

CANADA / JUDGMENT

Tsui v. Kondra

2023 BCSC 1532

COURT

Supreme Court of British Columbia

DECIDED

23 June 2023

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2023 BCSC 1532 Tsui v. Kondra

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tsui v. Kondra ,

2023 BCSC 1532

Date: 20230623

Docket: E210145

Registry: Vancouver

Between:

Amanda Tsui

Claimant

And

Kale John Kondra and Lyonsworth Investment Corp.,

Kondra Investment Corp., KK Elite Consulting Inc., Eric Koklip Lee,

Cindy Sunia Lee, Debbie Lee Schindler, Paul Hackert,

and Norton Singhavon

Respondents

Before: The Honourable Madam Justice Francis

Oral Reasons for Judgment

Counsel for the Claimant:

P.T. Busch

Counsel for the Respondents

Kale John Kondra and Lyonsworth Investment Corp., Kondra Investment Corp., KK Elite Consulting Inc.:

D.J. Miller

H.H. Graham

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 29 - 31, June 1 - 2, 5 - 9, and 12 - 16, 2023

Place and Date of Judgment:

Vancouver, B.C.

June 23, 2023

- [1] THE COURT: Amanda Tsui and Kale Kondra met in May 2016 in Kelowna. At the time, they were both in long-term relationships with other partners. Nevertheless, a romantic relationship ensued between them. Their relationship continued until sometime in 2020 or 2021. The nature of their relationship and whether Ms. Tsui and Mr. Kondra lived together for a continuous period of two years in a marriage-like relationship was the sole issue before me at trial. If they did, they were spouses for the purposes of the Family Law Act, S.B.C. 2011, c. 25 [FLA], and Ms. Tsui has access to the property division and spousal support regime of the FLA. If they did not, her notice of family claim must be dismissed in its entirety.
- [2] The legal issues in this case are therefore very straightforward: did Ms. Tsui and Mr. Kondra live together for a continuous period of at least two years and did they do so in a marriage-like relationship?
- [3] This case primarily turns on credibility. Ms. Tsui and Mr. Kondra's evidence about the events and the nature of their relationship is wildly different and completely unreconcilable. According to Ms. Tsui, the parties were living together in a marriage-like relationship from at least January 2018 when they moved into an Airbnb that Mr. Kondra had rented on Pacific Avenue in Vancouver (the "Pacific Airbnb"), until she broke things off with Mr. Kondra in early 2021. Mr. Kondra says that the parties were never in a marriage-like relationship and at most they only lived together from April 2019 when Ms. Tsui moved into an apartment that Mr. Kondra owned on Skyline Drive in Burnaby ("Skyline"), until February 2020, when Mr. Kondra moved to Taiwan.

Legal framework.

[4] Section 3 of the FLA sets out the test for whether a person is a spouse for the purposes of the Act:

3 (1) A person is a spouse for the purposes of this Act if the person

(a) is married to another person, or

(b) has lived with another person in a marriage-like relationship, and

(i) has done so for a continuous period of at least 2 years, or

(ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

(2) A spouse includes a former spouse.

(3) A relationship between spouses begins on the earlier of the following:

(a) the date on which they began to live together in a marriage-like relationship;

(b) the date of their marriage.

[Emphasis added.]

[5] The determination of whether a relationship is "marriage-like" requires a holistic approach in which all of the relevant aspects of the relationship are considered, but none of them are treated as being determinative: *Austin v. Goerz*, 2007 BCCA 586 at paras. 58 and 62.

[6] Notwithstanding the holistic nature of the enquiry, there are two distinct elements to the test for a marriage-like relationship; the couple must both "live with" one another for a continuous period of at least two years and they must do so in a marriage-like relationship: *Bellerose v. Reda*, 2023 BCSC 748 at para. 48.

[7] Because credibility is so central to the outcome of this case, on relevant points I have discussed the evidence of the parties and the witnesses in some detail. I have then endeavored to explain why I have preferred one party's version of the facts over the other.

Evidence**Direct Evidence of Ms. Tsui**

[8] At the time she met Mr. Kondra, Ms. Tsui was in a long-term romantic relationship with Nhuan Huynh, with whom she had lived since about 2015 at his apartment on Robson Street (the "Robson Street Apartment"). She testified that their relationship was rocky, and they broke up for the last time in July 2016 when she moved out of the Robson Street Apartment.

- [9] Mr. Kondra and Ms. Tsui met in Kelowna in May 2016. Ms. Tsui's sister Kelly, who is a friend of Mr. Kondra, had been in a jet ski accident. Kelly Tsui was hospitalised and Mr. Kondra got in touch with Ms. Tsui and flew her to Kelowna to be with her sister during her recovery. Ms. Tsui testified that after a week in Kelowna, she flew home. She testified that Mr. Kondra drove her to the airport and gave her \$1,000 in cash.
- [10] Ms. Tsui testified that she started dating Mr. Kondra in the summer of 2016. In August 2016, Mr. Kondra took her with him to Montreal to attend Formula One. After that, she started visiting him in his apartment on Barclay Street (the "Barclay Apartment") approximately two to three times a week where they had sex and spent time together. She was aware that another woman lived in the Barclay apartment with Mr. Kondra, but she testified that Mr. Kondra told her that they were in the process of breaking up and she believed Mr. Kondra to be single at this time.
- [11] During the period between August 2016 and December 2016, after her break-up with Mr. Huynh, Ms. Tsui testified that she lived first with a friend named Sharon in a townhouse and later with a friend named Carolyn who lived in the same building as Mr. Kondra. She testified that she was dating Mr. Kondra during this period and had completely broken up with Mr. Huynh.
- [12] In December 2016, Ms. Tsui learned that Mr. Kondra was still involved with Tracy Nguyen, the woman with whom he was living in the Barclay Apartment. She decided to break things off with Mr. Kondra.
- [13] In early 2017, according to Ms. Tsui, there was a brief period in which she and Mr. Huynh attempted to reconcile, but those attempts failed and in March 2017 she moved to Port Moody. At some point she resumed dating Mr. Kondra. She testified that at this time Mr. Kondra allowed her to drive one of his cars as her primary vehicle, a Mercedes GLE. She also testified that starting in 2017, Mr. Kondra gave her one of his credit cards to use. She used this card for food, school supplies, gas, and daily necessities.
- [14] Ms. Tsui testified that in early 2017, Mr. Kondra expressed to her that he wanted to move in with her. He had two condominiums that he was considering purchasing and he allowed her to pick the one she preferred to live in. She chose the Skyline apartment because she liked the floor plan but thought it needed some renovations, which Mr. Kondra agreed to. They made plans to make Skyline their home, although they knew it would take some time to renovate.
- [15] Ms. Tsui testified that on New Year's Eve, 2017, Mr. Kondra flew her and her friend, Madelon Chan, to his property in Cabo San Lucas, Mexico, to celebrate the 2018 New Year with him. While in Mexico, they looked online for Airbnb apartments where they could stay while the renovations of Skyline were taking place. They rented the Pacific Airbnb for a month in January 2018, and after that, they moved into a rental apartment in the Shangri-La building on Alberni Street in Vancouver (the "Shangri-La Apartment"). According to Ms. Tsui, the couple moved into the Shangri-La Apartment in March 2018 and stayed there until October

2018. Ms. Tsui testified that she had her own key fob and could come and go as she pleased from the Shangri-La Apartment.

- [16] In April 2018, the couple threw a catered dinner party at the Shangri-La Apartment and invited a number of friends. This event was significant as it was the first time Mr. Kondra met Ms. Tsui's circle of friends.
- [17] During 2018, the couple travelled frequently. Ms. Tsui estimated that they travelled together at least once a month within Asia and Canada. In April 2018, the couple went on a trip to Japan and Taiwan. Ms. Tsui came home early, and upon her return was in a fairly serious car accident. She convalesced in the Shangri-La Apartment while Mr. Kondra remained in Asia.
- [18] Around October 2018, according to Ms. Tsui, the lease at the Shangri-La Apartment was up and the couple went to live in a townhouse in Richmond that they rented from Airbnb (the "Richmond Airbnb"). She says they stayed there for a month and then moved into Skyline, the renovations at that point being mostly complete.
- [19] In June 2019, an incident happened that caused strain in the relationship between Ms. Tsui and Mr. Kondra. Ms. Tsui's testimony about this event was somewhat confusing. She testified that her friend, Aman Manj, was building a house for his mother and required her assistance in delivering a large sum of money to his friend, Sam. She took \$250,000 in cash from Mr. Manj to Sam. Sam was supposed to deposit the money at the TD Bank. Instead, Sam absconded with the money and Mr. Manj was very upset with Ms. Tsui. Ms. Tsui enlisted the help of Greg Tweed, a private investigator, to help get the money back, but she was not successful in tracking down Sam. Despite the fact that she described Mr. Manj as a trusted friend, whom she was helping with his mother's renovation, Ms. Tsui became concerned for her physical safety after the money was lost, and she told Mr. Kondra about the incident. According to Ms. Tsui, Mr. Kondra gave her \$250,000 in cash within a few hours of her confessing to him what had happened. After receiving a bag containing \$250,000 from Mr. Kondra, Ms. Tsui, on the instruction of Mr. Manj, took the bag of money to the Rolex store in downtown Vancouver. She then bought and subsequently returned a \$68,000 Rolex from the store using a secondary American Express card that Mr. Kondra had given her for the purpose of accessing airport lounges. The money was eventually given to one of Mr. Manj's associates.
- [20] After this incident, Mr. Kondra asked Ms. Tsui to sign a promissory note with respect to the cash he had given her to give to Mr. Manj. She testified that he told her that she did not need to pay him back the \$250,000, and the promissory note was for the purposes of "tax evasion".
- [21] In July 2019, the couple incorporated a company, Lyonsworth Investment Corp. ("Lyonsworth") and used the company as a vehicle to invest in a condominium in Coquitlam that Ms. Tsui had previously put a down payment on (the "Coquitlam Property"). Mr. Kondra and Ms. Tsui are both shareholders of Lyonsworth. Mr. Kondra's \$459,933 investment in Lyonsworth is reflected on the company financial statements as a loan to the company.

- [22] The couple continued to live in Skyline through 2019. They also travelled extensively that year. They went to the Maldives in April 2019 and again in November 2019. They made a number of trips to Taiwan in 2019 where, according to Ms. Tsui, they were considering relocating. Ms. Tsui testified that during these trips to Taiwan, she attended some business meetings with Mr. Kondra. She testified that the couple made a plan to move part time to Asia. They would reside six months of the year in Taiwan and six months of the year in Canada.
- [23] By early 2020, plans had been finalized for Mr. Kondra to go to Taiwan. Ms. Tsui wanted to visit family and friends in New York and Ontario, so she planned to follow Mr. Kondra to Taiwan around March 2020. Unfortunately the global COVID-19 pandemic interfered with their plans and she testified that the couple ended up being separated for most of 2020. Despite their separation, she testified that Mr. Kondra sent her various real estate listings in Taipei and that she eventually picked the apartment that the couple would live in together when she moved there.
- [24] Over the course of 2020, while Mr. Kondra was in Taipei and Ms. Tsui was living in Skyline, she continued to have access to Mr. Kondra's cars and his credit cards. She testified that the couple spoke every day over FaceTime and their relationship remained strong. She got a dog in February 2020 that she intended to bring with her when she moved to Taiwan. She says the couple talked about having children and looked for a place to live in Taiwan that was close to a daycare.
- [25] Ms. Tsui testified that throughout her relationship with Mr. Kondra, he financially supported her by paying her approximately \$2,000 to \$3,000 a month as well as letting her use his credit cards for her day-to-day expenses.
- [26] In about September or October 2020, Ms. Tsui testified that she became suspicious that Mr. Kondra was unfaithful to her. She confronted him, but the matter was not resolved. By late November 2020, she met Thomas Tran, a man she described as her rebound. She denied that she and Mr. Tran were ever a couple, but testified that they went on vacation together to Hawaii with a group of other people in December 2020.
- [27] In January 2021, Ms. Tsui filed her notice of family claim and registered certificates of pending litigation against a number of properties owned by Mr. Kondra. At this point, she says their marriage-like relationship terminated.

Cross-Examination of Ms. Tsui

- [28] Ms. Tsui made a number of admissions on cross-examination. Some of these admissions involved resiling from evidence she gave on direct examination. For example, she testified on direct examination that Mr. Kondra gave her an option in 2017 as to which of two properties he should purchase for the couple to live in, and she chose Skyline. When confronted with the purchase agreement for Skyline dated September 16, 2016, she admitted that she was not involved in the decision to purchase Skyline. She also admitted that

contrary to her direct examination, she did not spend New Year's Eve 2017 with Mr. Kondra in Mexico and, rather, flew to Cabo some days later, on January 4, 2018, with her friend, Madelon Chan. When taken to Mr. Kondra's Airbnb records which show that he rented the Richmond Airbnb for seven nights from September 28 to October 5, 2018, she admitted that the couple did not spend a month living in Richmond in the fall of 2018. Her testimony about when the couple moved into Skyline also changed on cross-examination. She testified on direct examination that the couple moved in September or October 2018. On cross-examination, she testified that while they started moving items into the apartment in the fall of 2018, the couple did not move into Skyline until December 2018. Her evidence about where the couple allegedly lived in the fall of 2018 is therefore very unclear.

- [29] On cross-examination, Ms. Tsui was confronted with the fact that she changed her mailing address with her bank to the Robson Street Apartment a month after she alleges that she commenced a common-law relationship with Mr. Kondra. She was unable to explain this. She was also confronted with the fact that in her initial notice of family claim, she had claimed that she and Mr. Kondra commenced living together in a marriage-like relationship in January 2017. She claimed that she made a mistake in the notice of family claim and that the correct date of their cohabitation was January 2018.
- [30] Ms. Tsui testified that she has never been married, but was unable to explain a marriage certificate in evidence that suggests that she married a man named Mauro David Ortiz on June 20, 2012.
- [31] Ms. Tsui claimed that she had a US driver's licence, but was unable to produce any licence other than a BC learner's licence issued in October 2019.
- [32] On cross-examination, Ms. Tsui clarified a number of ambiguities that were left from her direct examination on the events that took place in June and July 2019 involving a bag of money and a Rolex. She admitted that her friend, Aman Manj was a known member of the United Nations gang, since killed by gunfire in front of the Fairmont Pacific Rim Hotel in 2020. She admitted that the transaction she engaged in involved money laundering. She admitted that the Rolex she purchased in connection with this transaction was not returned the same day she bought it.
- [33] Ms. Tsui admitted on cross-examination that in July 2019, when Mr. Kondra invested in the Coquitlam Property through Lyonsworth, he refused to declare that the parties were in a common-law spousal relationship for the purposes of the contract of purchase and sale, even though this would avoid a 2 percent levy from the developer.
- [34] Ms. Tsui admitted that she produced only selective text messages in this litigation that were helpful to her case. She did not, for example, produce the text message from January 2021 by which she says she broke up with Mr. Kondra.

- [35] One of the most damaging pieces of evidence is the admission by Ms. Tsui that in February 2018, she and Mr. Huynh were in couple's counselling. This is notwithstanding her claim that she commenced living in a marriage-like relationship with Mr. Kondra in January 2018. Ms. Tsui suggested that she and Mr. Huynh went to counselling together long after they broke up because they are "both big on self-development".
- [36] There were multiple inaccuracies in affidavits Ms. Tsui has sworn in this proceeding which were pointed out to her on cross-examination. Her response to the multiple inaccuracies in her prior sworn evidence was, "I never really go over these things and that is my bad." Ms. Tsui's cavalier attitude towards evidence under oath is troubling and calls into question the veracity of all of her evidence.

Direct Evidence of Mr. Kondra

- [37] Mr. Kondra is 39 years old. He has achieved considerable financial success in a number of different business ventures. On February 7, 2020, he moved to Taiwan and he has lived there ever since.
- [38] Mr. Kondra testified that until the spring of 2018, he and Ms. Tsui had a casual sexual relationship. They were both in long-term relationships with other partners with whom they each lived. Their communications were therefore secretive, and up until mid 2017, rare.
- [39] Mr. Kondra met Ms. Tsui in May 2016 in Kelowna after her sister was in a jet ski accident there. He paid for Ms. Tsui to fly to Kelowna to see her sister. He drove her to the airport after her first visit but he did not give her \$1,000 cash. Rather, he treated her to Tim Hortons before she flew back to Vancouver.
- [40] Ms. Tsui visited Kelowna a couple more times in the weeks and months following her sister's accident. On her third visit, she and Mr. Kondra had sex. As mentioned, both were in long-term relationships with other people at the time and they did not have any further interaction until 2017. At some point in 2017, they ran into one another at a wedding and they started having an affair. During the latter half of 2017, they met once or twice a week for meals or to have sex, usually in Mr. Kondra's car.
- [41] At this time, Mr. Kondra had been in a relationship with Tracy Nguyen since 2013. They lived together in the Barclay Apartment. Both were named on the lease to that apartment which started as a one-year lease commencing September 1, 2016, and was extended on a month-to-month basis until the end of February 2018. Mr. Kondra testified that he and Ms. Nguyen broke up in late December 2017 and Ms. Nguyen moved out of the Barclay Apartment in early 2018. Mr. Kondra moved out shortly after that, in February or March 2018.
- [42] Mr. Kondra testified that he rented the Pacific Airbnb for the months of February and March 2018 as a place where he and Ms. Tsui could meet discretely to have sex. He also spent at least one night there with another woman. He testified that Ms. Tsui did not live in the

Pacific Airbnb and neither did he. It was a place where he would occasionally sleep, sometimes with Ms. Tsui, during his transition from the Barclay Apartment to the Shangri-La Apartment where, in April 2018, he moved in with his friend, Shane Patterson. Mr. Patterson had leased a two-bedroom apartment at the Shangri-La and Mr. Kondra moved in to the second bedroom.

- [43] After Mr. Kondra and Ms. Nguyen broke up, Mr. Kondra had a number of sexual relationships with a number of woman, including Ms. Tsui. He testified that in the spring of 2018, sometimes he and Mr. Patterson would pick up women from nightclubs and take them back to the Shangri-La Apartment.
- [44] In April 2018, Mr. Kondra and Ms. Tsui went on a trip to Asia together. Ms. Tsui came home early. On April 13, 2018, while Mr. Kondra was still in Asia, Ms. Tsui was in a car accident in Vancouver. Mr. Kondra let her stay at the Shangri-La Apartment for a couple of weeks while she recovered.
- [45] Mr. Kondra testified that Ms. Tsui slept over about one to two nights a week at the Shangri-La Apartment during those periods of time that Mr. Kondra was staying there and not travelling. She did not have her own key to the Shangri-La Apartment.
- [46] Mr. Kondra understood that Ms. Tsui had broken up with Mr. Huynh and moved out of the Robson Street Apartment sometime in February 2018. He believed she then moved to an apartment in Port Moody. He recalls driving her home to Port Moody in 2018. He denies that they ever lived together in 2018.
- [47] Mr. Kondra testified that he stayed in the Shangri-La Apartment until November 2018. The Richmond Airbnb, which he rented for a week, was never a place he lived in with Ms. Tsui. He rented that unit because he was dating a girl in Richmond and wanted to see her more easily. Mr. Kondra testified that he was in romantic relationships with many other women in 2018, including a woman in Kelowna, two women in Toronto, a woman in Tokyo, and another woman in Vancouver.
- [48] Mr. Kondra also testified that while he travelled with Ms. Tsui a number of times in 2018, he most often travelled without her. Most of his trips were with other friends or family.
- [49] Mr. Kondra denied that he financially supported Ms. Tsui. He testified that occasionally he gave her \$50 to \$100 if she was going out with friends, but there was no regular allowance, nor did he give her permission to use his credit cards for her day-to-day expenses. He was surprised to find out after the fact that she had extensively used his personal and corporate credit cards for online purchases of personal items, food delivery, and other expenses. He did make several large e-transfers to her for the purposes of payment for furniture for Skyline. Ms. Tsui, who was studying interior design at the time, assisted him in choosing furniture for Skyline.

- [50] By late 2018, the Skyline renovations had progressed to the point that Mr. Kondra could move in. He testified that he gradually moved his items from the Shangri-La Apartment and from storage. He testified that Ms. Tsui was not present during any of the move and she did not move in with him when he moved into Skyline. He testified that she only started to live in Skyline on a regular basis after the couple returned from a trip to the Maldives in April 2019. This is when, according to Mr. Kondra, the couple started living together.
- [51] Mr. Kondra described the incident involving the Rolex watch and the bag of cash in July 2019. According to his testimony, Ms. Tsui approached him and told him that she had a friend named Eric and she wanted to earn some income by helping Eric to launder money. She told Mr. Kondra that she took \$220,000 from Eric and met a person named Saman in a parking lot, Saman was supposed to give her a cheque in exchange for the cash. Instead, Saman pushed her to the ground and took the money, leaving her indebted to Eric. She initially approached Mr. Kondra and asked him for \$100,000. Then he learned that she had purchased a Rolex using his supplementary American Express card and that the Rolex purchase was somehow connected to this event. Eventually the matter escalated to the point that Ms. Tsui told Mr. Kondra that she was at risk of being kidnapped and she needed him to lend her \$220,000. Mr. Kondra borrowed \$220,000 in cash from his friend, Shane Schindler, and loaned it to Ms. Tsui in order that she could discharge her indebtedness. Mr. Kondra had his lawyers draw up a demand promissory note which Ms. Tsui signed.
- [52] Mr. Kondra described the money laundering incident as a turning point in his relationship with Ms. Tsui. He felt he could no longer trust her and their relationship deteriorated as a result. The couple started fighting frequently and in the second half of 2019, Mr. Kondra took every opportunity he could to travel so he could get away from Ms. Tsui.
- [53] In the fall of 2019, Mr. Kondra made the decision to relocate to Taiwan. He testified that it was always his plan to move to Taiwan alone, without Ms. Tsui. At this time, Mr. Kondra executed a number of planning documents, including a will, a power of attorney, and a representation agreement. He testified that these documents were made in anticipation of his pending move to Asia. Under his will, Mr. Kondra leaves his estate to his mother. His executor is his mother and his attorney and representative is his brother, Nathan. Ms. Tsui is not mentioned in any of the planning documents that Mr. Kondra executed in the fall of 2019.
- [54] On February 8, 2020, Mr. Kondra arrived in Taiwan and immediately commenced the process of formally immigrating there. On all of his immigration application forms he declared his relationship status as single.
- [55] Mr. Kondra admitted that he did not formally break up with Ms. Tsui when he moved to Taiwan. He hoped she would meet someone new quickly and thought she would have understood that they were ending their relationship by virtue of the fact that he was permanently moving to another country. He testified that he had no plans for Ms. Tsui to live with him in Taiwan, although they did discuss her coming to visit him there. He testified

that while they discussed flights for her to visit him in March 2020, he had no intention of booking a flight for her and did not want her to visit him.

- [56] When asked why he continued after February 2020 to exchange messages with Ms. Tsui that were affectionate and sometimes romantic, he explained that he wished to avoid confrontation. Ms. Tsui was still living in Skyline with all of Mr. Kondra's belongings. He did not want to risk conflict, so he appeased her in his text communications with her.
- [57] By April 2020, Mr. Kondra had started dating Judy Liu, a woman he met in Taiwan. By May 2020, Mr. Kondra and Ms. Lu were living together.

Cross-Examination of Mr. Kondra

- [58] On cross-examination, Mr. Kondra admitted that he did not tell Ms. Tsui about the other women he dated over the course of their relationship. He admitted that he kept the women he dated secret from one another.
- [59] Mr. Kondra also admitted that after he moved to Taiwan, he continued to pay for flights for Ms. Tsui and she continued to use his credit cards. She continued to have access to his vehicles. He did not ask her to leave Skyline until September 2020. Mr. Kondra continued to pay the mortgage and all the expenses on Skyline after he moved to Taiwan. He admitted that there was no definitive discussion between the two about breaking up until November 2020.

Non-Party Witnesses

- [60] Ms. Tsui called the following witnesses: Jessica Savarese, the designer who assisted with the new kitchen at Skyline; Gregory Tweed, the private investigator Ms. Tsui hired after the money laundering incident and then later to investigate Mr. Kondra; Theresa Cam, a former friend of Ms. Tsui; Andrew Aracanelli, Ms. Cam's fiancé and also a former friend of Ms. Tsui; Lui (Carole) Wong, Ms. Tsui's former Chinese tutor; and Keturah Tam, a former friend of Ms. Tsui.
- [61] Mr. Kondra called the following witnesses: Nhuan Huynh, Ms. Tsui's former partner; Tracy Nguyen, Mr. Kondra's former partner; Shane Patterson, Mr. Kondra's friend and former roommate from the Shangri-La Apartment; Nathan Kondra, Mr. Kondra's brother; Judy Liu, Mr. Kondra's current romantic partner; Tiffany Yeh, a former friend of Ms. Tsui; and an assortment of Mr. Kondra's friends and acquaintances, including Richard Pagal, Eric Lee, Norton Singhavon, Hankil Lee, Shane Schindler, and Jean Merchan.
- [62] There is little divergent in the evidence of the witnesses, including Ms. Tsui's witnesses, with respect to the timeline of the relationship. Almost uniformly, the witnesses' evidence corroborates the evidence of Mr. Kondra with respect to when the couple started dating, when they moved in together, and when they ceased living together. None of the witnesses, including those called by Ms. Tsui, were able to corroborate her testimony that she and Mr.

Kondra commenced living together in January 2018 and that they lived together continuously until he moved to Taiwan in February 2020.

- [63] Mr. Huynh testified that he and Ms. Tsui were in a romantic relationship from August 2015 until February 2018. They had a period of separation from November 2016 to March 2017, but other than during this period of time, they were living together in the Robson Street Apartment until February 2018 when Ms. Tsui moved out. He testified that they engaged in couple's counselling in February 2018 in an attempt to salvage their relationship.
- [64] Theresa Cam, who was called as a witness for Ms. Tsui, testified that she was a friend of Ms. Tsui in 2018. She understood that Ms. Tsui and Mr. Huynh did not break up until March 2018. Keturah Tam, another former friend called by Ms. Tsui, thought that Ms. Tsui and Mr. Huynh broke up around Valentine's Day in 2018. No witness, including Mr. Huynh himself, supported Ms. Tsui's evidence that she and Mr. Huynh broke up for the last time in July of 2016.
- [65] In terms of when Ms. Tsui and Mr. Kondra started living together, the non-party witnesses generally corroborated Mr. Kondra's evidence that he and Ms. Tsui did not live together in 2018 when he was living at the Shangri-La Apartment. Ms. Cam did not know whether Ms. Tsui ever lived with Mr. Kondra in the Shangri-La Apartment. She understood it to be Mr. Kondra's apartment. Ms. Tam believed that Ms. Tsui lived in the Shangri-La Apartment with Mr. Kondra but she never visited her there.
- [66] Shane Patterson testified that he leased the Shangri-La Apartment in the fall of 2017 when he was going through a marriage breakdown. The Shangri-La Apartment was a two-bedroom apartment. In April 2018, Mr. Kondra moved into the second bedroom. Mr. Patterson exercised his parenting time with his children at his father's home in Maple Ridge, so he was often away from the Shangri-La Apartment. However, he testified that he saw Ms. Tsui come to stay at the Shangri-La Apartment about once a week during the time that Mr. Patterson and Mr. Kondra lived there. Ms. Tsui did not have a key to the Shangri-La Apartment and she was not the only woman Mr. Patterson observed sleeping over with Mr. Kondra at the Shangri-La Apartment.
- [67] A number of witnesses, including Nathan Kondra, Eric Lee, Norton Singhavon, and Hankil Lee testified that they visited the Shangri-La Apartment while Mr. Kondra was living there and that there was no sign of women's clothing or toiletries or any other indication that anyone lived in the apartment other than Mr. Kondra and Mr. Patterson. These witnesses also testified that Mr. Kondra dated multiple other women throughout the course of 2018.
- [68] Carol Wong testified that she did Chinese lessons with Ms. Tsui in 2018 and 2019. The lessons started in August 2018 and took place approximately once a week in the common room at the Shangri-La. At some point Ms. Tsui moved the lessons to the Skyline, but Ms. Wong could not recall when.

- [69] Mr. Pagal testified that he assisted Mr. Kondra to move into Skyline in December 2018. Eric Lee also assisted Mr. Kondra with some aspects of his move to Skyline. Both testified that Ms. Tsui was not present when they moved and that none of her belongings were in Skyline when they moved Mr. Kondra's belongings in around December 2018. Mr. Lee testified that it only became evidence that Ms. Tsui was living in Skyline in April 2019.
- [70] Jessica Savarese is an interior designer who worked for Habitat Kitchens. She testified that Ms. Tsui came into her showroom in 2018 and hired her to assist with the new kitchen at Skyline. She also met Mr. Kondra and she testified that he had final approval on all aspects of the kitchen design that she worked on for Skyline.
- [71] Ms. Cam testified that she knew in early 2020 that Mr. Kondra was moving to Taiwan. Based on her conversations with Ms. Tsui, she understood that Ms. Tsui was planning to visit him there, but she had no knowledge that Ms. Tsui planned to move there.
- [72] Mr. Lee testified that he spoke to Mr. Kondra about his plans when he was moving to Taiwan and Mr. Kondra told him that he did not want Ms. Tsui to move to Taiwan with him.
- [73] Judy Liu testified that she started dating Mr. Kondra in April 2020 and that by May 2020 they were living together in Taipei.

Credibility

- [74] The factors to be considered when assessing credibility are usefully summarized in the case of *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd [2012] S.C.C.A. No. 392. The assessment involves consideration of the witness's ability and opportunity to observe events, the firmness of the witness's memory, the ability of the witness to resist the influence of interest in modifying recollection, a consideration of whether the witness's evidence harmonizes with independent evidence that has been accepted, whether the witness changes their evidence during direct examination and cross-examination, or is otherwise inconsistent in their recollections, the witness's demeanour generally, a consideration of whether the witness's evidence seems generally unreasonable, impossible, or unlikely, and whether the witness has a motive to lie. Such an assessment is aimed at considering whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.
- [75] In this case, there is no way to reconcile the two versions of events offered by Ms. Tsui and Mr. Kondra. Ultimately, I must decide which version is the most probable based on a review of the evidence as a whole, an assessment of the parties' demeanour at trial, a consideration of whose evidence most closely aligns with the objective evidence, and a consideration of the inconsistencies in the evidence.
- [76] There were numerous reliability and credibility issues that arose in the course of Ms. Tsui's testimony. There were multiple points of fact on which her evidence was contradicted by other witnesses, including her own witnesses. This included material facts such as when she

and Mr. Huynh broke up and ceased living together. Ms. Tsui testified that she and Mr. Huynh broke up for the last time and ceased living together in July 2016, but her two friends who testified, Theresa Cam and Keturah Tam, both testified that Ms. Tsui and Mr. Huynh were in a romantic relationship and living together until at least February 2018. Mr. Huynh, who presently has no relationship with Ms. Tsui or Mr. Kondra and has no interest in the outcome of these proceedings, testified that he and Ms. Tsui broke up for the last time when she moved out of the Robson Street Apartment in February 2018. Ms. Tsui's evidence that she and Mr. Huynh ceased living together in July 2016 is also belied by a number of documents. On September 1, 2017, Ms. Tsui signed a contract of purchase and sale with respect to the Coquitlam property and she used the Robson Street Apartment as her home address. In early 2018, she changed her address with her bank to the Robson Street Apartment address. Ms. Tsui's assertion that she broke up with Mr. Huynh for the last time in July 2016 and was exclusively in a relationship with Mr. Kondra from 2016 to 2020 is simply not true.

- [77] There are other inaccuracies on material points. In her notice of family claim, Ms. Tsui alleges that she and Mr. Kondra commenced living together in a marriage-like relationship in January 2017, a time at which it is clear that both she and Mr. Kondra were living in marriage-like relationships with other people. At trial, she amended her position to say that she and Mr. Kondra commenced living together in a marriage-like relationship in January 2018. She referred to the date in her notice of family claim as a "mistake."
- [78] Ms. Tsui testified that she chose the Skyline apartment before Mr. Kondra purchased it in December 2017. When taken to documentary evidence indicating that Mr. Kondra purchased the Skyline in September 2016, she testified that she'd not previously been "made aware" of the document.
- [79] Ms. Tsui testified that she spent a month living in the Richmond Airbnb with Mr. Kondra. On cross-examination, she was shown Mr. Kondra's Airbnb records which showed that he rented the Richmond Airbnb for one week. She testified that she must have read the dates wrong on Mr. Kondra's reservation.
- [80] Ms. Tsui testified that Mr. Kondra provided her with large amounts of cash through 2017 and 2018 and that she deposited the cash payments from Mr. Kondra into her bank account. However, Ms. Tsui's bank records were in evidence and they did not support her assertion that she made large cash deposits to her account during this period.
- [81] Ms. Tsui's selective disclosure of evidence has also caused me concern with respect to the credibility and reliability of her evidence. Despite her evidence that she was in daily contact with Mr. Kondra over the social media messaging platform WhatsApp, she admitted that she selectively disclosed messages between them and has not produced the full set of text messages the parties exchanged. Important text messages are missing from her disclosure. There is a gap of over a year in the messages she produced, from March 24, 2018 to June 6, 2019. This is a critical time because it encompasses the period that she says she and Mr.

Kondra were living together and he submits that they were not. The only inference I can draw from Ms. Tsui's decision not to disclose over a year's worth of WhatsApp messages is that those messages, if produced, would not be helpful to her case.

- [82] As a result of the foregoing, I have approached Ms. Tsui's evidence with a great deal of caution. Where her evidence is contradicted by the evidence of Mr. Kondra on material points, I have for the most part preferred the evidence of Mr. Kondra.

Analysis

Did the parties live together for a period of at least two years?

- [83] The FLA mandates that a couple must be in a marriage-like relationship and they must live together for a period of at least two years before they will be considered to be spouses. The FLA has no application to more transitory connections: *C.F.M. v. G.L.M.*, 2018 BCSC 815 at para. 11.
- [84] In *Jones v. Davidson*, 2022 BCCA 31, Saunders J.A. observed the following in considering whether two parties were spouses for the purposes of the former Estate Administration Act, R.S.B.C. 1996, c. 122:
- [17] It seems to me, however, that to be true to the legislation, the starting place for an enquiry into status as a common law spouse should be the first of the three qualifications: Did the survivor "live with" the deceased for the requisite period? I say this recognizing that the concept of living with another person must be susceptible to some factual fluidity to take account of the complexities of modern life including employment and education needs, and geography. Even so, the question I would pose here is whether the term "live with" connotes a degree of "withness" or sharing that is independent of the indicia of a marriage-like relationship and independent of the character of the relationship.
- [85] I have therefore considered separately the question of whether the parties lived together for a period of at least two years and the question of whether they were in a marriage-like relationship.

Date the parties started living together

- [86] Ms. Tsui submits that the parties commenced living together in January 2018. Mr. Kondra says the parties commenced living together in April 2019. On the basis of the evidence of all of the witnesses who testified on these issues, I reject Ms. Tsui's evidence in this regard and I accept Mr. Kondra's evidence.
- [87] As Mr. Huynh testified, Ms. Tsui was living with Mr. Huynh until they broke up in February 2018. She appears to have lived in Port Moody after she moved out of the Robson Street Apartment. She did not move into the Shangri-La Apartment, although she spent the night there with Mr. Kondra on a fairly regular basis and spent two weeks there in April 2018 while he was in Asia. She was there frequently enough that she took Chinese lessons in the

Shangri-La common room, but she never moved her personal items into the apartment and it was never her primary residence. Ms. Tsui's evidence that she lived in the Pacific Avenue Airbnb and then the Shangri-La Apartment from January 2018 to October 2018 is unsupported by any documentary evidence, is contradicted by her own witnesses, and is inconsistent with the credible testimony of the numerous witnesses who were close to Mr. Kondra and/or Ms. Tsui in 2018.

[88] I also do not accept Ms. Tsui's evidence that she moved into Skyline in October 2018. Mr. Kondra testified that Skyline was uninhabitable due to the ongoing renovations until December 2018. Photographs in evidence support this. Mr. Pagal and Mr. Lee both testified that they helped move Mr. Kondra into Skyline in December 2018 and there was no sign of Ms. Tsui. I find it more probable that Ms. Tsui moved into Skyline in April 2019 after the couple went on a trip to the Maldives as Mr. Kondra has asserted.

[89] I therefore find that the parties began living together in April 2019.

Date the parties ceased living together

[90] The next question is whether the parties lived together continuously for a period of at least two years commencing in April 2019.

[91] In February 2020, Mr. Kondra moved to Taiwan and commenced the process of immigrating there on a permanent basis. He did so as a single person. He testified that he had no intention of Ms. Tsui coming to live with him in Taiwan and he expressed this at the time to his friends.

[92] Mr. Kondra's decision to move permanently to Taiwan without Ms. Tsui clearly indicates that he understood his relationship with Ms. Tsui to be at an end. Shortly after moving to Taiwan, Mr. Kondra met Judy Liu and started a serious relationship with her.

[93] Ms. Tsui submits that she and Mr. Kondra continued to be in a loving committed relationship after he moved to Taiwan and that it was the onset of the COVID-19 pandemic that kept them apart from February 2020 until their break-up in January 2021.

[94] While it is possible for a couple living apart to be found to have continued to be in a spousal relationship, these facts do not give rise to the conclusion that the parties continued to live together in any way after Mr. Kondra moved to Taiwan in February 2020. As Justice Griffin (as she then was) noted in *Parke v. Veale*, 2015 BCSC 2554, considering a spousal status claim in a relationship similarly nascent to the one before me:

[73] Determining whether spouses who, through time and commitment, have crossed the threshold into matrimonial legal obligations should continue to have those obligations after they begin living apart is an entirely different context than the case before me.

- [74] This case is about the very beginning of a marriage-like relationship, which soon proved to be an unhappy and volatile one. The question is whether the two people have shown the time, two years continuous, and commitment, marriage-like, necessary to bring them within the statutory regime such that they owe matrimonial legal obligations to one another. As can be seen to be clear now, I have found on the facts that they have not.
- [95] I find Justice Griffin's comments to be helpful. This is not a case where Mr. Kondra and Ms. Tsui were in a long-term marriage-like relationship and the issue before the court is whether Mr. Kondra's move to Taiwan ended the spousal relationship. This is a case about whether a spousal relationship ever came into being. The statutory scheme is only invoked if the parties lived together continuously for a period of at least two years. They clearly did not because Mr. Kondra moved to Taiwan in February 2020, with the intention of staying there permanently without Ms. Tsui. The fact that Mr. Kondra may have been ambiguous in his communications with Ms. Tsui, and even caused her to believe that their romantic relationship was not over, does not change the fact that under any analysis, the couple were not living together after February 2020.
- [96] I found that the parties commenced living together in April 2019. I find that they ceased living together in February 2020. As the total continuous duration of their cohabitation was 10 months, they did not meet the first part of the test for spousal status under the FLA.
- [97] In any event, even if I acceded to Ms. Tsui's submission that the parties continued living together, albeit geographically apart, until January 2021, they would still fail to meet the two-year threshold for spousal status under the FLA, having commenced living together in April 2019.

Was the relationship marriage-like?

- [98] For completeness, I have also considered whether, if the parties had lived together for a period of two consecutive years, their relationship was marriage-like such that they would have been held to be spouses under the FLA.
- [99] In *Kennedy v. Smith*, 2022 BCSC 1622, I summarized the jurisprudence with respect to marriage-like relationships as follows:
- [56] Determining whether a cohabiting couple is in a marriage-like relationship is a question of mixed fact and law which requires a broad approach (*Austin v. Goerz*, 2007 BCCA 586). In *Austin*, the Court of Appeal rejected a "checklist approach" but referenced the factors listed in *M. v. H.*, [1999] 2 S.C.R. 3, [1999] S.C.J. No. 23 at para. 59, as helpful indicators of the kind of behaviour society associates with a marital relationship, including: shared shelter, sexual and personal behaviour, domestic services, social activities, economic support, children, and the societal perception of the couple.
- [57] In *Weber v. Leclerc*, 2015 BCCA 492 at para. 11, the Court of Appeal, citing *Gostlin v. Kergin*, [1986] B.C.J. No. 365, 3 B.C.L.R. (2d) 264 (C.A.), encouraged a "holistic" approach in assessing whether a relationship is "marriage-like" and confirmed that a couple must do more than co-

habit to be treated as spouses. At paras. 23 - 24, the Court held the parties' intentions, particularly the expectation the relationship will be of lengthy, indeterminate duration, may be important in determining whether it is "marriage-like", noting a court must test that evidence by considering whether the objective evidence is consonant with those intentions.

[100] In this case, I find that the following objective factors militate against a finding of a marriage-like relationship:

- a) While the couple travelled together during their relationship, Mr. Kondra travelled more often with other friends or by himself than he did with Ms. Tsui.
- b) Neither party was loyal to the other. Mr. Kondra testified that he had multiple sexual partners during his relationship with Ms. Tsui. Ms. Tsui started her relationship with Mr. Kondra while in a relationship with Mr. Huynh and started a relationship with Thomas Tran while she was still ostensibly in a relationship with Mr. Kondra, at least according to her timeline.
- c) The parties appeared to share almost no domestic services. Mr. Kondra testified that neither one of them ever cooked a meal for the other in the Skyline apartment. They each did their own laundry. They did not perform any services or tasks for one another.
- d) Mr. Kondra testified that their social circles were distinct and rarely overlapped.
- e) While Ms. Tsui, like many of Mr. Kondra's friends, met his mother, brother, sister-in-law, and nephew, she did not travel to meet his grandmother or other relatives. This is in contrast with his prior girlfriend, Tracy Nguyen, and current girlfriend, Judy Liu, both of whom have met his extended family.
- f) While Ms. Tsui claims that Mr. Kondra financially supported her during their relationship, this is not supported by the documentary evidence. It appears that Mr. Kondra gave Ms. Tsui some sums of money in 2019 and 2020, but these related to furniture purchases for Skyline. There is no documentary evidence to support her assertion that Mr. Kondra paid her a regular allowance of \$2,000 to \$3,000 a month. It also appears that Ms. Tsui used Mr. Kondra's credit cards, but she did so without his knowledge or permission.
- g) Many of Mr. Kondra's friends, along with his brother, testified that while they knew Mr. Kondra and Ms. Tsui were in a sexual relationship, they did not understand the relationship to be as serious as his prior relationship with Ms. Nguyen or his current relationship with Ms. Liu.
- h) The parties did not support one another in times of crisis. Ms. Tsui had a serious car accident in April 2018 and Mr. Kondra did not cut his Asia trip short to come home and tend to her. Mr. Kondra seriously injured his foot at a party in Lions Bay in August 2019 and Ms. Tsui did not come to the hospital. When Mr. Kondra loaned Ms. Tsui \$220,000 in connection with the money laundering incident, he testified that he did so because he was fearful for his own personal safety and he secured this loan with a promissory note.

[101] In terms of the subjective intentions of the parties, I cannot discern from the evidence or the behaviour of these parties the type of emotional commitment necessary to constitute a long-term, loving, committed relationship. In *Gostlin v. Kergin*, 3, B.C.L.R. (2d) 264, [1986] B.C.J. No. 365 (C.A.), our Court of Appeal framed the subjective intention with a hypothetical question: If each partner had been asked during the relationship whether if their partner were to be suddenly disabled for life, would they consider themselves committed to the long-term support of that partner? The answer in my view for both parties to this proceeding is unquestionably "no".

Conclusion

[102] Having found that the parties did not live together for a period of at least two years, and having found that they never had a marriage-like relationship, I find that the parties were not spouses for the purposes of the FLA. The claimant's notice of family claim is dismissed.

[103] With respect to costs, I have not heard submissions on costs. In the normal course, Mr. Kondra would have his costs as the successful party, but there may be matters relating to costs about which I am unaware. If that is the case, the parties may make arrangements through Supreme Court Scheduling for a one-hour hearing before me to speak to costs.

"Francis, J."

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