

CANADA / JUDGMENT

Wang v. Jiang

2020 BCSC 145

COURT

Supreme Court of British Columbia

DECIDED

7 February 2020

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2020 BCSC 145 Wang v. Jiang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Jiang,

2020 BCSC 145

Date: 20200207

Docket: E152456

Registry: Vancouver

Between:

Yi Meng Wang aka Sharon Wang

Claimant

And

Jun Cheng Jiang aka John Jiang, Xiao Ling Jiang, Tian Qi Jiang, Wingsum International Trading Inc., Wingsum Food Inc., W&W Food Ltd., and Win Sum Produce Corp., and Jun Shan Jiang aka Grace Jiang

Respondents

- and -

Docket: S165630

Registry: Vancouver

Between:

Jian Guo Wang

Plaintiff

And

Jun Cheng Jiang aka John Jiang and Xiao Ling Jiang

Defendants

- and -

Docket: S166703

Registry: Vancouver

Between:

Jian Guo Wang

Plaintiff

And

Yi Meng Wang and Jun Cheng Jiang aka John Jiang

Defendants

Corrected Judgment: On the 2nd page, J. Wai, has been added as Counsel for the Claimant/Defendant, Yi Meng Wang aka Sharon Wang

Before: The Honourable Mr. Justice McEwan

Reasons for Judgment

Counsel for the Plaintiff, Jian Guo Wang:

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D. Cayley

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J. Wai

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The Respondent/Defendant, Jun Cheng Jiang aka John Jiang appearing in person:

Jun Cheng Jiang aka John Jiang

The Respondent appearing in person:

Xiao Jiang

The Respondent appearing in person:

Jun Shan Jiang aka Grace Jiang

Place and Dates of Trial:

Vancouver, B.C.

June 25-29, July 3-6, 9-13, 16-20, 23-27, 30-31, August 1-3, 7-8, and September 10-14, 2018

Place and Date of Judgment:

Vancouver, B.C.

February 7, 2020

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[1]

- [1] In this trial of three actions, two civil claims by Jian Guo Wang ("Mr. Wang"), and a family claim by his daughter, Yi Meng Wang ("Sharon"), the evidence of which occupied 31 days of the Court's time, the claims of Mr. Wang ("the Wang claims") are, in essence, simple. The issues in the matrimonial action are somewhat more convoluted because of the number of issues involved.
- [2] There was a contempt hearing against John Jiang in the course of these proceedings in November 2016, which resulted in a sentence of imprisonment, largely suspended, which will be referred to in more detail later.
- [3] I will set out the basic issues in the Wang claims (E152456 and S165630) first although there is some overlap with the matrimonial claims.

I. THE WANG CLAIMS

A. Overview

- [4] In Action S166703, which is against Jun Cheng Jiang ("John") Jiang and Sharon (Wang's daughter) the Claimant alleges that in 2012 he entered into an oral agreement with John Jiang to acquire a piece of property at 2772 West 20th Avenue, Vancouver, B.C. (West 20th) which John and Sharon eventually lived in. Mr. Wang lent John and Sharon money to effect the purchase, with the balance to come from a mortgage to be obtained by the defendants, who would repay it as the equivalent of rent. The property would be registered in their names in order to build up Mr. Jiang's business credibility.
- [5] Mr. Wang alleges that, without Mr. Wang's knowledge, John later obtained a mortgage against the property and used the money for his own purposes.
- [6] The Claimant Wang seeks a declaration that he is the beneficial owner of this property, or in the alternative, various other forms of relief and accountings, including judgment for the amount of the loans and the mortgage, and return of the funds.
- [7] Mr. Wang says it is abundantly clear that he provided all of the funds to purchase the property, that it was occupied by John and his wife, Sharon, and that John and Sharon paid no rent to Mr. Wang but rather made monthly mortgage payments as the equivalent of rent.
- [8] As well, Mr. Wang loaned various funds to John for his business, for which John agreed to pay 10% per year. By July of 2013, Mr. Wang had advanced to John in various advances, unrelated to the two properties, the sum of \$228,130.

[9] The following table reflects Mr. Wang's calculations respecting the loan:

Date

Loan (Repayment

Outstanding Principal

Simple Interest (10%)

Number of days

Oct. 15, 2012

\$40,000.00

\$40,000.00

Dec. 31, 2012

\$40,000.00

\$841.53

77

Feb. 21, 2013

\$68,130.00

\$108,130.00

\$569.86

52

May 21, 2013

\$20,000.00

\$128,130.00

\$2,636.59

89

May 24, 2013

\$100,000.00

\$228,130.00

\$105.31

3

July 15, 2013

(\$954.28)

\$227,175.72

\$3,250.07

52

July 31, 2013

(\$954.28)

\$226,221.44

\$995.84

16

Aug. 15, 2013

(\$954.28)

\$225,267.16

\$929.68

15

Aug. 31, 2013

(\$954.28)

\$224,312.88

\$987.47

16

Sep 15, 2013

(\$954.28)

\$223,358.60

\$921.83

15

Sep 30, 2013

(\$954.28)

\$222,404.83

\$917.91

15

Oct. 15, 2013

(\$954.28)

\$221,450.04

\$913.99

15

Oct. 31, 2013

(\$954.28)

\$220,495.76

\$970.74

16

Nov. 15, 2013

(\$954.28)

\$219,541.48

\$906.15

15

Nov. 30, 2013

(\$954.28)

\$218,587.20

\$902.23

15

Dec. 15, 2013

(\$954.28)

\$217,632.92

\$898.30

15

Dec, 31, 2013

(\$954.28)

\$216,678.64

\$954.01

16

Jan. 15, 2014

(\$954.28)

\$215,724.36

\$890.46

15

Jan. 31, 2014

(\$954.28)

\$214,770.08

\$945.64

16

Feb. 15, 2014

(\$954.28)

\$213,815.80

\$882.62

15

Feb. 28, 2014

(\$954.28)

\$212,861.52

\$761.54

13

Mar. 15, 2014

(\$954.28)

\$211,907.24

\$874.77

15

Mar. 31, 2014

(\$954.28)

\$210,952.96

\$928.91

16

Apr. 15, 2014

(\$954.28)

\$209,998.68

\$866.93

15

Apr. 30, 2014

(\$954.28)

\$209,044.40

\$863.01

15

May 15, 2014

(\$954.28)

\$208,090.12

\$859.09

15

May 31, 2014

(\$954.28)

\$207,135.84

\$912.18

16

June 15, 2014

(\$954.28)

\$206,181.56

\$851.24

15

June 30, 2014

(\$954.28)

\$205,227.28

\$847.32

15

Aug. 5, 2014

\$52,622.50

\$257,849.78

\$2,024.16

36

Dec. 31, 2014

\$257,849.78

\$10,455.28

148

Dec. 31, 2015

\$257,849.78

\$25,784.98

365

Dec. 31, 2016

\$257,849.78

\$25,784.98

366

Dec. 31, 2017

\$257,849.78

\$25,784.98

365

Aug. 17, 2018

\$257,849.78

\$16,177.42

229

\$257,849.78

\$134,197.02

Total Principal and Interest

\$392,046.80

Per Diem Interest

\$70.64

[10] Action S165630 was commenced as a petition and converted to an action. This action concerns property at 7371 Sunnymede Crescent, Richmond, B.C. ("Sunnymede").

[11] Mr. Wang alleges that he entered into a written agreement with John in January of 2014, for the purchase of Sunnymede, the ownership of which would be in accordance with their respective contributions to the purchase and renovation, and title to which would be held in the name of John's mother, Xiao Ling Jiang ("Ms. Jiang"), who would receive 5% of the profits generated after sale. John now denies that he has any interest in the property, and says it belongs entirely to his mother, who claims ownership and receives rents from it.

[12] Mr. Wang seeks a declaration of equitable or beneficial interest in this property, with various other forms of relief.

[13] The only complexities in Mr. Wang's two claims arise from the multitude of falsehoods advanced by John at trial, most of which revolve around what the Claimants contend, and I accept, are two patently absurd allegations:

- a) John says that he had an arrangement with Mr. Wang whereby he would provide Mr. Wang with unidentified amounts of cash which John collected from his business and did not report to CRA until the spectre of incarceration loomed over his head during the course of this proceeding. In exchange, he says Mr. Wang transferred funds from China to Canada in approximately the same amount. This was the so-called "Cash Agreement".

- b) Ms. Jiang was a wealthy woman who loaned her son hundreds of thousands of dollars without providing a shred of loan documentation. It is more than three years since this litigation was commenced, and the allegation is that every penny that passed from John to his mother at any time in these proceedings was simply a "repayment" by John of these alleged loans.
- [14] Ultimately, I accept the Claimant's assertions that, but for these two central falsehoods and the many smaller and readily disprovable falsehoods that accompanied them, this proceeding likely would not have required a lengthy trial with the factual complexity and concomitant expense to Sharon and Mr. Wang.
- [15] This is a case of credibility. The defences, such as they are, are all steeped in lies that the Defendants stuck to with unreasonable persistence throughout this proceeding. Late in the day, and a few weeks before trial, the Defendants found themselves without a lawyer. This meant that the Defendants faced a trial with no appreciation of the rule in *Brown v. Dunn* and a number of other evidentiary principles. This was not helpful to their case. The case has been made out largely through the thorough efforts of counsel for the Claimants. Very little of the averments of the Claimants has been met by cogent proof of any kind offered by the Defendants. Much of the factual background to this judgment necessarily follows the Claimants version of events. This is not to say that the Claimants' case was proved to a wholly satisfactory degree. At the end of the day, despite the involvement of a forensic auditor and business evaluator the court was left with only what it could infer from the evidence that had been assembled.

B. The Wang Family

- [16] The Claimant, Jian Guo Wang is a wealthy, self-made man. He got his start as a young man studying machinery, and now with a few partners, runs a successful manufacturing company in China. Mr. Wang is also an astute investor.
- [17] In 2002, Mr. Wang and his wife Fei Fei Wu ("Ms. Wu") immigrated to Canada so that their daughter, Sharon could have a good education.
- [18] Mr. Wang and Ms. Wu initially settled in Richmond. Later, they purchased a home on West 21st Avenue in Vancouver.
- [19] After completing high school, Sharon studied economics at Western University in Ontario, and later transferred to Simon Fraser University to complete her studies. During this time, and for a considerable time thereafter, Sharon was supported by her parents.
- [20] Mr. Wang does not work in Canada. Rather, he has supported his family through his income in China and he divides his time between China and Canada.

C. The Jiang Family

- [21] In 2003, John's father, Mr. Jiang, immigrated to Canada as a refugee. Ms. Jiang said that the rest of the family came later under "family reunion" status. Mr. Jiang figures later in this proceeding. He remained in China and did not come to the trial or testify.
- [22] Ms. Jiang claims she sent money from China that she said her husband, Tian Qi Jiang (Mr. Jiang) used to purchase an "entire building" in Toronto. She had no documentation to support this assertion.
- [23] During cross-examination, it became evident that Ms. Jiang had painted a misleading picture. The documents revealed that, in fact, Mr. Jiang purchased a one-third interest in a building in Hamilton. When the relevant document was put to her, Ms. Jiang claimed to be unaware of it.
- [24] In any event, the business did poorly, and it was ultimately closed. Ms. Jiang has no knowledge of the terms of that sale. No documents were produced.
- [25] After the failure of this business in Hamilton, the Jiang family returned to China.
- [26] In June, 2004, John married his first wife, Xiao Ying Wu ("Jessie"). The Jiang family moved to Vancouver. Jessie was pregnant.
- [27] John had a younger sister, Grace (the defendant Jun Shan Jiang).
- [28] Following the birth of the child Harrison, John and Jessie joined the Jiang family, who were living in Vancouver, and moved into a rented accommodation on Fleming Street. John, Jessie and Harrison shared a room. Grace had her own room. According to Jessie Wu, Ms. Jiang and Mr. Jiang had two rooms. Despite the fact that she was living in this home together with them, she claimed she did not know whether or not they lived together.
- [29] Everyone in the Jiang family found paid work except for Grace, who was still a student at the time. Mr. Jiang drove a delivery truck, Ms. Jiang did child care and some cleaning work, and John drove a delivery truck at Fresh Choice (known in Chinese as "Hong Fa"), earning somewhere between \$1,000 and \$2,000 per month. Jessie taught piano, and testified that she had very little income at the time. She agreed that money was very tight during this period.
- [30] Both John and Ms. Jiang allege that John owed substantial sums to his mother. This allegation is central to Ms. Jiang's defence to Mr. Wang's claims regarding Sunnymede. It also touches on several parts of John's defence to the claims of Sharon which will be dealt with later.
- [31] In order to establish that John owed substantial amounts to his mother, Ms. Jiang needed to prove that she had the financial wherewithal to make those loans.

- [32] For those assets Ms. Jiang said she held on her own, a mining company and a fried chicken restaurant, the documents Ms. Jiang was able to produce were photographs, of no evidentiary value.
- [33] Ms. Jiang also claimed to have owned five properties in China at the time she came to Canada. Ms. Jiang took the Court to various documents she said supported this assertion, virtually all of which indicated that properties were not in her name, but rather in the name of her husband, Mr. Jiang. Also, there were no indications of what the various properties sold for, if indeed this did occur.
- [34] Ms. Jiang also claimed to have hundreds of thousands of units of Chinese currency ("RMB") in investment accounts, as well as gold bars and various jewelry, again without any documents to corroborate her testimony.
- [35] During cross-examination, Ms. Jiang agreed that she had not produced any documents to show the value of any of the following as of 2003, when she and her family came to Canada:
- a) Properties in China;
 - b) Bank accounts in her name; or
 - c) Stock accounts in her name.
- [36] In all of her evidence of assets in China, much of which were in the name of Mr. Jiang, Ms. Jiang left out one important fact: in 2010, Ms. Jiang and Mr. Jiang were divorced. When it was put to her that she never told the Court about this divorce, Ms. Jiang said no one had asked her.
- [37] Ms. Jiang then claimed that she and Mr. Jiang reconciled "very quickly after that, because of the young grandchildren", and that the two had since remarried.
- [38] When it was put to her that she never produced any documents relating to this divorce and alleged remarriage, Ms. Jiang replied again "nobody asked me for those".
- [39] When it was put to her that she had a divorce agreement whereby she and Mr. Jiang split their assets 50/50, Ms. Jiang answered "it would have been in all his properties, one of which I wanted 50%, I didn't want any of the others".
- [40] Shortly thereafter, a document was put to Ms. Jiang that referred to the existence of a divorce agreement.
- [41] In response, Ms. Jiang testified as follows:

For the two of us, getting a divorce, first of all, there was no divorce agreement. If there was a divorce agreement, with him having so many properties, it's not possible for me to just have 50% of one property.

- [42] In his evidence in chief, John claimed that, when his parents moved to Canada, they had assets worth "between several million RMB and tens of millions of RMB".
- [43] However, at discovery only a few months before trial, John said that he was not sure what assets his parents had and that his parents never told him their properties or assets.
- [44] John confirmed at trial that these answers were true.
- [45] Sharon submits that from all of the evidence at trial, a different picture emerges from that testified to by Ms. Jiang. John was the only member of the Jiang family with any ambition or income-earning capacity. Since the Jiang family came to Canada, and up to this day, John has in effect supported his entire family. John is the main support of the family and, according to the Claimant, the Jiangs would do anything to ensure that the prosperity they have derived from him continues unimpeded.
- [46] In her response to the petition in the Sunnymede property, filed September 16, 2016, Ms. Jiang pleaded as follows:
12. At the time of acquiring the Sunnymede property John owed Ms. Jiang a substantial financial debt of not less than \$530,000.00.
 13. To facilitate the purchase, Ms. Jiang demanded that John repay his debt.
- [47] However, Ms. Jiang acknowledges that she and Mr. Jiang came to Canada as refugees because they did not have the financial holdings to justify being investors or entrepreneurs. She also acknowledged during cross-examination by Sharon's counsel that, at discovery, she made no mention of having any substantial assets. No contemporaneous loan documents have been produced by Ms. Jiang or John.
- [48] At her examination for discovery in April 2018, Ms. Jiang gave the following evidence:
- Q. So my question is where are the loan documents?

A. At home, and I am also looking for them as well

Q. No, no, they wouldn't be at home this long. We have a trial in two months. Where are the signed and witnessed loan documents between yourself and your son? Are there any in your list of documents? Because I couldn't find a single one.

A. After I sort them out, I don't even know where I put them myself. That's why I'm still looking for them.

Q. Are you saying that you haven't been able to locate a single loan document to date?

A. I will continue to look for them.

Q. Have you found a single one and given it to your lawyer so he can list them to date; yes or no?

A. I don't know. Anyway, I have provided - produced a lot of documents. I might not remember.

[49] At trial, Ms. Jiang claimed that she kept a notebook of these loans, upon which the spreadsheet was based. Ms. Jiang claimed that these notebooks were made at the time - "each time John borrowed money, I would write it down, John would sign beside the note".

[50] When Ms. Jiang was asked where these notebooks are now, she said this:

"That's why I'm saying this is something I regret the most. I put them in my purse, but somehow I cannot locate them, I cannot find my purse."

[51] Ms. Jiang had created a two-page spreadsheet, and provided the following explanation of how this document, which is obviously self-serving, was created:

"So allow me to explain to you the whole situation. When the lawsuit started, I prepared this sheet according to my two notebooks. I tried to make copies. But then I put the original notebooks back into the purse I don't know where that is."

[52] The following morning, when court resumed, it was put to Ms. Jiang that she had never mentioned the existence of these notebooks in any of her affidavits or at any of her discoveries. Ms. Jiang responded "I forgot about it".

[53] The above exchange occurred after John was asked whether he was the sole owner of the company. John claimed, at discovery, that "at the time my father and my mother gave me money and so I promised them that they had a share in the company".

[54] When the questioning narrowed in on the years 2007 and 2008, John still had no recollection of how much money he claimed to have borrowed from his mother.

[55] The Claimant says the reliability of John's sworn evidence in these financial statements is highly questionable, as the earlier financial statements were sworn at a time when John was engaged in "pervasive perjury". This was addressed in part, in the contempt hearing on November 25, 2016.

[56] In his first financial statement, sworn on November 23, 2015, John said, at page 10, that he owed his mother \$220,000 for the period from 2002 to 2015.

[57] In his second financial statement, sworn on January 22, 2016, John said, at page 12, that he owed his mother \$180,000 for the period from 2002 to the present, asserting "I have borrowed from my mother to help pay legal fees and to pay living expenses."

[58] Both of these financial statements were put to John during cross-examination. With respect to both figures, John could only say that he did not know why he reported that figure at the time.

[59] During his cross-examination, John admitted for the first time, that various of the "loans" he included in his financial statements were entirely fictional.

- [60] When asked whether there would be full records of all of these transactions, John replied that "you just look at the bank statement and you would know. Over there you can't run away."
- [61] No such Chinese bank records are in evidence at trial.
- [62] At his discovery, John swore that "my mother would have written out" loan documents, but that "they would be with my mother."
- [63] No such documents have been produced.
- [64] There are no documents in evidence at trial indicating that Ms. Jiang transferred any funds from China, as a loan to John or otherwise.
- [65] After a painstaking review of the documents Ms. Jiang had provided to substantiate her claims of having substantial assets, Ms. Jiang agreed that the documents reflected only a sum of \$90,000 available to her in 2010 and 2011.
- [66] As she raises the issue of the loan in her defence to Mr. Wang's claims, Ms. Jiang bears the evidentiary burden of proving that loan. The evidence adduced at trial falls far short of discharging that burden.
- [67] I conclude that there were no loans from Ms. Jiang to John. I accept the Claimant's position that the entire allegation is simply a ruse on the part of mother and son to defeat the claims of Mr. Wang and Sharon by misleading the Court.

D. John Jiang and Sharon Wang Marry

- [68] To return to the narrative, John and Sharon met around the end of 2010, shortly after Sharon returned from school in Ontario. Soon thereafter, they began their relationship.
- [69] In July 2011, John purchased a property at 108 - 22888 Windsor Court, Richmond B.C. ("Windsor Court").
- [70] Up until this time, John made no mention to any member of the Wang family that he had been married to and divorced from Jessie, or that he had a child. In October 2011, John confessed to Sharon and her parents that he had been married before.
- [71] The Claimant and his wife Ms. Wu came to terms with the fact John had been married before after a tearful apology from John. Mr. Wang asked John if he had any children. He says John told him he did not have any children. He asked if he was sure, John said he was sure.
- [72] John denies this version of events. During his evidence in chief, he claimed that he had told Sharon about Harrison and that she said she could not accept it, so the two of them broke up. John also testified that Sharon concealed this fact from her parents. This version of events was never put to Sharon.

- [73] During cross-examination, Ms. Jiang was taken to Sharon's first affidavit in the family proceeding to which Ms. Jiang had responded with an affidavit of her own. At paragraphs 17 to 19 of her first affidavit, which Ms. Jiang did not respond to in her own affidavit, Sharon swore that she only found out a few weeks prior to swearing her affidavit that John had a child from a previous marriage, a discovery she was shocked to make and that after Sharon found out, Ms. Jiang sent a text message to Sharon apologizing for keeping John's son a secret from her. Ms. Jiang told Sharon that she kept that secret because she did not want Sharon and John's marriage to fall apart. At trial, Ms. Jiang confirmed the truth of Sharon's evidence in this regard.
- [74] Mr. Wang also confronted Ms. Jiang about her earlier statement that John had no children. Ms. Jiang tried to explain this away by saying John doesn't technically have a child, because Harrison was in Jessie's custody.
- [75] Sharon and John were married October 12, 2012.

E. The Purchase of the West 20th Property

- [76] After a search that involved viewings of 20 or 30 houses, Mr. Wang, who was looking to get into the real estate market in Vancouver, eventually found West 20th. Among other things, Mr. Wang liked how close West 20th was to his home on West 21st Avenue. Mr. Wang also thought that West 20th was good value. While the home's exterior was not particularly attractive, the owners had spent over \$200,000 on the home's interior. Mr. Wang decided to purchase West 20th.
- [77] Sharon made various proposals concerning the way West 20th would be held. Mr. Wang refused to accept them. This created tension between father and daughter.
- [78] John told Mr. Wang that the registration of West 20th in his name would be beneficial to his business, and assured Mr. Wang, as he had earlier told Sharon, that he did not want anything from him.
- [79] John explained that he could not afford to buy West 20th right away but that he wished to do so in the future when he had sufficient funds. If, by that time, the value of West 20th went up, John would buy West 20th from Mr. Wang in the future based on the appraised value at that time.
- [80] Conversely, if the value of West 20th decreased, John would pay Mr. Wang back his investment plus 10% per year.
- [81] John also proposed that Mr. Wang permit John and Sharon to live in West 20th. In exchange, John and Sharon would make the monthly mortgage payments as rent.
- [82] Mr. Wang agreed to these terms.

- [83] Ms. Wu, Mr. Wang's wife, recalls John meeting with her husband about West 20th, which took place in the study of her home on West 21st Avenue. While she was not present for the discussion itself, Ms. Wu recalls that after Mr. Wang and John emerged from the study, Mr. Wang told Ms. Wu that Sharon's and John's names would be used as "agent holders" for West 20th, and that John and Sharon would hold the property on Mr. Wang's behalf,
- [84] Mr. Wang testified that at no time was there any discussion, let alone agreement, granting John and Sharon the property as a gift nor was there any discussion that John could use West 20th for the purpose of borrowing money, for his business or otherwise.
- [85] On April 3, 2012, Mr. Wang wired \$153,845.80 from his account in China to Sharon's RBC account in Canada.
- [86] On April 11, 2012, Mr. Wang provided two bank drafts to Sharon: one from his TD account in the sum of \$400,000 and another from his HSBC account in the amount of \$65,000. Sharon deposited these funds into her RBC account.
- [87] Also on April 11, 2012, Mr. Wang wired \$233,778.80 from his account in China to Sharon's RBC account in Canada.
- [88] Sharon admits receipt of these funds.
- [89] John also admits receipt of these funds, and that these funds were used to purchase West 20th. However, John alleges that these funds were a gift from Mr. Wang to him and Sharon. None of these assertions were ever put to Sharon, Mr. Wang or Ms. Wu.
- [90] Mr. Wang, Ms. Wu and Sharon each deny that any one of them told John that these funds, or West 20th, were a gift from Mr. Wang to John and Sharon.
- [91] In fact, Mr. Wang and Ms. Wu ultimately gave the couple generous wedding gifts, approximately \$50,000 in cash and expensive luxury watches together worth approximately \$100,000.
- [92] For the purchase of West 20th, one of the vendor's conditions was that John and Sharon assume the mortgage, rather than obtain a first mortgage of their own.
- [93] In his application to CIBC to assume the vendor's mortgage, John provided various financial information about himself. That information included:
- (a) He was then working for Westin International Trading Inc., and had been since March 16, 2009, and that he was earning \$18,750 per month;
 - (b) Sharon was then working at Mr. Zhang Enterprises Inc. and had been since January 6, 2010, as office manager and bookkeeper, earning \$4,000 per month;
 - (c) John owned a Mercedes worth \$95,000; and

- (d) In addition to the value of West 20th, which he listed as \$2,123,000, John had \$850,000 of his own funds in a bank account.
- [94] According to the Claimant, none of that information was true:
- (a) By this time John had already started WIT [Wingsum International Trading Inc., which will be dealt with in more detail in the matrimonial action], and had ceased working for Westin. Also, according to his own evidence at trial, John was not earning anywhere close to \$18,750 per month, rather, as he said during his evidence in chief and confirmed during cross-examination, he was earning a little over \$3,000 per month.
- (b) Sharon never worked at any business called Mr. Zhang Enterprises Inc. In 2012, she was still a student, and was not working at all. At trial, John confirmed that Mr. Zhang was one of his customers.
- (c) John did not own any Mercedes. Ms. Wu owned a Mercedes, which Sharon used from time to time.
- (d) John did not have \$850,000 of his own funds, in addition to the value of West 20th. Rather, John had \$850,000 of Mr. Wang's money which was required in order to complete the purchase of West 20th.
- [95] Also of note is the absence of any mention of debts owing to his mother.
- [96] When the CIBC application was first put to John, he was asked whether or not he signed it. John responded "that one doesn't look like my signature". However, when it was pointed out to John that the document had come from his own binder, he agreed.
- [97] Sharon pointed this out to her father. Mr. Wang agreed to contribute \$10,000 to mortgage payments, representing approximately one-half of the mortgage payments for that three-month period.
- [98] After their marriage, John and Sharon moved into West 20th. Thereafter, John and Sharon began making the monthly mortgage payments. Pursuant to the agreement between John and Mr. Wang, John and Sharon were to make these payments as a form of rent.
- [99] On September 4, 2012, further to Sharon's request on John's behalf, Mr. Wang provided Sharon with a cheque for \$50,000 - \$40,000 for John, and \$10,000 for his share of the initial mortgage payments.
- [100] Mr. Wang recalls Sharon telling him that without this money, John's company would not be able to survive.
- [101] In October 2012, John said he was in need of money for his business. He spoke to Sharon about this, and said that he wanted to borrow \$40,000 from Sharon's father, Mr. Wang. Sharon conveyed this message to her father.
- [102] In February 2013, Sharon returned to Mr. Wang on John's behalf to seek another loan.

- [103] Mr. Wang was prepared to lend further funds. At trial, he explained that in his circle of friends borrowing and lending money is "normal". There was, however, the issue of interest.
- [104] On this occasion, John told Mr. Wang that whatever money he borrowed from Mr. Wang, he would pay interest of 10% per year.
- [105] John also told Sharon that he had agreed to pay interest of 10% to her father.
- [106] The Claimant points out that this was not the only occasion on which Mr. Wang and John discussed interest of 10%. Later, when the topic of investing in Sunnymede arose among Mr. Wang, John and Sharon, Mr. Wang asked John to repay the earlier loans, and Sharon responded that John had already promised to give interest of 10% and since his company was doing very well, that Mr. Wang should not pressure John to repay the money, just let him grow his business faster.

1. Loan of Further Funds

- [107] Mr. Wang agreed to loan further funds to John. He told Sharon to go to his home on West 21st, where she could find \$20,000 in his safe. Mr. Wang told Sharon to take those funds, and that he would arrange for further funds to be sent.
- [108] Sharon did as she was instructed and retrieved two bundles of cash from her father's safe, each bundle containing \$10,000.
- [109] On May 21, 2013, Sharon deposited those funds in her RBC account, and wrote a cheque to John in that amount.
- [110] At paragraphs 14 and 15 of his second affidavit in the West 20th proceeding, sworn on January 11, 2018, in support of his application for production of casino records and bank records from Mr. Wang, John swore that this \$20,000 transfer "came from my mother, Xiao Ling Jiang, not from the plaintiff."
- [111] However, when Sharon's cheque was shown to him at trial, he admitted that the \$20,000 had in fact come from Sharon.
- [112] On May 24, 2013, Mr. Wang arranged for the further sum of \$100,000 to be loaned to John by way of wire transfer to John and Sharon's joint account.
- [113] John admits receipt of these funds. He says, though, that these funds were not a loan but rather that he received these funds from Mr. Wang pursuant to a so-called "Cash Agreement". There is no evidence, apart from what he says, that there is such an agreement.
- [114] During cross-examination, John agreed that, on this occasion, John's company was saved by Sharon and her father working together to get funds to him.

[115] The assertion of the "Cash Agreement" was first articulated in John's response to civil claim in the West 20th proceeding, filed August 15, 2016:

7. The defendant denies that he agreed to repay with interest the funds described at paragraphs 13(f) and 13(g) of the notice of civil claim. Rather, by oral agreement of the plaintiff and the defendant Jiang, it was agreed that:
 - (a) the defendant Jiang would transfer Canadian funds in cash to the plaintiff; and
 - (b) the plaintiff would transfer funds from China to the defendants [i.e. John and Sharon] or either of them in approximately the same amount as the cash transferred to the plaintiff from the defendant Jiang.
8. Pursuant to the Cash Agreement, the defendant Jiang made a series of transfers of cash to the plaintiff. The transfers described at paragraphs 13(f) and 13(g) are the subsequent payments made by the plaintiff to the defendant Jiang pursuant to the Cash Agreement.

[116] A similar allegation is made by John in his response to civil claim filed in the Sunnymede proceeding, filed June 2, 2017:

7. To the extent that the plaintiff transferred funds ultimately used to purchase the Sunnymede property to either or both of the defendants, or to persons acting on their behalf, those transfers represented payments of funds owing by the plaintiff to the defendant Jun Cheng Jiang pursuant to an oral agreement whereby:
 - (a) the defendant Jun Cheng Jiang would transfer Canadian funds in cash to the plaintiff; and
 - (b) the plaintiff would transfer funds from China to the defendants [i.e. John and Ms. Jiang] or either of them in approximately the same amount as the cash transferred from the plaintiff to the defendant Jiang.

[117] John admitted that he had received \$100,000 from Mr. Wang on May 24, 2013. At the time Mr. Wang was in China, which undermines the notion that John had given Mr. Wang money ahead of time. In an attempt to explain this away, John asserted that "Later, I returned all the money to him in the coming three months."

[118] During his cross-examination of Mr. Wang, John took Mr. Wang to a deposit of \$18,000 on February 20, 2013 in Mr. Wang's HSBC account on February 20, 2013, which Mr. Wang explained was a regular deposit Mr. Wang and his wife made after coming back from China, to ensure he had enough money to cover his next mortgage payment. This is corroborated by a bank statement showing that the balance in Mr. Wang's account at that time was about \$1,650.26, and his last mortgage payment from the same account (on January 29, 2013) was in the sum of \$7,856.83. Mr. Wang said the deposit of \$18,000 had nothing to do with the wire transfer of \$18,260 that John was referring to.

- [119] These are the only documents from Exhibit "O", of the Respondents' brief of documents that John and his family put to any of the witnesses at trial, and John had chosen not to testify at all about his assertions regarding the \$18,000 during his evidence in chief.
- [120] Other than these three documents and the evidence relating to them, which in Mr. Wang's submission are of no assistance whatsoever, John adduced no documentary evidence in support of the "Cash Agreement".
- [121] This evidence stands in contrast to the assertions of John and his mother that they prepared IOUs for the alleged loans to John from his mother, documents which have never been produced in the years since this proceeding was commenced.
- [122] I accept the Claimant's submission that John's assertion that the "Cash Agreement" somehow benefited Mr. Wang is nonsensical. Mr. Wang did not require John to provide him cash for use in Canada. He was perfectly capable of bringing cash for himself or, when that was not enough, Mr. Wang could wire funds to himself. There is no conceivable reason for Mr. Wang to involve John in any such scheme.
- [123] John's assertion of the Cash Agreement has no basis, in logic or fact, based on the evidence adduced at trial.
- [124] Commencing in July 2013, John's company WIT, which will be described in more detail in the portion of the reasons dealing with Sharon's matrimonial claim, paid a salary of \$800 per month to Mr. Wang, and \$1,200 per month to his wife, Ms. Wu, in repayment of these loans. These payments ceased in June 2014, when John told Mr. Wang that he was having difficulty with his company, and that he hoped to repay Mr. Wang later.
- [125] During that period, Mr. Wang was paid \$9,298.08, and Ms. Wu was paid \$13,612.92.
- [126] From the evidence adduced at trial, it appears as though this is not the only instance in which John has issued salary to persons who provided no services to WIT. For instance, WIT paid a salary to John's first wife, Jessie Wu, who apparently never worked on WIT premises, and who provided contradictory evidence of the nature and duration of her purported positions. Also, WIT pays a salary to John's current girlfriend, Wen Xuan "Cathy" Shi, who again currently appears to do nothing of any value for WIT.

2. The \$500,000 Mortgage

- [127] On July 31, 2013, John registered a second mortgage against West 20th in the amount of \$500,000.
- [128] Mr. Wang was unaware of this second mortgage until after the litigation commenced.

[129] Both John and Sharon signed the mortgage documentation. Sharon explained that she trusted John, and that his company was doing well, and that she wanted him to continue to do well. Sharon testified that she did not tell her father about this mortgage, as she was worried he would turn it down, and also because she did not expect there would be any problem paying it back, since John's company was doing well. Sharon also explained that she did not, at that time, expect that she and John would ever get divorced.

F. Sunnymede

[130] Mr. Wang and John were both interested in real estate. During this period, John, with Sharon's assistance, prepared several investment plans, which Mr. Wang for one reason or another rejected.

[131] During the search for a property, the realtor, Mr. Zhong, had no dealings with Ms. Jiang. He dealt exclusively with John. Mr. Zhong made a number of offers on John's behalf, none of which were accepted.

[132] Ultimately John and Mr. Wang agreed to purchase the Sunnymede property, taking out a mortgage in Ms. Jiang's name.

[133] I adopt the recitation of facts put forward by Mr. Wang, as it accords with the evidence I heard.

[134] John told Sharon that, because he had so many loans under his name, it would be impossible for him to apply for a mortgage in his own name. Conversely, since his mother, Ms. Jiang did not have any loans under her name, it would be easier for her to make that application.

[135] Mr. Wang told John that, if Ms. Jiang were to be involved, she would definitely need to be given a "reward". John replied that this was not necessary. Nevertheless they later agreed she would be given 5% upon sale of the property.

[136] At trial, John said that the reason he acted on his mother's behalf was because Ms. Jiang does not speak English, and because she had never purchased a property before.

[137] John brought a proposal over to Mr. Wang's home, and reviewed it with Mr. Wang. In response, Mr. Wang told John that the proposal was not complete, and so he did not accept its terms at that time.

[138] In the proposal to Mr. Wang that John admits to signing later, John wrote "I have arranged a loan from a bank."

[139] However, John had not yet obtained Mr. Wang's agreement to the Sunnymede investment venture and, as a result, John had not yet secured the funds necessary to complete the purchase of that property.

[140] Among other things, the proposal provided that:

- (a) John had "bought" Sunnymede;
 - (b) Sunnymede would be sold in one or two years, "to be decided based upon the specific market situation";
 - (c) "the profit after sale of the house shall be allocated according to the ratio of investment by both parties";
 - (d) Both John and Mr. Wang would contribute to the cost of purchasing, renovating, and paying the mortgage; and
 - (e) "[John's] mother applied for a loan of \$889,000 from the bank and 5% of the profit after selling the house shall be allocated to [her] as payback."
- [141] Mr. Wang suggested that a new bank account be opened in Ms. Jiang's name for the project. At the time, Mr. Wang viewed John and his mother's bank accounts as being "chaotic", with John using an account with his mother, and his mother having another account, and so Mr. Wang wanted to have a new account opened.
- [142] Sharon also recalls John telling her father and her that Ms. Jiang had agreed to the terms of the Sunnymede investment, prior to John signing this document.
- [143] Mr. Wang never signed the document. He told John that he agreed to the terms set out in the document, and that that was why he was transferring funds.
- [144] Despite acknowledging having signed the proposal, John claimed at trial that he had no recollection of this document whatsoever, which Mr. Wang says is unlikely, as this is an important document.
- [145] Mr. Wang submits that John's evidence relating to this document is typical of the nature of his evidence in general. That is, John was evasive, refused to admit irrefutable facts, and continued to advance evidence that was obviously false.
- [146] At discovery, John admitted that it was true that he had made such a proposal to Mr. Wang.
- [147] By this point, Mr. Wang had not agreed to the terms of the agreement. Without Mr. Wang's money, Ms. Jiang had no way to independently qualify for a mortgage.
- [148] I accept that the evidence of the following transactions shows that John and Ms. Jiang transferred various funds into Ms. Jiang's own account, for the purpose of fraudulently representing Ms. Jiang's net worth to Scotiabank.
- [149] On January 17, 2014, John and Ms. Jiang transferred \$97,448.10 from their joint account into Ms. Jiang's account. During her cross-examination, Ms. Jiang, when asked about the source of this deposit at discovery, acknowledged that she did not know where the funds came from.

- [150] That same day, John transferred \$450,000 from WIT's account into Ms. Jiang's account. At trial, Ms. Jiang claimed that she had asked John to "repay" this money to her and that John told her "this is how much I can repay" but added that John told her she would have to give the money back to him, a factor she had not mentioned at discovery.
- [151] On January 20, 2014, according to bank documents produced by Ms. Jiang, there were three further transactions, a deposit of \$10,000, a deposit of \$529.20 and a withdrawal of \$1,000. After these transactions were carried out, Ms. Jiang's account had a balance of \$573,407.49.
- [152] This is the same sum - \$573,407 - that Ms. Jiang set out in the "Asset" section of her Scotiabank mortgage application.
- [153] At trial, John agreed that he gave his mother a temporary loan of the \$450,000 so the bank could be fooled, and that he then took it right back again. Otherwise, John denied that he had helped his mother with the mortgage application. However, Ms. Jiang acknowledged on discovery that John was helping her.
- [154] During cross-examination, John confirmed that he was present at his mother's discovery, and he was taken through the above portions of his transcript.
- A Earlier, I said that in terms of the mortgage it was my mother who went to make the application. The only help I provided was to lend money from the company, \$450,000, and in two days, that money was repaid.
- [155] It was put to Ms. Jiang that if she told the bank she had a certain amount of money but didn't actually have it, the bank would not have approved her application. She answered "I suppose so". At trial, John agreed that one needs to be honest and truthful when making mortgage applications.
- [156] Indeed, the Scotiabank approval included the following:
- We may cancel this approval if we find there has been any material change to your financial status, as disclosed in the Credit application, or if there has been any misrepresentation of facts in the Credit Application or other documentation.
- [157] On February 17, 2014, Ms. Jiang ultimately obtained a bank draft in the sum of \$430,000, comprised entirely of two money transfers, which she undoubtedly sent to the lawyer assisting with the conveyance of Sunnymede.
- [158] At trial, Ms. Jiang claimed that the \$430,000 from Mr. Wang was, in fact, a repayment by John of \$230,000 along with a loan of \$200,000 from Mr. Wang to her, which she said John had arranged.
- [159] John gave no such evidence at trial.

- [160] Only after Mr. Wang commenced the Sunnymede proceeding did Ms. Jiang raise the allegation. In her response to petition, filed on September 16, 2016, Ms. Jiang pleaded the following:
13. To facilitate the purchase of Sunnymede, Ms. Jiang demanded that John repay his debt.
 14. To repay Ms. Jiang, John called in debts owed to him and borrowed money from Mr. Wang to repay part of his liability to Ms. Jiang. Prior to closing, John repaid \$518,000 of his debt.
- [161] John arranged for a payment of the \$69,000 deposit, which came from the funds in his joint account with his mother.
- [162] The \$230,000 transfer erroneously lists Ms. Jiang as the remitter, but it is clear that Mr. Wang is the source of these funds.
- [163] Sharon, who had access to the Sunnymede account, confirmed that these funds were received from her father.
- [164] With the Scotiabank mortgage then obtained, the \$450,000 was immediately withdrawn from Ms. Jiang's account and returned to WIT.
- [165] On January 23, 2014, the sum of \$97,448.10 was transferred back to the joint account of John and his mother.
- [166] After the withdrawal of the funds used by John and Ms. Jiang to fraudulently inflate Ms. Jiang's bank balance for the purpose of the mortgage application, Ms. Jiang's account balance was back down to \$17,251.43 which, of course, was nowhere near sufficient to qualify for a mortgage, or to complete the purchase of Sunnymede.
- [167] The Claimant submits, and I accept, that the only explanation for this is that the alleged loans and ownership of assets in China by Ms. Jiang are a complete fiction.
- [168] Further, Ms. Jiang acknowledged that she had obtained a document showing a change to her name from John's from Scotiabank shortly before trial.
- [169] During his evidence, John said that the realtor, Mr. Zhong, had prepared this document.
- [170] During her evidence, Ms. Jiang said that "the agent gave it to me". Ms. Jiang also confirmed that, after she received this document from the realtor, she took it to the bank to complete her mortgage application.
- [171] Shortly after her mother gave that evidence, Grace advised the Court that Mr. Zhong would be testifying, that "he was the one who changed the name", and that after his testimony the Court would have a "clear understanding of why the name was changed to Xiao Ling Jiang".

- [172] Mr. Zhong, when he testified, said that he did not change the name from John Jiang to Xiao Ling Jiang. He also confirmed his view that to seek an extension for removal of a financing subject for another reason is "dishonest", and that he would not do that on behalf of a client if he was aware of that dishonest purpose. He did not, himself, change the name on the document.
- [173] During his evidence in chief, Mr. Zhong denied any knowledge of or involvement in the alterations made to the doctored contract. In fact, Mr. Zhong disagreed with the very notion that he would ever make alterations to contracts except where agreed to and initialed by both parties.
- [174] These versions of events are, of course irreconcilable. The evidence of John and Ms. Jiang on this topic, and the unsworn representations of Grace, cannot be attributed to faulty memory or mistake.
- [175] As this document came from Scotiabank's file, it is clear that Scotiabank relied on it in evaluating Ms. Jiang's mortgage application. In other words, Ms. Jiang was content for Scotiabank to rely on a clearly doctored document.
- [176] On February 19, 2014, in a manner entirely consistent with the agreement between Mr. Wang and John, the purchase of Sunnymede completed in the name of Ms. Jiang, using funds from Mr. Wang and John.
- [177] After the purchase of Sunnymede, John carried out renovations to the property. Mr. Wang admits that John spent \$41,000 on renovations for Sunnymede.
- [178] According to John, he carried out the renovations on Sunnymede because the property was purchased for the purpose of having John's son attend secondary school in Richmond, and so he "felt obliged" to take up some of the expense. Ms. Jiang's evidence on this point was virtually identical to her son's, "the renovation was a gift from my son to me and my grandchildren".
- [179] According to John and Ms. Jiang, this act of charity came at a time where both of them allege that John owed substantial funds to his mother. There was no explanation as to why this was not taken as a repayment of those alleged loans.
- [180] John and Jessie's son Harrison was attending Richmond High because Jessie (John's first wife) and her new spouse had recently moved to 7688 Alderbridge Way, Richmond. Jessie Wu said Sunnymede was bought by Ms. Jiang so Harrison could attend school at Richmond High School, but the condominium she and her new spouse live in on Alderbridge Way in Richmond is in the catchment area and she did not mention this until she was confronted with it in cross examination. This court warned her to be forthright at this point.
- [181] Jessie agreed that Harrison's school had nothing to do with Sunnymede; it was because she had bought a place in that particular catchment area.

- [182] Jessie also gave confusing evidence regarding her application to have Harrison attend Farris Elementary school. Jessie claimed she was entirely unaware of the criteria for late applications but she admitted that the circumstances in 2014 would not have satisfied any of them. Ultimately, Jessie agreed that the school board does not care about who the caregiver is, the school board only cares about who the guardian is when a child is enrolled in school.
- [183] I accept that this evidence regarding Sunnymede being purchased to enable Harrison to attend Richmond High and the related story of having applied to have Harrison attend Farris Elementary was exposed as a fabrication during the cross-examination of Jessie Wu.

G. Listing of Sunnymede

- [184] On April 1, 2014, Sunnymede was listed for sale.
- [185] In early 2014, John had a discussion with Mr. Wang, during which he voiced a number of complaints. John asked Mr. Wang to invest more into Sunnymede, telling him he was short of cash and his funds were "tight". Consistent with their agreement, which provided that the profit from the sale of Sunnymede would be shared in proportion to their respective investment ratios, John and Mr. Wang agreed that further investment by Mr. Wang would increase Mr. Wang's interest, and decrease John's interest, in Sunnymede.
- [186] Mr. Wang was reluctant to provide further funds. However, given the dire picture John painted of the financial health of his company, Mr. Wang felt as though he had no choice. The one benefit Mr. Wang perceived was that his agreement with John was that the profit from the sale of Sunnymede would be shared based on their respective investment ratios.
- [187] On April 1, 2014, after this discussion and agreement with John, Mr. Wang transferred money which, after exchange, was equivalent to \$130,890.05.
- [188] That day, after service fees were deducted, \$130,862.05 was deposited in the Sunnymede account.
- [189] Sharon confirmed that these funds were received from her father. Sharon also noted that there were insufficient funds in the account to cover the mortgage payments.
- [190] On April 4, 2014, \$60,000 of the funds transferred by Mr. Wang was withdrawn by John. When John addressed his withdrawal of \$60,000 from the Sunnymede account on April 4, 2014, he alleged that "at the same time, Sharon and I took \$60,000 and gave it to her father". This assertion was never put to Sharon or Mr. Wang, which John purported to recall only when the withdrawal was put to him. During his evidence in chief, John admitted that these funds were invested in his company.
- [191] On June 10, 2014, Mr. Wang transferred 582,000 RMB through Money TT, which after exchange was equivalent to \$100,000.

- [192] Again, given the nature of the allegations made by John and Ms. Jiang in this proceeding, Mr. Wang was forced to produce bank statements from China to provide that he was the source of these funds.
- [193] That day, after service fees were deducted, \$99,985 was deposited in the Sunnymede account.
- [194] Subsequently, Sharon advised Ms. Jiang that "The money has arrived at the account".
- [195] The next day, June 11, 2014, Sharon used one of those cheques to pay out \$70,000 to her father. During his evidence in chief, Mr. Wang confirmed that he does not view his share of Sunnymede as having increased by \$100,000, only by \$30,000, which is the amount remaining of the \$100,000 after Mr. Wang's withdrawal of \$70,000.
- [196] In her pleading, Ms. Jiang alleges that these two transactions were carried out without her knowledge or consent:
26. On or about June 2014, without the knowledge or consent of Ms. Jiang, Ms. Wang proceeded to use the pre-signed cheques to transfer money to Mr. Wang through the Sunnymede account.
- [197] Ms. Jiang maintained this position during the course of her testimony, despite Sharon's clear testimony in chief. Ms. Jiang was taken through the contents of the relevant text message exchange and acknowledged she received the message but did not pay attention to it. However, later in her evidence, with Ms. Jiang having had the opportunity to carefully consider what her evidence would be on this issue, was only able to muster this:
- The message, I did receive - but on that particular one, I wasn't paying attention to the time.
- [198] Eventually, Ms. Jiang admitted that she was aware that Sharon would be writing a cheque in the next few days, which Ms. Jiang had already signed in blank.
- [199] The Claimant submits that if, as Ms. Jiang claims, Sunnymede (the property) and the Sunnymede account truly belonged to her, it is a curious choice for Ms. Jiang to allow Sharon manage the account and not her own daughter, in whom she placed "absolute trust". As well, during cross-examination, Ms. Jiang said she rarely went to John and Sharon's place until the birth of Julie in October of 2014.
- [200] On July 15, 2014, John withdrew \$75,000 from the Sunnymede account. In his evidence in chief, John said that he believed he used these funds for his company.
- [201] On August 5, 2014, Mr. Wang wired the sum of \$52,622.50 to John's joint account with Sharon.
- [202] Sharon confirmed that these funds were deposited in her and John's joint account, and that these funds constituted a loan by her father to John.

- [203] John admits receipt of these funds, but says that they were "subsequent repayments" to him from Mr. Wang pursuant to the "Cash Agreement". There is no evidence of these payments.
- [204] By August 2014, John had not yet found a buyer for Sunnymede. John proposed to Mr. Wang to rent out the property. Mr. Wang agreed.
- [205] In August 2014, John decided to rent out Sunnymede, rather than sell it. Sharon found a tenant, and prepared a rental tenancy agreement to rent Sunnymede to these tenants for \$4,000 per month. John signed the agreement with the tenants.
- [206] Sharon explained that her daughter Julia was to be born two months later, in October 2014, so Sharon and John got Ms. Jiang's help to deal with the tenants from time to time. However, Sharon confirmed that Ms. Jiang had nothing to do with this rental agreement.
- [207] During her evidence in chief, Ms. Jiang said that this was done without her knowledge while she was out of the country. However, Ms. Jiang had a very specific recollection of having departed for her trip on August 19, 2014, and this agreement is dated August 7, 2014. Clearly it was signed before she departed for her trip.
- [208] The Claimant submits that the simple explanation for all of this is that Ms. Jiang had no involvement with the management of a property that was not hers.
- [209] In August, Sunnymede was still listed for sale. As Ms. Jiang planned to travel back to China later in August, Sharon proposed to Ms. Jiang that pursuant to the Sunnymede investment agreement Ms. Jiang provided Sharon with a power of attorney.
- [210] Ms. Jiang contacted a lawyer named Xiao Feng Zheng, and, on August 12, 2014, Ms. Jiang arranged for Sharon to attend Mr. Zheng's offices with her to sign the power of attorney.
- [211] Sharon also confirmed that Ms. Jiang had never revoked the power of attorney, even up to the time of trial.
- [212] In October 2014, John signed a "move out agreement" with the Sunnymede tenants. On the second page of that agreement, he identified himself as the "Owner", and signed that agreement in his own name.
- [213] On October 14, 2014, \$8,400 was deposited into the Sunnymede account. These funds came from the joint account of Sharon and John. Sharon testified that she transferred these funds from her joint account with John to the Sunnymede account to ensure there were enough funds to cover the upcoming mortgage payment.
- [214] In December 2014, John told Mr. Wang he was in need of further funds, and so he asked Mr. Wang to send further funds to the Sunnymede account. Mr. Wang agreed to do so.
- [215] On December 5, 2014, Mr. Wang transferred 425,200 RMB through Money TT, which, after exchange, was equivalent to \$76,889.70.

- [216] Given the nature of the allegations made by John and Ms. Jiang in this proceeding, Mr. Wang was again compelled to produce bank statements from China to prove that he was the source of these funds.
- [217] Sharon confirmed that these funds were transferred from her father into the Sunnymede account, for the purpose of Mr. Wang increasing his investment.
- [218] On December 9, 2014, John withdrew \$50,000 from the Sunnymede account.
- [219] However, John testified in chief that these funds came from WIT. During cross-examination, John affirmed this evidence, stating once again that he took it as a shareholder loan from WIT, even when it was suggested to him that he was mistaken. It was not until the Sunnymede account was put to John that he finally conceded that the funds to purchase the WFI warehouse came, in part, from Mr. Wang. WFI and the warehouse will be further discussed later in these reasons.
- [220] Ms. Jiang, who is a 90% shareholder of WFI, testified at trial that she did not know where these funds came from notwithstanding that they were wired into and paid out of the Sunnymede account in her name.
- [221] On July 28, 2015, \$8,500 was deposited in the Sunnymede account. Mr. Wang admits that these sums came from John.

II. Separation of John and Sharon

- [222] In August 2015, differences arose between John and Sharon. Ultimately, they separated.
- [223] John wrote "I will give the house to you", which John confirmed at trial was a reference to West 20th.
- [224] On September 2, 2015, Sharon commenced her family proceeding.
- [225] On November 23, 2015, Sharon obtained an ex parte Anton Piller order.
- [226] On November 24, 2015, the independent supervising solicitor carried out the search of the office premises. The results of that search exposed John's previous evidence about his cash business as false. John admitted he lied about this. This will be dealt with in more detail later.
- [227] In April 2016, Sharon applied to freeze various assets which she said constituted family property, including WIT, Windsor Court, and Sunnymede. In response, Ms. Jiang swore an affidavit alleging that she had a beneficial interest not only in Sunnymede, but in WIT and Windsor Court as well.
- [228] It is submitted by the Claimant that Ms. Jiang took that position, and swore that evidence, in an effort to defeat Sharon's claims for family property.
- [229] In June and July 2016, Mr. Wang commenced his two civil proceedings.

[230] In response to the Sunnymede proceeding, Ms. Jiang took the position that Sunnymede had nothing to do with Mr. Wang, but was rather Ms. Jiang's investment alone. John adopted his mother's position.

[231] I accept Mr. Wang's position that, as a result of the positions taken by John and Ms. Jiang, it was necessary for Sharon and Mr. Wang to lead considerable volumes of evidence in support of what are, in their essence, rather straightforward positions.

III. Summary of Relief Sought

[232] In respect of West 20th, Mr. Wang seeks a declaration that he is the beneficial owner and the property is held in trust for him in whole or in part; a sale of the property, and accountings, as well as judgment for the loan amounts and the amount of the mortgage.

[233] In respect of Sunnymede, Mr. Wang in his civil action claims that the property is an investment, with Ms. Jiang holding title effectively as trustee, and that he should take ownership of the majority of the equity in this property totaling over 90%, pursuant to the written agreement between himself and John, Ms. Wu (Mr. Wang's wife) is not named in that action, and does not oppose the relief Mr. Wang seeks.

[234] Mr. Wang seeks that the property be sold with most or all of the net sale proceeds being allocated to him. He acknowledges the need for an accounting as to the mortgage payments made, as well as rent received. Mr. Wang seeks occupation rent as well.

[235] According to Mr. Wang, the Sunnymede agreement provides that 5% of the net profit goes to Ms. Jiang, with a return of equity and a return of profits based on the investment of John and Mr. Wang. In the event John is found to have any interest in the Sunnymede property or proceeds thereof, or in the event any portion of Sunnymede thereof is found to be a family asset.

[236] Mr. Wang seeks:

- (a) that monies advanced by Mr. Wang is a loan and family debt, repayable with interest;
- (b) In further alternative, if the monies advanced by Mr. Wang is a gift, it is a gift to Sharon only;
- (c) In still further alternative, if the monies advanced by Mr. Wang is a gift to both parties, then it should be unequally divided 100% in Sharon's favor.
- (d) That any monies contributed by John shall be unequally divided 100% in Sharon's favor, as they come from missing cash.
- (e) To the extent the Sunnymede property is a family asset, that Ms. Jiang holds her legal interest in trust for the Sharon and John, a determination of their respective interests and an order that Ms. Jiang transfer her interest to Sharon and John in proportion to their respective interests.

[237] In respect of West 20th, I accept the evidence of Mr. Wang and Sharon and reject John's evidence where it conflicts with theirs. I accept the table of loan amounts set out earlier.

[238] In respect of Sunnymede, I accept the evidence of Mr. Wang and Sharon over that of John and Ms. Jiang.

[239] I will deal with the relief in the portion of these reasons on remedies.

IV. THE CLAIMANT SHARON'S MATRIMONIAL ACTION

[240] I have referred to Sharon Wang throughout as "Sharon" to avoid confusion over the various Claimants, and to John Jiang as "John" also to avoid confusion.

[241] Sharon and John started cohabiting in a marriage-like relationship at the end of July or beginning of August 2011, when the first family home was purchased for them to live in. They married on October 21, 2012 and separated on August 21, 2015.

[242] Sharon and John were divorced by order in this proceeding on September 22, 2016.

[243] Their daughter, Nuohan Julia Jiang ("Julia"), was born on October 22, 2014, and is now five years old. She resides with Sharon, with John having access.

[244] The parties reached a final custody, guardianship and parenting time order and a special costs quantum settlement of \$410,000 for interim special costs up to the date of the finding of contempt.

[245] The order of Madam Justice Warren dated January 19, 2018 provided that there would be no claim under the order until the child reached the age of 8. Custody, guardianship and parenting time do not need to be referred to in these reasons.

[246] It is Sharon's position that this litigation has been characterized by malfeasance, financial non-disclosure, fraudulent behavior, and contempt of court including perjury on the part of John, Grace and Ms. Jiang as well as what she terms "henchman" employees.

[247] More particularly, John swore numerous affidavits in which he denied a double-invoicing scheme for his company for the purpose of collecting unreported cash income to himself. It was only after Sharon obtained an Anton Piller order in this proceeding, with the resulting search proving the same, that he admitted it. Prior to the Anton Piller order exposing his deceit and perjury, John further refused to pay child support and spousal support as ordered.

V. SHARON'S POSITION ON FAMILY ASSETS

[248] Sharon says at issue are child support, spousal support, division of property and special costs since the finding of contempt, fines, and whether John and other family members should be jailed for continuing untruths. The property claims include various relief against companies owned and/or operated by John and include members of John's family who are registered owners of assets in question but who Sharon says in reality are "straw people" that hold the property for John

[249] Sharon's position on the assets is summarized as follows:

- (a) Mr. Wang's civil actions must prevail, whereby Mr. Wang is the owner of the West 20th Avenue, Vancouver and Sunnynede, Richmond properties, with any remainder between the parties being family property. The balance, if any shall be held in trust pending further distribution;
- (b) Windsor Court, Richmond, is a family property bought by John to be divided between John and Sharon in accordance with their time together;
- (c) It is common ground that WIT is family property and divisible as such and as it is obvious all companies are part of the WIT Group. The correct value is \$7.2 million after the minority shareholder deduction and the only credit to be deducted for the minority shareholders is \$74,967 to Mr. William Chi Min Wan, for his investment in W&W. All other shareholders are "straw men". The shareholder loan owed to Grace and Ms. Jiang is held in trust on behalf of John, and should be found to be a family property and divisible.
- (d) Similarly, the end-run and affiliated companies WFI, W&W and WSP should be found to be a family property and divisible, to the extent owned by members of the Jiang family.
- (e) WFI is a family property and is worth \$414,659 (\$262,383 Shane Troyer + \$154,276 due to shareholders).
- (f) The other assets are family property to be divided as set out in the Scott Schedule.

[250] On the issues respecting the child, Sharon says:

- (g) The parties reached a final custody guardianship and parenting time order and a special costs quantum settlement of \$410,000 for interim special costs up to the date of the finding of contempt.
- (h) Child support and Spousal support should be fixed as per the Guideline Income Report, retroactively and prospectively based on an income of at least \$1.6 million based upon the final reports of Shane Troyer and Doug Ryder of Grant Thornton.

A. Family Assets

[251] Before turning to a review of Sharon's evidence, I will deal first with the various corporations with which John and his family are associated, and which Sharon alleges are all, in reality, owned by John.

[252] Sharon submits that the companies other than WIT are what she terms "end-run" companies designed to hide the income of WIT and defeat her various claims.

1. John's Businesses

[253] John runs a Chinese meat processing and distribution business primarily serving the Asian restaurant community. The company has grown dramatically since its inception in 2011. Sales have increased from a few million to over 24 million dollars for the fiscal year end February 2018.

[254] Attached below is a company organizational chart which shows the registered company share ownership.

Name

Incorporation

Business

Shareholder Structure

Directors

Registered Office

Note

Wingsum International Trading Inc. ("WIT")

February 11, 2011

Meat Processor

100% - Jun Cheng Jiang ("John")

John

3110-21311 Gordon Way, Richmond, BC

Owns 150-6753 Graybar Road; Used to rent 3110&3120-21331 Gordon way which is now in John's father's name

Wingsum Food Inc. ("WFI")

June 11, 2013

Warehouse Rental

10% - Jun Cheng Jiang 90%- Xiao Ling Jiang

John

3110-21311 Gordon Way Richmond, BC

Owns 3125-21331 Gordon Way; WIT was the guarantee on the mortgage application; John put initial down payment and further monies at closing

W & W Food Ltd. (W&W")

May 11, 2015

Meat Processor

67% - Xiao Ling Jiang 33% - William Chi Ming Wan

Xiao Ling Jiang & William Chi Ming Wan

150-6753 Graybar Road Richmond, BC

End run company, using employees, meat cutters, trucks, some investment by Mr. Wan but mother's shares 100% John's

Win Sum Produce Corp (WSP")

December 31, 2015

Meat Processor

48% - Xiao Ling Jiang 30% - Jun Shan Jiang (John's sister) 3% - Zhao Bing Wan 3% CYP Management 16% - Laramie Autumn Raven Lee

Xia Ling Jiang Jun Shan Jiang Laramie Autumn - Raven Lee

3125-21311 Gordon Way, Richmond, BC

End run company except for small percentages to sales people; 3% - Zhao Bing Wan (A top sales person at WIT) 3% - CYP Management (Director of which is Gary Hsu, another top sales person at WIT)

Westin International Trading Inc. ("Westin")

March 16, 2009

Meat Processor

15% - Jun Cheng Jiang

Hyoung Suk Cho; Jun Cheng Jiang; Nyuk Tat Lee; Nyuk Vei Lee

120-3751 Shell Road, Richmond, BC

John says not in operation

[255] In the final forensic audit report, Shane Troyer, the jointly appointed expert, gave his opinion that all four companies operate as a single entity and there is no legitimate business purpose for the separation of the companies. As will be dealt with in more detail below, although John alleges he created the other companies because his first company WIT has a bad reputation in 2015, they are all engaged in the same business. Their names are so close as to confirm they are a "WIT Group". They use many of the same employees, salesmen, trucks, meat cutters, warehouses, trucks, and computer programs and the like. The end-run companies buy their meat at a preferential rate such that profits are diverted away from WIT to these "new" companies from John's company and service clients John formally serviced through his company.

2. Westin International Trading

[256] Westin is a company in which John acquired his 15% interest prior to the marriage, which interest he retains to date, despite stalled litigation between Westin and WIT. He is believed to have no further involvement, including little if any during the marriage. The value is unknown. Sharon seeks a declaration that his interest be declared a family asset and divisible as such.

[257] Shane Troyer's report dated July 6, 2018, indicates that the auditor did not receive financial information for the company. The forensic audit and business valuations as per the Order of March 11, 2016, of Master MacNaughton was to extend to all business entities that John has a legal, beneficial interest in or control of, and as such includes Westin. Sharon submits that John has obstructed the auditor from carrying out his duties as per the above Order. John admits there has been no steps taken in this action for years, and it is essentially dormant.

[258] It is Sharon's position that whatever John owes on account of WIT is a pre-marriage debt and John alone is liable for this debt and can keep any money that he recovers from this lawsuit. It is expected that this lawsuit will likely result in a consent dismissal of the respective claims of the companies.

3. WIT

[259] WIT was created in February 2011, a year and a half before the marriage and is wholly owned by John. There is no dispute it is a family asset. It is further undisputed that it ran an illegal unreported cash scheme from 2013 to at least 2015, whereby salespeople collected payments in cash, and John collected the cash without reporting it to CRA. More complete details are set out below.

[260] Further, the line of credit for WIT was secured by the West 20th property; it has increased to about \$1,000,000 since separation. John agreed that he has "racked up" WIT's line of credit since this litigation was commenced.

- [261] Subsequent to the Anton Piller order, John made a voluntary declaration as to unpaid taxes. This resulted in a tax lien, registered against West 20th and Windsor Court. The evidence showed John was dishonest before the Anton Piller order, dishonest with his disclosure to the CRA, committed further perjury by denying ever participating in any kickback scheme (which he only admitted at trial) and by being dishonest about not collecting cash since the fall of 2015.
- [262] As to that line of credit and the tax lien against John of \$282,000, Sharon says these should be borne by John alone, or in case of the WIT line of credit, any legitimate portion has already been deducted included from the company value, and should not be included in the value of West 20th as doing so would be "double counting".
- [263] Sharon takes the position that the decision to deal in unreported cash was John's alone, and as such, he should bear the burden of the tax debt alone.

4. WFI

- [264] WFI was created in June 2013, during the relationship. On paper the shareholdings are 90% to Ms. Jiang, and 10% to John. The company's sole purpose was to purchase a commercial unit used by WIT, namely 3125 - 21331 Gordon Way, Richmond, B.C. ("3125 Gordon Way").
- [265] Despite the registered shareholdings, Sharon says it is clear that the monies used to purchase 3125 Gordon Way are from Sharon's account and Mr. Wang's contribution to Sunnymede. John has personally guaranteed the mortgage, the mortgage loan to WFI being 100% guaranteed by WIT and by West 20th. Virtually all the documents for WFI's start up and purchase of 3125 Gordon Way were signed by John, and WIT continues to use 3125 Gordon Way to date. Sharon says WFI is clearly owned 100% by John, and is a family asset. I am satisfied that John's father had no other participation than to provide his name to the transaction.
- [266] Shane Troyer said the value of WFI is \$261,000, and to this amount should be added the shareholders loan of \$154,276 found in WFI's financial statements.

5. Wingsum International Trading Inc.

- [267] Wingsum Inc. was incorporated on July 22, 2016. It was created after separation. There are further indications that the corporation operates in Victoria, B.C., which coincides with WIT's customer list indicating they now have Victoria customers. Grace is now known to be one of the shareholders. However, Mr. Wang and Sharon received indications that this company only operated for a short time, and is not operating any longer.

6. W&W

[268] W&W was incorporated on May 11, 2015. It is meat processing company ostensibly owned by Ms. Jiang and William Wan. Sharon says the shares are in fact 100% John's. Little is known about the company by Sharon. It, in any event operates on an integrated basis with WIT. It does not process its own meat. WIT does all of that.

7. WSP

[269] There is a recently discovered further company, WSP, which Sharon says may be yet another end-run attempt by John. Sharon says this company was started by John, Grace and Ms. Jiang for the purpose of conducting cash sales and diverting profits from WIT in order to defeat Sharon's claims.

[270] WSP is servicing existing companies. It is not currently named as a party. Sharon says the fact that another new company was created yet again goes to the issue of John's credibility. Its processes and activities are all part of the Corporate Group controlled by John.

B. The Companies are One Corporate Group

[271] It is Sharon's position, substantiated by the report of Mr. Troyer, that all of WIT, WSP, and W&W are all one corporate group, owned and controlled by John.

[272] She alleges that the evidence of the companies' integration includes:

- W&W and WSP purchase the majority of their meat from WIT
- WIT processes the meat for W&W and WSP
- Three companies share warehouses and freezers
- WIT warehouse employees sorting for W&W and WSP
- WIT sells meat to W&W and WSP at wholesale price
- A number of salesmen work at both WIT and WSP
- Companies share drivers and trucks for delivery
- Accounting staff working as a team
- Companies share the same internal ordering program
- Grace and Ms. Jiang have signing authorities for all three companies
- WSP dependent on WIT's line of credit
- Minority shareholders of WSP are WIT's employees
- No valid business reason to start WSP and W&W was set up to do sales for WIT

[273] Extensive evidence was called to support these allegations, which I will set out briefly, but, on a consideration of the evidence called over the many days of this trial, I am satisfied that all of the shares in these companies stated to be owned by John and his family members are 100% John's.

1. W&W and WSP Connection to WIT

[274] W&W, WSP and WIT share their drivers. All W&W and WSP have to do is to take orders from customers and put them into WIT's internal website. This requires only a salesperson. William Wan is the only salesperson working at W&W, and almost all of WSP sales are made by individuals who are working (5 salesmen) or worked for (Grace and Ms. Jiang) at WIT. All the sales made by W&W and WSP could easily be done through WIT.

[275] WIT processes the meat for W&W and WSP, which means W&W and WSP lack the capacity to process meat, and certainly had no such capacity when they were incorporated.

[276] During cross examination, John confirmed that meat cutters all work for WIT and WIT cuts meat for all three companies. John also added that if WIT helps W&W and WSP cut meat, he charges \$0.2 per pound. No evidence has been given regarding whether \$0.1 - \$0.2 per pound is fair market price for processing meat, but there was evidence that WIT profits collapsed when WSP's skyrocketed. John admitted that it is absurd that WIT with 6 times the sales would make much less profit than WSP.

[277] In June 2016, WSP hired one of WIT's chicken cutters to cut its chicken. The chicken cutter worked in WIT's cutting floor, without moving her work station location.

2. Three companies share warehouses and freezers

[278] W&W and WSP did not have their own warehouse or freezers until May 2017.

[279] During cross examination, Zhaobin Wan, salesman of both companies and minority shareholder of WSP, and Summer Wang, one of John's employees, both acknowledged that all three companies share warehouses.

3. Warehouse employees sort for W&W and WSP

[280] In addition to processing meat for W&W and WSP, WIT also has its warehouse employees sorting and putting the products on pallet.

[281] John admitted that it is WIT's obligation to get the products for WSP and W&W ready, to put all customers' products on pallet, and allow customers to deliver their products.

[282] This shows that WIT does all the work necessary to make the meat ready to deliver to restaurant customers. There is no need for WIT or the customers to go through W&W and WSP.

4. Companies share trucks

- [283] Grace admitted that WIT and WSP do delivery for each other and charge \$10 per delivery. This was also confirmed by Zhaobin Wan.
- [284] It is also clear that without WIT's support, WSP would not have been able to start its business. WSP had no trucks when it started. WIT purchases and processes WSP's products and had its own trucks to deliver these products to WSP's customers. Without WIT's support, WSP has no meat to sell, no one to process and pack the meat, and nobody to deliver the meat.
5. A number of Salesmen work at both WIT and WSP, showing the level of integration
- [285] Since WIT takes care of the production and does most of the delivery, the only thing left for WSP and W&W to do is to take orders from customers, which is a salesperson's responsibility.
- [286] In John's examination in chief, John gave evidence that WIT would not be able to serve W&W and WSP's customers, because WIT does not have the time or energy to deal with their customers.
- [287] However, the evidence did not support this position.
- [288] During cross-examination, Sharon's counsel took John through WIT's salesperson list and WSP's 2016 commission Quickbook report. John admitted the following 6 persons work at both WIT and WSP as their names show up on both documents: Gary Hsu (CYP management), Zhaobin Wan (Wan Cheng Enterprise), Joyce Wong, Laiyin Yuen, Tim Chow (Shunda Enterprise), and Xiao Ling Jiang, his mother.
- [289] John also admitted "David" also works for both WIT and WSP, although he did not provide his full name or the company he provided his service through.
- [290] Sharon's counsel took Grace through WIT's salesperson list and Grace also identified 6 salesmen work at both WIT and WSP, some of which coincided with those named by John: Gary Hsu (CYP), Joyce Wong, Laiyin Yuen, Tim Chow (Shunda Enterprise), Zhaobin Wan (Wan Cheng Enterprise), and Anthony Cheng (Drakon Management).
- [291] Ms. Jiang also admitted in cross-examination that at least 5 employees and salesmen work for both companies.
- [292] Zhaobin Wan also admitted that a number of salesmen work for both WIT and WSP. Summer Wang said a number of salesmen work for both companies and Gary Hsu is one of them.
- [293] Gary Hsu admitted that he puts in orders for WIT's customers and he also brings customers to WSP.

- [294] In summary, at least 6 salespersons work for WIT and WSP at the same time. Almost all the sales made by WSP in 2016 went through the salespersons who work at both companies, and through Grace and Ms. Jiang, who worked at WIT. The sharing of salespersons proves John was not telling the truth when he claimed that WIT is not able to serve WSP's customers; the fact is that WIT's sales are the exact persons who are serving WSP's customers.
6. Companies share the same internal ordering program, which shows the level of integration, and WIT supports W&W and WSP
- [295] Under cross-examination, John admitted that WIT and WSP share the same order program. When salesmen (who work for WIT and WSP at the same time) take orders from customers, they entered the order into the same system for both WSP and WIT.
- [296] Grace admitted that both W&W and WSP order from the internal WIT website. The process is that customers place an order with the salesperson, and the salesperson enters order into WIT's website. Grace also admitted that her other customers do not have access to this website.
- [297] Zhaobin Wan admitted all 3 companies use the same sales program. Summer Wang also admitted that WSP, WIT and W&W all use the same ordering program for customer sales. Gary Hsu also admitted that he uses the same program to place orders for WSP and WIT.
- [298] Thus there is no dispute that the three companies are sharing one internal ordering placing website for the sales persons to place orders for their customers. WIT sharing of its internal website with W&W and WSP provides another indication of how closely integrated these companies are.
- [299] The ordering website was set up by Sharon, and is maintained by WIT. WSP and W&W use it without extra charge, while receiving a wholesale price for their non-wholesale, well-processed products. This further supports Sharon's claim that W&W and WSP are WIT's end-run companies created to divert profit from WIT.
7. Historical customers moved from WIT to WSP
- [300] Grace testified that she found some of the customers for WSP by herself, including the Bourbon Street Grill. The Bourbon Street Grill owner, who testified, said the opposite: he ordered from John for a couple of years until John disappeared on him. He had to contact Ms. Jiang, and started to order from WSP. Thus, Grace's testimony, that she found the customers herself, is not reliable.
- [301] In addition to sharing customers, John admitted that WIT and WSP share customer numbers, and Grace also used these same numbers.

[302] The evidence discloses that half of WSP's sales in the first 5 months came from WIT's historical customers. Seven or eight of WIT's longstanding loyal customers who trusted John switched to WSP, and John admitted that he warned them that he was going to be under scrutiny so they better stop buying from WIT. One of John's loyal customers went to John's sister Grace to order from her new company, while the sister was still working at WIT.

[303] Considering all of this evidence, I accept Sharon's position that John, Grace and Ms. Jiang started WSP together, using Grace and Ms. Jiang's name, to use WSP to conduct cash sales, and divert profits from WIT to defeat Sharon's claim.

8. Accounting staff work as a team

[304] As further indications of the level of integration, Grace and Ms. Jiang have signing authorities for all three companies. As well, WSP is dependent on WIT's line of credit. Minority shareholders of WSP are WIT's employees, which shows the level of integration.

9. Other factors indicating companies are in reality one entity

[305] W&W and WSP operate out of the same office at 3125-21331 Gordon Way.

[306] Both Grace and Ms. Jiang admitted that there is no non-competition agreement between WSP and WIT.

10. The "resignation email", stating intent to create "arms-length" company

[307] There was an e-mail sent in April 2016 (WSP was incorporated months earlier in December of 2015). Sharon says this e-mail was created with the intent to show that the new company was to be an "arms-length" company, as if the companies were strangers. Grace Jiang admitted to sending the e-mail. It is Sharon's position that this e-mail was completely self-serving, and is completely belied by the conduct of Grace Jiang and WSP.

11. Miscellaneous Evidence

[308] Sharon says the fact that John called WSP "his mom and sister's company" is a key admission that the minority shareholders are straw people.

[309] As well, Gary Hsu and Zhao Bin Wang admitted to having no idea why they were shareholders; they were asked to become shareholders by Ms. Jiang. There is no shareholders agreement, no shareholder's meetings; and they have no say. They are "straw men investors" used to try and disguise the true ownership.

[310] Sharon says the other minority shareholders are either not real (like Sunny Seeto's daughter Autumn Laramée, who did not testify to putting any money into WSP), or who have received dividends back already equal to their investment. She says there should be no discount for the "faux shareholders".

[311] Sharon further points out that Grace could not explain whose shares Autumn Laramée was going to get to increase her shares to 40-45%. She says this is further evidence that this was another end-run scheme to try to artificially diminish John's real ownership.

[312] Sharon points to various other pieces of evidence: Grace Jiang had the time to attend make-up school, in the first year of WSP's startup; WSP was named as a "produce" company although it only sells meat; other people in the industry, for instance Xiao Shan Li, a salesman at Fresh Choice said he considered W&W and WIT the same company.

[313] In support of her position that WSP was created to divert profits from WIT, Sharon points out that there was no valid business reason to start WSP; W&W was set up to do sales for WIT. WIT is able to serve W&W and WSP's customers by itself. Profits were diverted from WIT into WSP.

12. Shane Troyer's Evidence at Trial

[314] On July 13, 2018 (Day 13), forensic auditor Shane Troyer from Grant Thornton gave evidence that these three companies work on an integrated basis.

[315] Mr. Troyer's report provided some helpful analysis, but was deficient in many respects. He said he had no way of knowing whether the records he examined were complete, and admitted to limited hands on forensic auditing by his team:

(i) An English speaking associate spent less than a day on the premises of Chinese speaking company;

(ii) His team did not travel with salesman to get sense of business;

(iii) His team did not follow drivers to see if cash was used;

(iv) He looked at the accounting records but there was no way to check the accuracy;

(v) Since cash was not deposited, missing monies can't be totalled;

(vi) He had no way of confirming what, if any, cash expenses were paid;

(vii) He did not confirm with employees what they were paid in cash;

(viii) He could not be sure if employees, if asked, would be truthful about undeclared income;

[316] Mr. Troyer's evidence covered a number of points about the operation of the companies, many of which are set out above. Despite the limitations on his audit, Shane Troyer characterizes the scope of what he concluded was fraud as "large".

[317] He said the company names were so similar it was not logical to think they were creating new brands. There was no good reason for companies to be named this way and it seemed unusual. Neither was there a good business purpose to run three companies selling the same products instead of one; it is more costly with less economy of scale. More overhead needs to be incurred to run three companies that sell same products. In his opinion, the

only reason to have three companies is to sprinkle incomes for tax purposes, which was not brought forward to the auditor.

- [318] He also noted that WSP never sold any produce, only meat, so it made no sense to have "Produce" in the name. Mr. Troyer also agreed that calling one company "Produce" wasn't a great differentiation strategy.
- [319] Mr. Troyer understood the three companies operated on an "integrated basis" and there was a strong intercompany relationship of WIT, W&W and WSP. They cannot be valued separately and they share profit and margins.
- [320] He confirmed John was selling meat to WSP and W&W at less than it could sell to its customers and the profit then showed up in new companies instead of WIT; he could find no good business purpose for this.
- [321] Mr. Troyer said Grace and Ms. Jiang were taking far higher compensation than John, who was CEO, and this did not make sense. He agreed it did not pass the smell test and would make sense as a way to divert income.
- [322] Mr. Troyer confirmed that the company financial statements fraudulently excluded substantial undeclared cash.
- [323] Mr. Troyer testified that their procedure to look for missing cash was to review books and look for variances in margins. However, there was no documentation and no way of knowing if they found all the cash with certainty. He was able to locate \$2,709,563, but had no way to confirm if this was all of the missing cash; given there are no source documents.
- [324] Mr. Troyer also identified two different versions of "typed cash ledgers" produced by Grace, which Grace admitted were not source documents but copy and paste documents of only partial data she created. The first version found at Exhibit 17, Tab 149 differed from a later document Grace provided to him at Exhibit 17, Tab 152. Mr. Troyer refers to this billing fraud. He said even if this is recorded on books, the profit should be higher because the restaurant owner was charged for meat he didn't get and WIT didn't have to pay for: it was a phantom sale on the increased charge.
- [325] Sharon submits that the existence of ongoing cash schemes is clearly proven by the long term employee, Sunny Seeto's, illogically low salary compared to 2010 versus today; as well his daughter was receiving more than he was, as senior management.
- [326] Sharon submits that critical answers were given by Mr. Troyer as follows, and provided the following notes of his evidence:

Q. - able to confirm proof of any other expenses?

a. No

Q. No proof whatsoever

a. No

Q. This period of cash payments doesn't match to full period you did audit? Why are they missing cash invoices?

a. This is based on what provided

b. It was identified to us that cash expenses occurred throughout

c. Analysis of potential quantum

Q. As I understand, John essentially said pro-rate expenses for period because no spreadsheet - seemed odd?

a. Seemed unusual complete docs for one period and not others

Q. Put theory toward you - 2 types of cash invoices re kickback - cash ledgers show cash income coming in, cash expenses going out

a. Correct

Q. One explanation - John didn't want you to know there was actually more cash collected, because cash collected is on same document as expense - he had to pick - he knew he made more cash - he didn't want you to know, so he didn't provide

a. That's possible

b. One potential reason why margin lower throughout period

Q. We just don't know where these other documents are - can't even get full spreadsheet

a. Just have what provided

Q. John asks you to prorate for period, ask for higher amount

a. Not request from John, our analysis with info from Grace

Q. Completely blind in one area

a. Correct

[327] Mr. Troyer says the range of profit have varied widely since operations began in 2012. At para. 45 he said the following:

Excessive profit margins of between 8.5% and 7.0% (without inclusion of any cash expenses claimed by Mr. Jiang) were achieved in the years ending February 2013, 2014 and 2015 with lower profit margins being realized in later years where cash revenues were reduced and then disappeared from the secondary books and records of wit. At this time profit margins (before tax) were reduced to 5.3% and 2.6% for the years ending February 2016 and 2017 respectively. Given the large variances in performance and the impact that changes in salary, commissions and other payments to non arm's length individuals have on year over year performance we believe it is reasonable to assume that under normalized operations a before tax profit margin of between 3%

and 6% could be realized.

[328] According to Mr. Troyer it may be reasonable to add an increase for part of the 2019 fiscal year as well; a reasonable amount to add is \$4,000,000, thus giving a total of \$28,000,000.

[329] Mr. Troyer said that when dealing with company expenses, an attempt to justify them is flawed if the missing hidden cash discovered is only a fraction of the real hidden cash. The expense percentage figures change dramatically if this is so.

[330] Mr. Troyer noted that with sales growth of nearly \$20 million from 2013 to 2018 or roughly \$4,000,000 increase in sales year over year, which he characterized as significant, WIT was a "successful company".

[331] He also noted that the shareholder's loan increased by \$1,200,000 from \$1,442,237 February 2015 to \$2,664,294 in December 2017, and the line of credit increased by \$1.1 million from \$391,301 in February 2015 to \$1,505,071 in December 2017.

[332] Mr. Troyer indicated that John's voluntary disclosure figure to CRA was less than what he discovered it should be on his audit; even after credit for unsubstantiated cash expenses.

[333] There are obvious deficiencies in Mr. Troyer's report. He spoke in general terms of operating officer salaries, but inexplicably, he failed to obtain, job descriptions, work hours, responsibilities, skill sets, detailed educational and work histories and did no investigation of Ms. Jiang's duties and child care duties that kept her away from the office. His investigation to estimate the amount of fair salaries was wholly deficient.

[334] Mr. Troyer spoke to George Choy, the owner of Fresh Choice, a comparable business. He acknowledged George Choy told him his gross margin is 20%.

[335] As set out below, George Choy provided key details on what fair salaries were in this exact marketplace of "value added meat processors".

[336] Mr. Troyer was asked how much time he spent taking advantage of key comparisons from an identical company Fresh Choice based on letters sent him summarizing George Choy's evidence on income and valuation issues for the WIT Group and like "value added meat processors".

[337] According to Sharon, Mr. Troyer admitted:

- a. He didn't talk to Choy about split invoices;
- b. George Choy was genuine in wanting to help the auditor find the truth;
- c. Spoke only 1- few minutes in total with Choy on phone;
- d. Exhibit 10, Tab 30 and 31 confirmed the altered two versions of the "typed cash ledger" revealed in the second version a kickback scheme was illegal and flat fee was not a commission;

- e. Exhibit 10, Tab 31A being key evidence of George Choy which Choy confirmed under oath was never discussed with Choy by Shane even though letter urged him to do so:
- i. No discussion of what job entails to manage company - "very simple" no skill needed, 1 fulltime person for \$100,00-\$110,00 could do all jobs;
- ii. Car allowances
- iii. Real profit roughly 6% not 4% and higher with undeclared cash being 10%.
- iv. Sunny Seeto salary a fraud, daughter getting more nonsensical, Sunny should be receiving \$100,000 not \$52,800 a year. The difference must be cash.
- v. Cash payment rampant in industry and Choy has computer program to do this split invoice scheme restaurant owners demand.
- vi. CRA audits in this industry are common and many have been caught.
- vii. Pork Butt sales by John and Seeto are occurring which could be over \$450,000 a year.

A monitor could cost \$5000, to \$10,000 a month to check inventory, weights, transactions, meet with stakeholders, receive reports, control inventory to check for cash being fully declared, site inspection, and variance analysis. Mr. Troyer did only a very few of these steps.

[338] When it was put to Mr. Troyer that Fresh Choice never earned a 7-8% net profit his answer was "not in their financial statement". However, George Choy had already testified that the additional undeclared cash income which brought the profit up. Mr. Troyer reported:

Our analysis identified that Pork Butt related products were the lowest margin products sold, with beef products having margins of over 20% balancing the overall margin percentage for WIT, W&W and WSP at around 18%. Even if we are to assume that margins on Pork Butt product sales should approximate the average margins for overall product sales then potential missing revenues relating to Pork Butt would be limited to between \$70,000 (at an 18% margin) and \$140,000 (at a 20% margin).

[339] Grace did not put any documents proving lower margins for WIT, W&W or WSP versus Fresh Choice or other competitors in front of witness or court at all. No customers said WIT was cheaper.

[340] Mr. Troyer also went through the investment of shareholders Exhibit 9 and agreed the lack of any contribution by Ms. Jiang and Grace was odd. The shareholders loan made after the fact has been withdrawn from the company so Grace and Ms. Jiang put no money into WSP.

[341] Mr. Troyer was shown Exhibit 10, Tab 3, 5 and 7. He admitted the first time he saw any cash expense printout from Grace was in May 2018, nearly 3 years after the action started and this document had never been produced before. Again he confirmed personal expenses he identified for legal and expert fees were not added back to properly increase profits in 2016-2017.

- [342] Mr. Troyer said increased employee benefits cost 7% on the portion of salary that was formerly cash. It is important to note employees got partially declared and partially undeclared income. No one but John and family members got substantially all undeclared cash.
- [343] Mr. Troyer analysed the sales of Pork Butt but did not find it to be a significant diversion of profits. However, there has been no oversight on Pork Butt sales since December 31, 2017. Sharon submits that John and Sunny Seeto have proven their willingness to lie, and their word that they didn't take Pork Butt cash recently, rings hollow. It is not to be believed, given the clear proof that John, Grace and Ms. Jiang knew of the cash scheme.
- [344] Grace sought to have Mr. Troyer admit bigger sales means lower pricing. While he did not agree, he did say "With larger volume, you expect economies of scale".
- [345] John admitted he would get a better price from suppliers if he ordered higher volumes, but when asked how much extra profit this resulted in, he would not respond. Sharon says an adverse inference must be drawn that profits are higher than 6% for John's company due to higher volume of sales and economies of scale.
- [346] Mr. Troyer stated one of the differences in net profit related to huge increases in non-arm's length compensation paid out to Grace and Ms. Jiang.
- [347] Mr. Troyer did not resile from his position that John failing to deposit cash caused the line of credit to increase, and Grace could not get Mr. Troyer to admit the line of credit went up solely due to other factors.
- [348] Mr. Troyer was asked what a person bringing in \$1,500,000 of business would get. (3% commission would mean Grace gets \$45,000) This is far less than what Grace and Ms. Jiang took out in 2016, 2017 and 2018. John's sales dwarfed that of Grace and Ms. Jiang so presumably he would get the most compensation by far yet, according to the company records he gets the least.
- [349] Even without Mr. Troyer knowing that the real source of funds to buy WFI came from Sharon's "treasury account" and Sharon's father's money, taken out of the Sunnymede account after he transferred money to it, Mr. Troyer was firmly of the opinion John was the real owner of WFI, given the guarantees, down payments, signed documentation, and use of premises etc. He said the "risk and rewards" were John's, not Ms. Jiang's, even though she is alleged to own 90% of the shares in the company.

13. George Choy and Fresh Choice

- [350] I have referred to Mr. Choy in the context of Mr. Troyer's report.
- [351] Mr. Choy was called by Sharon to assist the court in coming to a correct income and company valuation. His evidence was forthright.

- [352] Fresh Choice started in 1986 and the WIT Group are very similar if not identical in customers and products offered as Value Added Meat Processing and Custom Cut Meat suppliers.
- [353] Mr. Choy said cash payments from restaurants is common. Restaurant employees, chefs, and supplier employees, want to be partly paid in cash or they go elsewhere where they can get paid in cash. Companies continue to do this, including his own.
- [354] Mr. Choy said upper management total salary should be \$100,000-\$110,000 per year. This is a simple business not requiring great deal of management skills, "very primitive not high tech" he could hire one person without high education to do their 3 duties for \$100,000.

C. Conclusion

- [355] Despite the deficiencies in Mr. Troyer's report, I conclude that Sharon's position is established. The evidence is overwhelming in support of her position; these three companies are all one group, and the new companies were merely created as end-run companies to divert profit from WIT. They were set up the way they are as a means of hiding income.
- [356] It is also clearly evident that there is a great deal of undisclosed cash going through the companies, which I will deal with later.

VI. OTHER FAMILY ASSETS AND DEBTS

- [357] As mentioned above in the discussion of WFI, Sharon takes the position that, despite the registered shareholdings, it is clear that the monies used to purchase 3125 Gordon Way are from Sharon's account and Mr. Wang's contribution to Sunnymede. John has personally guaranteed the mortgage, the mortgage loan to WFI being 100% guaranteed by WIT and by West 20th, virtually all the documents for WFI's start up and purchase of 3125 Gordon Way were signed by John, and WIT continues to use 3125 Gordon Way to date. Sharon says WFI is clearly owned 100% by John, and is a family asset.
- [358] In addition to the companies dealt with above, Sharon says she is entitled to half the increase in value of Windsor Court, a piece of property purchased in Richmond, and in which she testified that she lived for about a year. This will be dealt with in more detail below.
- [359] She says as well that anything remaining after Mr. Wang's claims are satisfied in regard to West 20th and Sunnymede is a family asset.

A. Misc. Debts

- [360] As mentioned earlier, subsequent to the Anton Piller order, John made a voluntary declaration as to unpaid taxes. This resulted in a tax lien, registered against West 20th and Windsor Court. Sharon says the evidence showed John was dishonest before the Anton Piller order, dishonest with his disclosure to the CRA, committed further perjury by denying ever participating in any kickback scheme which he only admitted at trial, and by being dishonest about not collecting cash since the fall of 2015.
- [361] He also acknowledged that he secured a line of credit which is now \$1,000,000 against the West 20th property.
- [362] As to that line of credit and the tax lien against John of \$282,000, Sharon says these should be borne by John alone, or in case of the WIT line of credit, any legitimate portion has already been deducted included from the company value, and should not be included in the value of West 20th as doing so would be "double counting".
- [363] Sharon takes the position that the decision to deal in unreported cash was John's alone, and as such, he should bear the burden of the tax debt alone.
- [364] Sharon's evidence regarding the continuing collateral mortgage on West 20th for \$500,000 was that John told her to sign it, very early in a morning, in a rush, she trusted him, and did not ever think she would get divorced.

VII. SUMMARY OF SHARON'S EVIDENCE RESPECTING FAMILY ASSETS

- [365] Having set out a description of the corporate assets, I will review some of Sharon's evidence dealing with those and other assets.
- [366] Sharon's counsel provided the following summary of her evidence, which is generally an accurate recitation:

A. Background

- [367] Sharon testified under direct examination that:
- (a) She is age 31;
 - (b) She came to Canada in about 2001 or 2002;
 - (c) She has been a citizen for about 8-10 years;
 - (d) She currently resides at 2772 West 20th, with the child, Julia;
 - (e) Cohabitation began after John purchased Windsor Court, in about July or August, 2011;
 - (f) She and John married in October 2012;
 - (g) Julia was born October 22, 2014; and

(h) She and John separated in about the end of August 2015.

B. Education

[368] Sharon testified under direct examination that:

- (a) In China, she graduated from middle school, and graduated high school in Canada. She took ESL courses in secondary school for about 3 years.
- (b) She went to the University of Western Ontario in Toronto for 4 years, 2005/2006 to 2010. She did not graduate.
- (c) She went to Kwantlen in Vancouver for ½ term, then SFU from 2011 to 2014, full time, and graduated with degree in economics in 2014.
- (d) She also volunteered at RBC for one summer in 2006/2007, and worked at VCC as office assistant as a volunteer.

C. Business and work experience

[369] Sharon testified under direct examination that:

She also worked as a real estate assistant, where the agent was her friend. This happened in 2014 while studying at SFU. She worked on the 1-2 days that she did not have school, and earned \$15 per hour.

D. Meeting John and knowledge of his work

[370] Sharon testified under direct examination that:

- (a) She met John in about the end of 2010 or early 2011. He lived in one-room basement apartment. She later learned his parents were living in East Vancouver, in a half-basement.
- (b) John advised he had university in China, in computers. Her parents later said he did not graduate.
- (c) He told her he worked for Fresh Choice food as driver and salesperson before, and for Westin doing similar work. He was also a 10-15% shareholder. There were lots of other shareholders. He was thinking of getting out of the company, with Sunny Seeto, who also worked at Fresh Choice, to start a new company.

E. WIT and dealings in Cash

[371] Sharon testified under direct examination that:

- (a) John started a new company, Wingsum International Trading ("WIT"), and the idea was that Westin did not need to pay him a salary, but would still get supplied from Westin. Westin liked the idea.
- (b) The name in Chinese for the company was "Weixin", Sharon came up with "Wingsum". This was not challenged on cross-examination.

[372] Sharon testified under direct examination that:

- (a) Sharon had a good relationship with some of the employees at the company, and would help with planning, and odd jobs, and if someone injured, would drive that person to emergency.
- (b) She also attended company events, including annual ones, like a BBQ at Cultus Lake, and at Harrison Hotsprings which would happen every year.
- (c) John advised her that his profit margin was about 10%, and that his daily sales were about \$80,000 to \$100,000.
- (d) John would sometimes say that money paid out, would be gotten back. She felt these were kickbacks, but did not know specifics.
- (e) She also identified that when she returned home, John would put his money in bundles, and put them in the safe at home. He would also use the cash counter on his bedside table.
- (f) She stated John himself would also not use the cash in the safe. He would, however, have cash in his pocket, as much as \$3,000, and sometimes put cash in a different drawer at home if had too much. She also confirmed on cross on Day 9, July 6, that she did not know if this was from the company or not, but that it came from John's pocket.
- (g) She also confirmed under cross-examination, with regards the text message at Exhibit 4, that she did not recall what she was referring to, when she said "there's no money at home", it could have been the money in the drawer that John would sometimes place, or in the joint account. She also confirmed that it was Airui Fu who was the one playing baccarat, and that she does not gamble. Hence the reference to the "money is almost gone" is to her friend, not herself.
- (h) She also identified a TD safety deposit box, but she did not have the key.
- (i) There was also an incident where John's father took cash collected, and went to the casino and gambled it away, John did not let his father work for the company after that.

[373] Sharon said she now understands, having found John's handwritten ledger at home, that the amounts recorded in the ledger were not reported. She acknowledges that there were also some employees in the company who told her there was a problem with unreported cash.

[374] Sharon also said she had seen certain 4 digit and 5 digit invoices before separation, at home, but she did not understand what they meant. She later found out, after the Anton Piller search, that the 4-digit ones referred to unreported cash.

[375] When asked about her affidavit which said "I assisted John with cash collection and calculation", she confirmed this meant she went along to the various stores and waited in the car and that she sometimes helped him use the cash counter, at home, but clarified she did not at any time help him enter cash into his laptop.

- [376] Taking all of this evidence into account, it is acknowledged on Sharon's behalf that she did have some contact with the company employees over the years including at the annual retreat, but was not a part of the internal workings of the company.
- [377] As well, she had some limited contact with John's unreported cash scheme.
- [378] It is also clear that she suspected something was fishy, but she says it is also clear that she was not directly involved, as she was not the one having conversations with the persons at restaurants, regarding kickbacks. She did assist in counting cash, literally, but did not assist in writing it down.

F. Windsor Court

- [379] Sharon's evidence on direct was that Windsor Court was purchased in about July 2011. It was registered in John's name. She and John went to look at the property before purchase. Sharon described Windsor Court as a 3-bedroom townhouse, all three bedrooms were upstairs and one master bedroom.
- [380] Sharon testified that:
- (a) Her parents would pay for most things for her, while she was there. John would buy gifts, not so much after they married.
 - (b) She and John got furniture together, John purchased it, lots of furniture was purchased from Craigslist.
 - (c) She identified a breakup in late October 2011, but indicated she returned about 1-2 weeks later.
- [381] Sharon's evidence about residing at Windsor Court was corroborated by Yuki Ku's testimony and was not significantly challenged on cross.
- [382] Sharon also identified her e-mails from the strata for Windsor Court, which were not challenged on cross examination.
- [383] The equity in Windsor Court is:
- (a) 2018 BC Assessment: \$575,000
 - (b) Mortgage, approximately: \$171,000
 - (c) Remaining Equity, approximately: \$404,000
- [384] Sharon's position is it is clear from the above that she did in fact live at Windsor Court from about, July 2011, until she and John moved into West 20th. As such she says she is entitled to half the increase in value from about December, 2014, until they moved to West 20th.

G. Wedding and Cash gifts

[385] On Day 6 July 3, Sharon testified in direct examination about the wedding, and the cash gifts, as follows:

There was \$90,000, in cash, presented by her father. Of that, about \$50,000 was given from Mr. and Ms. Wu, and the remainder largely from friends and family of the Wangs. She confirmed as follows:

Exhibit 15-2, Tab 203 is the TD deposit slip, showing the deposit of over \$63,000 into the parties' joint account from the wedding, including a breakdown as to the various denominations of bills i.e. 20's, 50's and 100's that make up that amount.

H. Lifestyle

[386] From Day 6, July 3, Sharon testified regarding the parties' lifestyle from marriage in October 2012, to before Julia was born, in October 2014, as follows:

- (a) The first house they purchased was after John started his company so in marrying him, Sharon did not expect to get any gifts from their family.
- (b) She provided \$48,000 to him, some from savings some from parents. Gave to John, most of which he used for his company (as discovered during the litigation, this was in fact used for WFI, for the purchase of the 3125 Gordon Way unit).

[387] Sharon says that, from cross-examination, it appears John is attempting to show that the parties had an extravagant lifestyle, and specifically, that Sharon spent some or all of the unreported cash. However, she argues that this cannot be so. It is undisputed that, during this period, John was working long and hard to improve his company, and that Sharon was attending full time school and working. The evidence as to no honeymoon, limited vacations and other expenses is evidence of a hardworking, relatively inexpensive lifestyle. There is no evidence of expensive cruises, country clubs, or expensive parties. The main "extravagance" is the mortgage payments and maintenance on West 20th, about \$7,500 a month.

I. Lifestyle after Julia's birth (October 22, 2014)

[388] Sharon testified that John gave her \$1,000 per month, mostly in cash, and sometimes less. She said it was not enough. John was spending money on himself, i.e. a Tiffany necklace and Gucci shoes.

J. Separation

[389] Sharon testified as to the reasons for separation. There was unhappiness in their lives. She discovered John had other women. He did not really take care of their child. Sharon discovered he had a child from a previous marriage, from a photo on Facebook. This is at odds with John's testimony. I do not, however, feel it is necessary to reconcile the difference for the purposes of this Judgment.

K. Gordon Way property, owned by WIT, not WFI

[390] It is Sharon's position that WIT, not WFI, owns Gordon Way. She testified:

- (a) WFI was originally set up to do retailing in meat, online sales. She helped purchase the domain - wingsumfood.com
- (b) Instead, it became a holding company for 3125 - 21331 Gordon Way, Richmond, B.C.
- (c) Sharon's friend, Ran Dai, had invested \$220,000 into it. Later Sharon discovered that it was transferred to his mother. She later discovered Ran Dai had sued for the money.
- (d) It was John, not his mother, who put up the money for Gordon Way property,

[391] Sharon said she clearly had no idea that \$40,000 of her own money was used to purchase the 3125 - 21331 Gordon Way unit.

[392] In addition, there is an "amount due to shareholder", as in WFI's financial statements of \$154,276. She says this must be added to the value of WFI, bringing the total to \$414,659.

L. W&W Foods Inc.

[393] Sharon testified that she does not know much about W&W Foods Inc. She understood that John and William Wan would be selling meat wholesale, and that John knew William Wan from days with Fresh Choice (i.e. "Hong Fa"), and also Sunny Seeto. She said in the beginning, they used John's warehouse and vehicles. Sharon was not aware that John's mother was involved.

M. Events after separation

[394] Sharon testified:

- (a) That there was an order that she have exclusive possession of West 20th on December 14, 2015, whereupon John moved out, and further that Sharon made her contributions to West 20th as per that order. John was ordered to pay interim child support of \$2,442, and interim spousal support of \$8,443. John paid for two months and then stopped.
- (b) That John later did not make the payments, and that house nearly went into foreclosure because of it:
 - (i) she points to letters from counsel, including the banks, identifying the shortfall, from April 13, 2016, to October 5, 2016. It is noted John would later bring this back into good standing, prior to the court's decision on contempt.
- (c) That John would gamble, during the relationship.
 - (i) Sharon identified this as a photo taken by Airui Fu (Lina), who texted her. Sharon was upset, as John was gambling, when not paying child support. This led to the Order of November 25, 2016, whereby John was ordered, by consent, not to gamble.

[395] Much of the above was already before the court when John was sentenced for contempt on November 25, 2016.

[396] Sharon says it is clear, especially from the letters in 2017 and 2018, that John has been repeatedly late in obeying the court orders, and as such has repeatedly breached the same. She also points out that John admitted later at trial, when he was testifying, that the mortgage for West 20th was in arrears at that point in time.

N. Wingsum Produce Corp ("WSP")

[397] Sharon testified that her knowledge of the corporation came only after this litigation, including that it was created after separation.

O. Tian Qi Jiang became registered owner of 3100 and 3120-21331 Gordon Way, Richmond, B.C.

[398] On Day 8, July 5, Sharon confirmed that she only discovered during this litigation, that John's father, Tian Qi Jiang, had become the registered owner of these two units in August 2016. She knew WIT had rented these units as warehouses during the marriage. She also observed the rent was very high.

P. Sharon's bank statements and credit card statements

[399] With the exception of the \$48,000 she provided, and some payments for her RBC credit card, Sharon was not significantly cross-examined on these issues.

Q. Wuding and other Chinese assets registered in Sharon's name.

[400] These are dealt with at paras 571-577 herein.

R. John's Stocks Purchased in China

[401] This will be discussed in more detail later, but Sharon and John do not agree on whether these stocks belong to him or his mother. The stocks were valued at \$127,000 and they were held by his mother. \$50,000 of their value went into the business. Sharon claims half of the \$77,000 that is left.

S. Mercedes

[402] On Day 9, July 6, Sharon confirmed that her mother purchased the Mercedes on May 19, 2010, prior to cohabitation as in Exhibit 13, Tab 79, the purchase document from that date. She did not put money into the purchase. Both of them used it. The vehicle is registered in her name, but she considers that her mother owns it.

T. Income and work after separation

[403] Sharon worked from September 2016 to December 2017 at Landa, a real estate developer's office, as an office assistant. Her maximum earnings in a year were about \$37,000. She had Julia in daycare at the time. She left the employment as she had to take care of Julia, had an urgent trip to China to visit some senior people who were ill, for about a month, and also had this litigation, which was scheduled for 50 court days.

U. Special expenses for Julia

[404] During the trial, Exhibit 13, Tab 56-65 and 67-71, were admitted for the truth of the contents regarding special expenses.

[405] The same day, Sharon testified regarding special expenses that Exhibit 13, Tab 64 was confirmation as to daycare amounts paid, provided to CRA. That was not challenged on cross examination.

[406] The above documents includes Tab 61, which is a chart breaking down special expenses for Julia, year by year. As such, it is confirmed that there is no disagreement with respect to the numbers, for retroactive and current special expenses.

[407] For current special expenses, the court has Sharon's F8 as in the Trial Record, and special expenses as listed therein. I accept these.

V. Summary of Sharon's Position in the Businesses

[408] Sharon's evidence is detailed in the Summary, above. It is submitted on her behalf that the essence of it is as follows:

- (a) From the time of cohabitation in July 2011 to before Julia was born in October 2014, she was a full-time student, who also worked part-time;
- (b) After Julia was born, she was a full-time mom;
- (c) She was involved in helping the startup of WIT, particularly by getting financing through her friend and father, and in the companies' annual events. However, she played a very limited role, with respect to the inner workings of the company, and in particular, with respect to John's unreported cash dealings.
- (d) As Mr. Wang's submissions indicate, she was often not involved or had limited involvement in discussions between Mr. Wang and John.
- (e) She has limited knowledge of WFI, W&W and WSP and their workings.

[409] It is Sharon's position that, by her background and activities throughout the marriage, she does not present as a person in the position of control of, or with substantial knowledge of John's Companies. Her evidence, both in direct and cross, is consistent with that background.

- [410] Sharon submits, moreover, there is a marked absence of any attempt to lie or fabricate things about WIT or the other corporations in this regard. Put more plainly, she admits what she does not know.
- [411] John admits Sharon came up with the name for his company, WIT. Sharon's family was well connected and he borrowed money from her girlfriend Airui Fu to start his company, despite trying to deny the connection and pretending a stranger he met lent such a sum. He admitted \$200,000 from Jennifer Dai was from Sharon's friendship with her.
- [412] Sharon submits that John tried to minimize her attendances at their family business and pretended it was not significant when she went to customers with him for business saying it was on their way to dinner. However, John admitted that Sharon took an injured employee of WIT to hospital. He also admitted that Sharon and her father saved his company, when Mr. Wang transferred \$100,000 to him at Sharon's request.

W. John's Position on Alleged Assets of Sharon's

- [413] John argues that Mr. Wang's alleged property in China includes bank accounts, shares in investment companies, and a stock account.
- [414] John claims that Sharon at one point in time appeared to own some shares in a Chinese company that was later transferred to her aunt, Ning Ning Wu. There is also a Chinese bank account and stock account in her name.
- [415] Sharon says none of these shares or monies are Sharon's and they belong to her father and their third parties.
- [416] Sharon's position is set out under the heading "Wuding", below.
- [417] Briefly, Sharon says that she was unaware of these transactions at the time, that she was here in Canada in any event that she was young and had no income or assets to contribute to the purchase of such shares, and that her father arranged for the transactions, which is apparently possible in China. As such, her interest as a nominee is not a family property and she has no interest in these shares.
- [418] She says as well that the same argument applies to her bank account and stock account which was set up by her father for him to use to trade stocks and his wife to make online purchases.

VIII. John Jiang's Evidence

- [419] Having reviewed Sharon's evidence, I will now turn to an assessment of John Jiang's evidence.

A. Perjury of John Jiang Prior to Trial

- [420] In November of 2016, during the course of these proceedings, John was found by this court to have committed contempt of court and perjury, and was sentenced to prison for 6 months, with 5 months suspended in this family law proceeding, at *Wang v. Jiang*, 2016 BCSC 2461 at para. 3:
- [3] The nature of the contempt in this case is twofold. The contempt was egregious, it was a concerted attempt to thwart the processes of the court, and it included not only acts of noncompliance but acts of perjury. Again I say those are admitted and I will not enumerate the various breaches, except to say that I am satisfied that what has occurred was a grievous attempt to frustrate the whole point of the court proceeding. [emphasis added]
- [421] Sharon submits that this is relevant to findings in this trial. The standard of proof for civil contempt, as for criminal contempt, is proof beyond a reasonable doubt. Contempt must adhere to the requisite standard of proof (*Hokhold v. Gerbrandt*, 2016 BCCA 6). As such, she says the finding of perjury against John is relevant to John's credibility in this matter, or more properly, his lack of credibility.
- [422] Sharon and Mr. Wang further highlight in their submissions the manner in which John's prior perjury was committed, as they say it bears resemblance to the manner in which John conducted himself in the subsequent litigation, and in his testimony at trial, which they both dealt with at length in their submissions.
- [423] Sharon refers to the following points from the previous judgment:
- (a) As at para. 1 of *Wang v. Jiang*, 2016 BCSC 2461 noted that the contempt and perjury was "admitted", but that the Respondent John:
- comes before the court having had the benefit of an adjournment to consider his situation after the two-day hearing during that time he has taken advantage of the opportunity to purge his contempt.
- (b) As well, the court noted it would "not enumerate the breaches" in its decision, as they were admitted. It was clear on the record that John repeatedly lied in several of his Affidavits about the unreported cash income, both to Sharon, and to Canada Revenue Agency, and only changed his evidence after the Anton Piller search of WIT revealed the lies. In other words, he only told the truth, when he got caught.

B. Sharon's Position: John is not a credible witness

[424] Sharon and Mr. Wang both say the examples of John's lying and obfuscating the truth, are voluminous, and I accept that. They provide some examples, while noting that, although some of the evidence referred to was already before the court in *Wang v. Jiang*, 2016 BCSC 2461, that was in November 2016, prior to examinations for discovery being done of John, and prior to the production of the expert reports regarding John's Corporations and John's Guideline Income.

C. Untruths already identified in Mr. Wang's Submissions

[425] Sharon makes reference to and adopts the comments in relation to the West 20th property, specifically John's mortgage application:

(i) The false content as described therein, and John only admitting to his signature thereon being his own when told the document was from his own binder at trial.

(ii) The absence of the loan to his mother as a liability on that document.

[426] She also adopts the comments regarding the Sunnymede property, specifically, the activities of John in relation to his mother's mortgage application:

(i) At paras. 260-289 and 301-303 of the submissions of Mr. Wang [which I accept], in temporarily providing \$450,000 of WIT's money to his mother's account, to defraud the bank into granting her a mortgage to his mother.

(ii) At paras. 321-336 of the submissions of Mr. Wang [which I accept] in relation to the Sunnymede agreement that he admitted at the contempt hearing, attempted to lie about on discovery, and later admitted at trial.

[427] In addition to the above, Sharon refers to what I accept are transparent falsehoods in relation to WIT, WFI, W&W, WSP, his old financial statements, the alleged loans to his mother, the unreported cash, the events of the Anton Piller order, amongst others.

[428] I accept Sharon's submission that John is clearly lying regarding every significant issue in this case, in a concerted effort to defraud Sharon of her claims to property division, and child support and spousal support. She enumerates various pieces of evidence to support this claim.

D. Unreported Cash Scheme

[429] I have referred previously to the 4 digit invoices when discussing Mr. Troyer's report.

[430] These are the invoices that John had created in order to record cash sales which did not go into the Bank. John says he alone kept these records and no one else knew about them. Sharon says all the key employees, as well as Ms. Jiang and Grace were involved in recording the cash transactions.

- [431] In cross-examination by Sharon's counsel, John admitted that if he did not want to pay tax, he would print documents without WIT's logo from his laptop.
- [432] John maintained the position that he was the only person who typed the 4 digit invoices without WIT's logo. Sharon submits that on the sheer volume of unreported cash that these invoices generated - \$2,700,000 - this would be impossible.
- [433] Zhaobin Wan, Gary Hsu and Summer Wang confirmed that they would see the 4 digit invoices routinely. Gary Hsu said the office clerk prepared the 4 digit invoices. Gary Hsu said some of the girls left so he did not remember the names of persons who prepared the invoices.
- [434] On Day 20, July 23, counsel for Sharon cross-examined John again on his employees' knowledge about the unreported cash, and John maintained that his employees did not know about WIT's unreported cash. However, WIT's employees, Zhaobin Wan, Sunny Seeto (warehouse manager) and Gary Hsu confirmed that they knew about the cash business. Summer Wang testified that she and Artemis Hou knew about the secret cash.
- [435] John testified that he was the only person picking out the unreported cash, but Summer Wang testified that said she would pick out unreported cash, and hand cash to John afterwards. She said cash continued to come in, even when John was on holidays. This was contrary to what John had stated, which was that he told undeclared cash customers to hold off paying until he returned from holidays.
- [436] John finally admitted, after being taken through the relevant documents, that they showed the customers whose cash payments were not deposited into the company and were not reported. However, he insisted he was the only one who crossed out entries on the driver's sheets, which resulted in cash not going into the bank. To the contrary, Summer Wang said she was the person who crossed out the drivers' sheets. She said Ms. Jiang and Grace were aware she was doing it, as she did it openly in the office.
- [437] As well, Summer Wang testified that when she was erasing the driver's sheets during the Anton Piller order, Ms. Jiang imposed herself trying to block Mr. Plottel's view. The bundle of drivers' sheets contained evidence that John was doing unreported cash, and the only reasonable explanation for Ms. Jiang's assistance to Summer Wang is that she knew about the unreported cash and was helping Summer Wang by destroying evidence.
- [438] Summer Wang admitted to creating the handwritten cash ledger which John initialed on the right side. She testified that there is no doubt she created it, no doubt those are John's initials and said John would be lying if he said he created this document. John said he prepared this one day when computers were down; even when John was shown it had nearly 2 months of entries on it, he maintained his answer.

- [439] Contrary to John's purported evidence, Ms. Wang denied that the cash ever stopped coming in when John was on holidays. John testified that there were only 12 secret cash customers but this was not consistent with Summer Wang's estimate that over 20 to 30 cash paying secret undeclared cash scheme customers were involved.
- [440] John changed his own evidence on the contempt hearing that he is not sure whether he knew about the cash, and made a statement in court that his mother and sister were not aware of the unreported cash.
- [441] Although Mr. Troyer was told by John and Grace that Grace did not know of "large scale" fraudulent scheme, with payments going to so many individuals and volume of cash collected he said he did not know if it was possible for Grace not to know; he would find it unlikely, given her involvement in the company.
- [442] Mr. Troyer testified he would find it "challenging to conclude" that Grace would not know about unreported cash scheme given the significant volume of cash, where the revenue and expenses related, the payments going to various individuals, and especially Grace because she was involved in the company.
- [443] At trial, Grace claimed she did not know WIT was not reporting cash income to CRA; claims, she did not know of double invoicing scheme; and claims she did not see drivers coming in and leaving cash on desk. Given the above high level involvement and her education, I accept Sharon's submission that it is highly unlikely that Grace, with a diploma in accounting, and working in the accounting department, could have somehow missed the vast, at least \$2,700,000, unreported cash scheme.
- [444] The joint expert Shane Troyer's report says over \$2,700,000 of missing cash showed up based on the QuickBooks 777 file which Sharon submits is only the tip of the iceberg on the total missing cash. Grace provided the 777 Food Inc. file. Initially there were gaps and then more files were provided.
- [445] Shane Troyer says "We do not have the full invoices but rather have the cash invoice data from QuickBooks". He says they have no way of knowing if this is a complete list and we don't know if these invoice were the actual invoices provided to the clients. It is not as if we have a separate file of invoices in word or PDF (on corporate letterhead) for us to match to each invoice in QB for 777 "
- [446] Shane Troyer's emails Exhibits 29, 30 and 31 show there is no way of confirming computer records are complete and unaltered and no source documents to compare the computer records to; because they are all destroyed. There are no copies of 4 digit invoices to compare to and add up to find real missing cash.

- [447] John and Grace argued at this point that there were 11 pages of signed receipts by employees paid in cash sent to Shane Troyer by drop box, but Mr. Troyer's emails say no such document containing proof of cash salary to employees signed off on by them exists. It has never been produced by John, Grace or Ms. Jiang. Sharon says this list, if it ever existed, would show much more cash paid out and prove there were other hidden cash schemes in play.
- [448] John admits to destroying all but a very few 4 digit invoices so there are no source documents to add up and confirm the real missing cash amount. He admits he sent no hard copy 4 digit secret cash invoices to the auditor that could be added up to verify cash.
- [449] John admitted to being "really upset" that the Anton Piller raid team found the 4 digit invoices and admits to lying during the raid.
- [450] When confronted with evidence that he threw documents, a key and a laptop out the window, he denied this, saying it felt stuffy and he opened the window to breathe better. He also admitted he lied when he denied there was any laptop on the premises during the raid.
- [451] John was shown the "handwritten cash ledger" and said all the relevant information was in his computer. It was suggested to him that he had destroyed the cash ledgers. John denied this, saying his computer had all the records but Sharon submits this is untrue as Shane Troyer cannot confirm there were no alterations to the QuickBooks files.
- [452] Sharon points out that, despite John's mother showing up on Grace's copy and paste "altered cash ledger" every month, John said she did not know about the secret hidden cash scheme. At the perjury hearing he admitted that he didn't know if his mother and Grace knew. He admitted they may have seen the two types of invoices.
- [453] John said he didn't know if Sunny Seeto knew of the secret cash collections, but Sunny acknowledged that he did; he said he didn't think salesmen knew, but the salesmen confirmed they did. Sunny Seeto said John's mom, who said she didn't know about it, was lying because he confirmed she gave Sunny Seeto 4 digit invoices. Summer Wang said she knew and Artemis knew and Grace and Joanna knew of the secret undeclared cash collections too.
- [454] As already mentioned, Summer Wang said she, not John, prepared the cash ledger. Again John said he prepared the document and no one but he knew about this document. I accept that this was not true.
- [455] Sharon submits the court can only draw an adverse inference that he lied about these documents being a "one off" when in fact they would show the real cash collected. She says the fact these documents were destroyed but for the few pages that were produced, indicates millions more dollars of cash were collected and secreted from her, as well as from CRA and this Court.

- [456] Sharon submits that these 4 digit hard copy invoices, if not destroyed, could have been added up to get the real missing hidden secret cash income. That is why they were destroyed, moved off premises in a large bag or thrown out a window.
- [457] Considering all of this evidence, it is clear from Summer Wang, Sunny Seeto and Gordon Plottel's evidence that both Grace and Ms. Jiang were aware of the cash scheme.
- [458] It is Sharon's position that John's testimony, which is clearly not credible, that he was the only person who is aware of the unreported cash situation, was all to cover the facts that his mother and sister were involved in the unreported cash scheme. Sharon submits that John lied about it to keep his mother and sister out of the scheme, so they could continue to be able to help John divert money out of WIT, to defeat Sharon's claim.
- [459] Sharon submits that John also co-opted his own employees, not just in the unreported cash scheme, but also as his agents in his "intention to deceive", most notably: Sunny Seeto, who required a bench warrant to be issued to force him to attend his discovery; and Summer Wang, who took a personal day and turned off her phone when she was to testify.
- [460] She submits that, in the end result, the whole family and even some key employees, until cross-examined vigorously, lied outright, despite many warnings from counsel and the Court.

E. Financial Statements

- [461] In addition to the above lies on the unreported cash scheme, John admitted that he lied about two loans in his financial statement #1, to Jian He Mu and Weili Zhang, for the sole reason of protecting himself.
- [462] On his financial statement #1, John identified Jian He Mu as a real person and a friend. Regarding the \$130,000 loan in his financial statement, John admitted that there was no such loan, and that he had lied. Also on his financial statement #1, he admitted that the loan stated therein to Weili Zhang was another lie. He admitted those lies were to protect himself.
- [463] As well, John, who had counsel at the time, swore in that financial statement, that he was paying his mother \$2,500 for living expenses, and \$1,000 to his ex-wife as child support. However, he confirmed at trial that he is not actually paying these two sums right now, but had arrangements with his mother and his first wife Jessie that those amounts could be paid later.
- [464] I accept Sharon's position that, despite having competent counsel who would have explained the difference between an actual payment, and a deferred debt, John chose to include these expenses to make it appear he had less money available to pay child support and spousal support to Sharon in this case.

- [465] Sharon points to additional indications of John's prevarication, some of which have already been referred to.
- [466] I have already mentioned the contempt hearing which took place earlier in these proceedings. John Jiang admits to perjury with respect to his first Form 8 financial statement on income in saying his income was only \$50,000.
- [467] He confirmed as a result of his perjury he was found guilty and sentenced to 6 months jail time with 1 month to be served and 5 months suspended.
- [468] He admitted to not agreeing to joint experts while the undeclared cash income was undiscovered. He also admitted to lying about cash invoices, the handwritten ledger being his and his initials.
- [469] John Jiang admits restaurant owners knew he was not declaring the cash income. He was clearly not telling the truth when he said others at his office were unaware of his hidden cash scheme.
- [470] John admitted gambling while not paying child or spousal support and living at the West 20th home in Vancouver.
- [471] He admits, contrary to testimony at the November 2016 perjury hearing that his company did poorly after the raid. In fact its sales increased substantially from \$18 million to at least \$24 million, according to Shane Troyer's report.
- [472] He admits the bank has renewed his line of credit and has never suspended his line of credit and that since proceedings started the line of credit increased by \$1,100,000: \$391,000 from February 2015, to \$1,505,000 by December 31, 2017, while none of the related companies W&W and WSP have any line of credit. It is submitted by Sharon that John, and likely all the Jiang family, pocketed cash and this caused the company to be forced to increase the line of credit.
- [473] When confronted with the fact that WSP was created in December 2015, just a month after the Anton Piller order, John denied it is an end-run company, and says he has no knowledge of what WSP does, although he says he does not know who would sell a new company like WSP meat except WIT. He did admit that at the time he knew WIT's sales were rapidly increasing.
- [474] Sharon says the court should find that John was deliberately attempting to divert clients away from his own successful business in an attempt to divert profits to the end-run companies. He merely has to ensure that the salesmen who currently work for him then bring the clients to WIT, something his salesmen said they could easily do.
- [475] In direct examination by Grace, John then stated that he is so busy he is not in a position to keep up with more clients.

- [476] Gary Hsu's evidence in cross examination was that John started slacking off after the family action was brought so Mr. Hsu switched to WSP at the end of 2015.
- [477] After repeatedly pleading ignorance of WSP, despite getting paid a consulting fee to help manage it, and the companies being right beside each other, the Court warned Mr. Hsu that he had to start telling the truth and stop stonewalling. He admitted that when WIT did not have enough manpower, labour, some office staff duties, they would help them. He acknowledged that 98% of meat came from WIT.
- [478] Sharon points to further evidence to show that WIT artificially reduces its profits by another scheme John Jiang admitted to: storing meat at WSP and paying them rent.
- [479] When John Jiang was shown Exhibit 28, which was the 2017 WSP Financial Statement showing sales for 2016 of \$3.6 million and net profits of \$253,000 that was higher than WIT on sales that were a sixth of WIT's, John Jiang agreed this result was absurd.
- [480] John Jiang was then directed to another exhibit which shows his salary as \$58,000 for a total of \$290,000 or 1.5% profit and he agreed this result was absurd.
- [481] As already mentioned, he admitted that he lied on his Form F8 filed November 24, 2018, about a personal loan of \$148,000 for Jian Mu and \$94,000 for Weili Zhang. Sharon characterizes this lie, which the Court confirmed in its own question to John, as a fraud on the court, done to diminish the just claims of Sharon and Julia, despite John's claim that he had to lie to protect others.

F. Ms. Jaing's role; Grace's role

- [482] John claims \$2,500 a month for living expenses to his mother and admits this is a lie because he is not paying it to her. In any event, his mother cannot be working 7-8 hours a day and caring for these 3 young children during the days and after school.
- [483] He admitted his mother looks after Harrison age 13, Julia age 3.5 years and Stella age just 1.5 years, only part of the time, after school and admitted his new spouse works fulltime, sometimes 9-5 or 10-4. It only came out in cross-examination of his new wife that she worked for him at WIT and earned an inflated salary of \$42,000 while part time at best.
- [484] Sharon submits that one of the most revealing exchanges of the cross examination of John Jiang was this:

Q. This is profits you've diverted from WIT into end-run companies, had family simply lend it to you so you don't pay tax on it, correct?

A. No

A. My mother and my younger sister every single day work at WIT

A. This is the salary they're entitled to

A. Even if they go elsewhere to work, they'll still get same salary

Q. Every day they work at WIT, that's your evidence?

A. No, I mean WSP

Q. You said WIT - Freudian slip, didn't you?

A. No I misspoke

[485] On the Form F8 Ms. Jiang is now owed \$781,836 up \$481,000 in a year and his sister is now owed \$155,000 up \$115,000 in a year. These "loans" total nearly \$600,000 in 1 year and Sharon says again that this is simply his income diverted to his mother and sister and impressed with the false "loan" designations.

[486] Sharon says the inexplicable sudden sales success of Grace in WSP who made huge sales without prior experience indicates yet another scheme where John diverts his income and profits to others who then presumably give it back to him and claim it to be a "loan".

[487] Sharon takes the position that Grace was less involved in the untruths than her mother or John. She presented as a comparatively more straightforward witness than John or her mother, Ms. Jiang.

[488] Sharon says, however, that it remains obvious that Grace has colluded with her brother and mother in their collective attempt to deceive the court into thinking that WSP is a separate company from WIT, and as well in denying her involvement in the unreported cash scheme. This evidence has been referred to above.

G. Alleged loans between John and Ms. Jiang

[489] Sharon submits that the alleged loans between John and Ms. Jiang, are an obvious fraud maintained since early in the litigation. She says the evidence from trial proves that there is no loan between John and his mother and his mother did not have the financial wherewithal to make such loans. This has been dealt with thoroughly in the discussion of the Wang claims.

[490] Mr. Plottel, who was to conduct the audit, said Ms. Jiang had a large bag big enough to hold documents. He said the object was not a purse, which Mr. Plottel would not have been concerned about. He never saw the shopping bag again after his first appearance, despite looking for it.

[491] The only loan "evidence" Ms. Jiang produced was a 2-page typed-out chart that she prepared after the litigation started. Sharon says it is thus suspect and cannot be relied on. I agree with that.

- [492] At trial, Ms. Jiang was cross-examined on the existence of the loan documents, and Ms. Jiang changed her story from the discovery and now claims that she kept a notebook of these loans, upon which the spreadsheet was based. The "loan documents" she previously referred are now reclassified to be actually in notebooks that she could not locate.
- [493] Sharon submits that Ms. Jiang's story is unbelievable. Ms. Jiang claimed that she had loan documents, which she failed to produce at the time of discovery, and she would continue to look for. Then incredibly, the loan documents turned into notebooks at trial. She said she forgot about the notebooks and that's why she never mentioned them, but she said she was using them for the purpose of creating her chart. It is not sensible that she forgot about the notebooks if she was using them to prepare her chart.
- [494] John's evidence on his financial statements also serves to prove that there is no loan between him and his mother, as he was not even sure what the amount he owed his mother is.
- [495] Ms. Jiang confirmed at trial, the part of the loan that she allegedly made to John prior to John and Sharon's relationship, is not related to WIT, and had nothing to do with Sharon. She admitted that after 2011, all the money was invested into WIT. Also, on Ms. Jiang's spreadsheet, the alleged loans made prior to July 21, 2011, with total amount \$361,067, had nothing to do with WIT. Therefore, Sharon submits that even if these loans existed, they are excluded loans solely belong to John. She is not responsible for them.
- [496] Sharon submits, however, that there was no loan between John and his mother, prior to John and Sharon's relationship. John's ex-wife Xiao Ying Wu aka Jessie Wu testified and she said at the time of her divorce with John, there was no debt to divide.
- [497] Regarding the loans Ms. Jiang allegedly advanced to John after John and Sharon's relationship, Ms. Jiang failed to provide any believable evidence.
- [498] Most if not all of the cash advances are allegedly facilitated by friends. Ms. Jiang provided no names of any friends. She could have called her friends to testify for her, if these transactions actually happened. Mr. Jiang chose not to do so and I accept Sharon's position that an adverse inference should be drawn against Ms. Jiang.
- [499] Regarding the one transfer allegedly through Money TT, Ms. Jiang provided no Money TT record. The bank account was in her husband's name, and without a Money TT document and her husband, Tian Qi Jiang's evidence, Ms. Jiang and John could not prove that the money in Tian Qi Jiang's Chinese bank account actually went to John. Since the money came from Tian Qi Jiang, his evidence is also crucial for the court to determine the purpose of the advance.
- [500] Ms. Jiang could have called her husband/ex-husband Tian Qi Jiang to testify. However, Ms. Jiang chose not to do so, and once again, an adverse inference can be drawn from this failure.

- [501] Ms. Jiang admitted at trial that she had failed to mention any cash of significant value at her discovery, and had failed to provide any documents showing the value of her bank account and stock account in China. She also admitted that she and her husband sold the rest of their properties prior to their move to Canada. She provided no bank accounts showing where the net proceeds went.
- [502] Ms. Jiang disagreed with the estimate of her net worth of \$90,000 even though it was based on her own real estate documents. Despite the lack of supporting evidence, she said the properties were sold at a higher price.
- [503] Further evidence on that day showed that Tian Qi Jiang used the sales proceeds in China to buy 1/3 of a building in Hamilton where she and her family ran a money-losing dollar store not a home in Toronto as she said in direct evidence. She admitted that the business was doing poorly and her family had to use their savings to survive. As mentioned earlier when discussing the Wang claims, Jessie testified that money was tight during this time.
- [504] The Jiang family purchased no real property in Vancouver, shared one floor on the ground floor/basement of a rented house and everyone had to work hard to make a living.
- [505] Even though Ms. Jiang and her husband claimed that they had substantial wealth in China, the evidence shows that they only had around CAD \$90,000 available to them in 2011. Of the other two units they owned in China, one was sold in 2016 and one was not sold until the date of trial. They purchased no real property in Vancouver and shared one floor of a rented house.
- [506] As set out earlier, it is clear from the evidence of Jessie, John's first wife, that the Jiang family lifestyle in Vancouver was Spartan. Money was tight; there were no funds to purchase a house. According to Jessie, Mr. and Ms. Jiang lived separately in two rooms, although Ms. Jiang said they lived together.
- [507] Ms. Jiang claimed John owed her unpaid living expenses, which resulted in her credit to herself for \$50,000 and another \$69,000 coming from the joint account between her and John. Sharon says in fact both sums are John's money, and Ms. Jiang's stories are unbelievable.
- [508] Ms. Jiang said the alleged \$50,000 loan was actually what John owed her for unpaid living expenses. She said that had she taken out \$1,000 each month from John, she would have over \$50,000 in her own account, but she did not do so, so this \$50,000 should be hers. Even if it was John's own money that he accumulated, and he used his savings to save his company, it should be seen as a loan from her to John because this was supposed to be her money.
- [509] She testified that her own living expenses were paid for by money from daycare.

- [510] However, according to Jessie Wu, John's first wife, John was paying his mother for living expenses; John would deposit half of his paycheque to her and John's account and half of his paycheque to his mother and his joint account to living expense.
- [511] Ms. Jiang said in her affidavit #2 (Exhibit 56) at para. 18 that "He actually frequently failed to pay rent and food, as agreed. John told me that I could record it as a 'debt'. However as a mother, I have never counted how many times he failed to pay me."
- [512] Ms. Jiang said that, even though John stopped living with her in 2011, John still had to pay her living expense after moving out. In her direct examination, she said: "That included me taking care of the child, and then included John coming back over the weekend, sometimes coming back for meals."
- [513] However, Harrison only went to Ms. Jiang's house occasionally, as his mother has sole custody of him. Sharon submits that the price John is supposed to pay for her occasional work seems surprisingly high: in addition to the free house and utilities of close to \$50,000 a year tax free, John still owes her \$1,000 a month.
- [514] Ms. Jiang's also said John repaid her \$69,000 for unpaid living expenses. She said this repayment to her can be found on her loan spreadsheet, but there is no \$69,000 repayment on her chart. Also, if she already credited herself for \$50,000 for John's unpaid living expense in May 2013, it is not clear how John could owe her another \$69,000 for unpaid living expenses.
- [515] Sharon submits that Ms. Jiang's alleged loans to John are a lie fabricated by her and John, to defraud Mr. Wang and defeat Sharon's claim.
- [516] As already mentioned, she says John is really just diverting profits to family members at the expense of his company so they can hand him back his own money and impress it with the false title of a "loan".
- [517] Sharon also points out that Ms. Jiang claimed that John then gifted her proceeds for the Sunnymede property's renovation, while John still allegedly owed her substantial amounts of money. This makes her loan theory even less credible.
- [518] Overall, I accept Sharon's contention that Ms. Jiang did not have the financial wherewithal to loan John over CAD \$700,000.

IX. MS. JIANG'S CLAIM FOR WAGES AND COMMISSION FROM WIT

- [519] Ms. Jiang says she is owed wages and commission.
- [520] Sharon points out that there was no evidence which was adduced to support that Ms. Jiang was entitled to \$3,000 a month salary. She seemed to be involved in basic tasks like getting groceries and making lunch. She admitted she didn't even know how to enter an order in the computer system. She clearly spent significant time looking after the grandchildren. The day of the Anton Piller raid, she wasn't even at work until 11:00 am. No evidence was

adduced to support that she is entitled the commission listed in her lawyer's letter. The commission cash ledgers Grace prepared shows \$0 commission, \$0 net to her.

[521] Ms. Jiang's lawyer stated in his letter, entered as evidence, that her compensation was to be \$3,000 a month and asked for full \$3,000 of 36 months repaid, as if Ms. Jiang received no money from WIT.

[522] The fact is WIT's books show, as Ms. Jiang's affidavit and testimony in court confirm, she received salary from WIT as follows:

- 1) April 2013 to September 2014: \$400 a month x 18 months = \$7,200
- 2) October 2014 to February 2015: \$1,500 x 5 months = \$7,500
- 3) March 2015 to December 2015: \$3,000 x 10 months = \$30,000

Total: \$7,200 + \$7,500 + \$30,000 = \$44,700

[523] These \$44,700 paid salaries were not given credit in Ms. Jiang's claim for the unpaid wage claim. Sharon submits that it is inconceivable that she did not also receive several thousands of cash per month just like the employees.

[524] As well, Ms. Jiang received a tax-free benefit for living at Windsor Court. She confirmed that John paid for the mortgage and some utilities and claimed that these benefits should be what John was paying for her for taking care of Harrison.

[525] Ms. Jiang was cross-examined by Sharon's counsel about moving into Windsor Court in November in 2012. She acknowledged neither she nor Grace paid rent or utilities. She acknowledges that John was paying about \$3,500 per month on the mortgage, along with the taxes and utilities. She said this was because she took care of the children.

[526] According to Sharon, the tax free benefit Ms. Jiang received for living at Windsor Court a year totals approximately:

- 1) Mortgage payment: \$1,644 (every two weeks) x 26 = 42, 744
- 2) Hydro and gas(approximate): \$100 x 12 = \$1,200
- 3) Property tax (approximate): \$2,000

Total: \$45,944/year

[527] The total tax free benefit Ms. Jiang received for living at Windsor Court totals:

$\$45,944 \times 3 = \$137,832$

[528] Salary and these tax free benefits, adding back the actual salaries Ms. Jiang received from WIT:

$\$137,832 + \$44,700 = \$182,532$

- [529] The actual benefits and salaries received by Ms. Jiang of \$182,532 substantially exceed her unfounded claim of \$163,382.70.
- [530] Sharon's position is twofold: firstly, Ms. Jiang received salaries from WIT since early March 2013, and whatever salaries she and John agreed and she received, should be what Ms. Jiang is entitled. Ms. Jiang's demand for unpaid wages and commission was unfounded and only made as an attempt to divert more money out of WIT to defeat Sharon's claim.
- [531] Secondly, John used Sharon and John's family profits, which should have been shared between him and Sharon, to support Ms. Jiang. The tax free benefit Ms. Jiang received is approximately \$137,832, which well exceeds what Ms. Jiang is entitled to, and even what she demanded. If this amount is grossed up to include tax she would have had to pay the total gross salary equivalent which is approximately \$180,000 plus \$44,700 or nearly \$225,000, versus her claim of \$163,382.70. This is over \$60,000 over her claimed amount before her tens of thousands of hidden undeclared secret cash.
- [532] I accept Sharon's submissions on this claim. I can see no basis upon which Ms. Jiang has established a claim for further wages and commissions.

X. VALUATIONS

- [533] Ascertaining a value for the group of companies is a difficult exercise. There is little reliable and helpful evidence on which to assess a figure. I will refer to some of the evidence.

A. WIT: Doug Ryder Evidence

- [534] The report by Doug Ryder, CPA, CA and Certified Business valuator uses a valuation date for the WIT Group of February 28, 2017. Doug Ryder has 20 years' experience and relied on the forensic report of Shane Troyer.
- [535] Mr. Ryder concluded the value of WFI, of just over \$260,000, is not included in this valuation report and must be added as a separate family property.
- [536] Sharon says there are other adjustments and corrections that must be made.
- [537] Doug Ryder selects a value of \$5.32 million being the midpoint of a range in value for the WIT Group of \$4.8 million to \$5.79 million before corrections to add back inadequate contingent debts and before "smell testing" the value against net profit percentages. This includes the line of credit which is secured in part on West 20th and Windsor Court so this debt must not be double deducted.

[538] His report assumes the financial statements are correct and all missing secret undeclared cash was found by Shane Troyer. Sharon submits what has now become obvious: that this is not true and is not a reliable basis for judgment. She points to payments to John's ex-spouse, as well as to his new spouse at \$42,000 a year. She also says the evidence is clear that secret cash and fake expenses are still rampant.

[539] Doug Ryder at page 365, para. 5.1 (k)1 concluded the shareholder's loan owed by John is collectible by the company or companies.

B. Mr. Jiang Sr.: Compensation Owing to John, and thus to Sharon

[540] Sharon says a compensation payment is due from John's father to John to correct for what she terms the "inflated rent scheme". She sets it out as follows:

A. Rent - Diversion of Family Property, FCA breach of restraining order

Doug Ryder's Report - Exhibit 10, Tab 49 page 367 Table 6.1

W&W pays \$8.75 per sq ft for identical unit = fair market rent

To defeat, hinder or delay within the meaning of FCA

WIT aka John pays:

- (a) \$17.14 per sq ft to WFI
- (b) \$12.45 per sq ft to his father Tian Qi Jiang

The result is not in the ordinary course of business and is a breach of the section 91 restraining order pronounced by Madam Justice Baker on September 29, 2015 (Exhibit 11, Book 2, Tab 8, para 1)

The division of profit from August 2016 to August 2018 is substantial and can be calculated as follows:

- WIT pays Tian Qi Jiang rent of \$8,000 per month
- $\$8,000 \times 8.75/12.45 = \$5,622.49$
- $\$8,000 - \$5,622.49 = \$2,377.51$ overpayment
- $\$2,377.51 \times 24 \text{ months} = \$57,060.24$ total overpayment from August 2016 to August 2018

B. Salary - Diversion of Family Property, FCA breach of restraining order

Shane Troyer's Report - Exhibit 10, Tab 48, page 346 paragraph b

From March 1, 2017 to December 31, 2017, Tian Qi Jiang was paid \$18,769.

From March 1, 2016 to February 28, 2017, Tian Qi Jiang was paid \$6,000.

In total, Tian Qi Jiang was paid \$24,769. However:

(i) The evidence at trial was that Tian Qi Jiang was in China most of the time, taking care of his mother.

(ii) As well, Sharon's evidence at trial was that Tian Qi Jiang once helped John collect cash from restaurants, but took the cash and went to the casino and gambled it away. John and his father had a big fight over that, and after that John did not allow his father to work in the company anymore. This fight happened after marriage, between 2012 and 2013.

(iii) Further, when Sharon sought to examine Tian Qi Jiang, his lawyer advised that he was in China and taking care of his mother.

TOTAL Diversion of Family Property

\$57,060.24 rent + \$24,769 salary when in China = \$81,829.24

[541] Sharon says the result is not in the ordinary course of business and is a breach of the Section 91 restraining order pronounced by Madam Justice Baker on September 29, 2015.

[542] Sharon also says that Doug Ryder testified his valuation was based on the actual results the company obtained over 2012-2017 not the percentage of gross margin for John's guideline income that Shane Troyer used. This results in a lower valuation by Doug Ryder because of the tanking year of 2017 where a net profit of only 2.6% is used.

[543] Accordingly, according to Sharon, this court will be using a conservative valuation if it uses the following formula to get to the real value of the WIT Group.

- (1) High value from Table 9.1 being \$5,790,000
- (2) Add back false Ms. Jiang wage claim \$ 163,000 deducted on table 9.1
- (3) Add back Westin contingent debt \$ 235,000 deducted on table 9.1
- (4) Add back end run debt to Grace \$ 246,000

And Ms. Jiang from end run profit

Diversion

- (5) (\$74,000 to William Wan Legitimate) -----

Total WIT GROUP Value \$ 6,434,000.00

[544] Using the mid-point cross check total for net profits of 5.5% from Mr. Ryder's chart 9.4 shows:

- (1) Midpoint value 9.4 at 5.5% \$6,630,000.00
- (2) Add back false Ms. Jiang wage claim \$ 163,000 deducted on table 9.1
- (3) Add back Westin contingent debt \$ 235,000 deducted on table 9.1
- (4) Add back end run debt to Grace \$ 246,000

And Ms. Jiang from end run profit

Diversion

(5) (\$74,000 to William Wan Legitimate)

Total WIT Group Value \$ 7,274,000.00

[545] Sharon says this total does not account for additional missing cash, fake employee income diversions, and secreted cash still missing.

[546] Sharon says the court should not use suspect financial statements for the valuation, but should do a fairer specific comparison based on Fresh Choice where John learned the business and where identical forces are at play.

[547] She says the most conservative approach would be to use the midpoint analysis by Doug Ryder from Table 9.4 and add back the corrections for contingent loans that are not, and never were real. She says that, in fact, they are not true debts; they are really payable in the future.

[548] Sharon says the real value of the WIT Group is \$7,274,000 less William Wang's investment of \$74,000 from Exhibit 9. The total value of John's interest in the WIT Group is thus \$7,200,000 when corrected to reflect John's true ownership.

XI. SHARON'S \$40,000

[549] Sharon refers to the \$48,000 she transferred into their joint account, which John admitted was Sharon's "treasury account". Of this, \$40,000 went out, on the same day it appeared in John's joint account with his mother. Sharon says the money is hers. John insists it was a "repayment to his mother".

XII. WIT, WFI AND THE GORDON WAY WAREHOUSES

[550] John admitted, with respect to WIT and Gordon Way (the warehouses) that:

- i. He is the sole director;
- ii. He signed every single document for the Gordon Way purchase:
 - 1) Exhibit 54, Tab 216, 221, consent resolution of directors to borrow from TD, 222, Form A transfer, 223, purchaser's Statement of adjustments;
- iii. Exhibit 54, Tab 220, page 2640, including signing the assignment for both WIT and WFI;
- iv. Exhibit 54, Tab 225, he signed everything except the lease for WFI.

[551] He was taken through Exhibit 54, Tab 219 showing that \$50,000 and \$40,000 came into his account. He said it was from WIT.

[552] Sharon says that it is thus clear that John is attempting, with one lie to defraud Mr. Wang and his \$50,000, Sharon and her \$40,000, and Jennifer Dai and her \$200,000.

A. Gordon Way Warehouses

[553] Sharon says Ms. Jiang's evidence on this issue is wholly implausible, and it is clear she was acting in concert with John.

[554] Sharon submits that even if Ms. Jiang's evidence were not found to be implausible, it is completely consistent with her being a figurehead for WFI, not knowing where the monies came from, and being not involved in virtually all documentation, or in the acquisition of the property, or in bearing the risks of the mortgage.

[555] I accept Sharon's position that WFI, and the 3125 Gordon Way unit it owns are actually owned by John and WIT, and are thus a family asset. The value of WIT should be adjusted accordingly, to be increased by the amount stated by Mr. Troyer, of \$260,383.

[556] As such, the gain is: \$157,000 (difference between current BC Assessment and purchase price) plus the payment down of the mortgage of \$162,404.73 = \$319,404.73 and is family property. In saying this I am rejecting the submission of Tian Qi Jiang.

XIII. WINDSOR COURT

[557] Sharon's evidence is clear that she lived in Windsor Court from about July 2011, to October 2012. This was supported by the evidence of Yuki Ku, her dog walking friend who bought a place across the street, and her mother, who saw her then in March 2012.

[558] Sharon lists the following points from John's testimony at trial, respecting Windsor Court:

- (i) He admits Sharon went to look at Windsor Court prior to purchase;
- (ii) He says Sharon "seldom lived" there, "looked down" on the place because it was small, told him she did not want to live there, and would spend just a few nights, not a lot;
- (iii) He had "no idea" whether Sharon would order things and have them sent there;
- (iv) He said the housewarming was not a housewarming, "just friends hanging out";
- (v) He did not dispute that Sharon had a dog in direct evidence.

[559] From cross examination:

- (i) He admits that he said at the examination for discovery that Sharon "never" lived there, contradicting his evidence at trial;
- (ii) He admits the strata e-mails were sent to Sharon;
- (iii) He claims the dog was his dog;
- (iv) He claimed Ms. Yuki Ku "does not know anything at all";

(v) He agreed that he provided no witness to show that Sharon did not live there.

[560] Further, though Ms. Jiang concedes that Windsor Court is John's now, she was questioned about her affidavit in this proceeding, wherein she said she resided at Windsor Court after purchase in 2011. At trial, she admitted that her earlier affidavit was incorrect, that she did not move in in 2011, but instead after November 2012. That move-in date accords with Grace Jiang's evidence. Ms. Jiang had thus tried to adjust her evidence to coordinate with John's evidence.

[561] Sharon says the evidence is clear that she lived in Windsor Court for about a year and is entitled to one half of any increase during that time.

[562] I am unable to find that Sharon made any meaningful contribution to the property during the short time she lived in the house, nor did its value increase to any measurable amount during the short times in which she lived in the property. She did not live there when her father was in Canada, which is another reason not to give her an interest. Therefore on this asset, I find that Mr. Jiang is entitled to the whole of the equity in the property.

XIV. PURCHASE OF STOCKS IN CHINA

[563] Mr. Wang gave evidence that around the end of 2012 to the beginning of 2013, he advised John to sell his gold stocks.

[564] He said in September 2014, he told John his friends identified two companies to invest in, being CITIC Securities (Zhong Xin Zheng Quan in Chinese) and Industrial Securities (Xing Ye Zheng Quan in Chinese).

[565] Exhibit 8 shows the sale of gold stock and the purchase of the two securities stocks Mr. Wang recommended to John.

[566] John testified that he never purchased stocks in China, and never told Sharon about him purchasing stocks. He stated he did not have a bank account or stock account in China, and he was busy with his company so he did not have time trading stocks. He admitted he liked to "pretend to trade stocks".

[567] Ms. Jiang's evidence was similar to John's. She said after Julia was born, she went to John and Sharon's house, and John recommended these two stocks to her. However, Julia was born after the CITIC Securities was purchased.

[568] Sharon says John told lies to cover his lies, and his mother adopted the same lies. She did not provide any explanation for why her stock account's activities are consistent with Mr. Wang's suggestions to John, including purchase and sale of the two securities stocks.

[569] Sharon says these stocks are actually John's, not his mother's. In light of the disposition of the proceeds I agree.

- [570] The Chinese stocks were sold at RMB \$632,712 (approximately CAD \$123,000) on September 7, 2015. Ms. Jiang said that the monies were transferred to Canada, CAD \$50,000 was put into W&W.
- [571] Sharon submits that W&W is also family property, because out of the total investment of \$150,000, \$100,000 came from WIT's shareholder withdrawal that John made, and \$50,000 came from John's Chinese stocks.
- [572] Sharon says the remainder of the Chinese stock sale proceeds should be seen as family assets (valued around CAD \$73,000), and Sharon is entitled half of it. I agree with this.

XV. WUDING

- [573] Wuding is an investment vehicle in China. Sharon holds shares for other people. Mr. Wang administers Wuding. He says that it is common practice in China to put assets in other people's names.
- [574] Sharon says none of the monies in the bank account and the stock account belong to her.
- [575] Her father is the real owner of the funds in these accounts. Mr. Wang's evidence is that:
- (a) Sharon did not invest any money in Wuding,
 - (b) Sharon did not do any work for Wuding,
 - (c) Sharon was holding the investment for other third party investors as a nominee shareholder. The shares in her name belong to other third parties. The real investors never lent or gifted her shares.
 - (d) Sharon was not aware of shares in her name before the family litigation started.
 - (e) Sharon's name was removed as a shareholder without her knowledge. The replacement of Sharon is also a nominee shareholder.
- [576] The evidence shows that this account was opened in 2007, when Sharon was still a teenager. Mr. Wang put all the monies in this account, and was the only person who conducted transactions in this account.
- [577] Sharon says it is clear that she has never had any interest in Wuding. She put no money into it, never participated in Wuding's management, never did any work for Wuding, and was not even aware that her name was used for Wuding.
- [578] Sharon says this investment has nothing to do with her and that it is not a family asset. I accept that position.

XVI. LEGAL ARGUMENT ON WEST 20TH

- [579] Much of the history of this transaction has already been examined in the context of Mr. Wang's claims.

- [580] With respect to West 20th, Mr. Wang seeks a declaration that he is the beneficial owner of West 20th, and that he receive judgment for the second mortgage as security for WIT in the amount of \$500,000. He is also seeking a declaration for judgment against John for the CRA tax lien, secured against West 20th and Windsor Court.
- [581] Mr. Wang seeks, in the alternative, that he has beneficial ownership in proportion to his contribution, plus 10% per annum on that amount, based on the agreement, and on unjust enrichment. In that event, John and Sharon would share the remaining interest in West 20th as a family asset.
- [582] Sharon agrees with Mr. Wang's submissions that the agreement prevails, or that Ms. Jiang holds the property in trust for Mr. Wang. Both Sharon and Mr. Wang argue strongly that the alleged loans between Ms. Jiang and John are fake and should be discounted entirely.
- [583] The sole defence is that the funds were a gift.
- [584] Sharon requests that John use his best efforts to remove Sharon and West 20th as security from WIT's line of credit, or failing that, that Sharon have judgment for the same amount.
- [585] I have already indicated that I accept the evidence of Mr. Wang and Sharon over that of John. I will now set out the legal argument that flows from those findings.
- [586] In Mr. Wang's submission, the evidence overwhelmingly establishes the existence of the West 20th agreement.
- [587] The nature of the contract for the purchase of West 20th are as follows:
- (a) Mr. Wang would contribute the funds necessary to acquire West 20th;
 - (b) The balance of the purchase price would be made up by a mortgage in the names of Sharon and John;
 - (c) Sharon and John would make payments on the mortgage as the equivalent of rent;
 - (d) West 20th would be registered in the names of Sharon and John, and they would hold it in trust for Mr. Wang; and
 - (e) John and Sharon would have the right to purchase West 20th from Mr. Wang at fair market value.
- [588] Mr. Wang performed his obligations and provided over \$850,000 for the purchase price.
- [589] Sharon says that in taking title to the West 20th property John and Sharon acted as bare trustees. Professor Waters explains:

The usually accepted meaning of the term "bare," "naked" or "simple" trust is a trust where the trustee or trustees hold property without any duty to perform except to convey it to the beneficiary or beneficiaries upon demand. It is true, of course, that so long as a trustee holds property on trust he has the duty to account for the property, keeping it secure and unharmed. The trustee cannot divest himself of this duty, and, if that is his sole duty, he must transfer that property to the beneficiary on demand

This definition of the bare, naked or simple trust assumes two things: (1) that the beneficiary or beneficiaries are able to call for the property on demand; and (2) either than no active duties were ever required by the settlor or that the active duties have been performed

[590] John and Sharon have done their part in making the monthly mortgage payments as the equivalent of rent. For those months, it should be noted, where John and Sharon did not occupy West 20th, Mr. Wang subsidized their rent payments.

[591] Sharon says nothing of legal significance arises from the fact that John and Sharon made those monthly mortgage payments as the equivalent of rent. After all, monthly payments by cohabiting family members, even where such payments are equal to the amount of mortgage payments, are equally consistent with a rental arrangement between the family members.

Booth v. Knibb Developments Ltd., 2002 ABCA 180, paras. 20-31; Royal Bank of Canada v. Reddy, 2007 ABQB 613, para. 14; Dhaliwal v. Ollek, 2012 BCCA 86, para. 36

[592] Mr. Wang submits that John's assertion of a gift has no basis in fact and must accordingly fail. This "gift" is based on "understandings" but John had earlier told Mr. Wang and Sharon that he did not want anything from Mr. Wang. In 2012, John was, in Sharon's submission eager to demonstrate to his one-day-to-be father-in-law that he was capable and ambitious. This is inconsistent with the notion of a gift.

[593] One of the difficulties with the evidence is that John Jiang carried so much of the burden of proof on his own, and without the assistance of much documentary evidence. In respect of the dealings with Mr. Wang, his evidence rests on a lie. He claims that Mr. Wang's investment was a wedding gift. As I have already noted, this was not corroborated and I do not accept it.

[594] The other explanation John advanced for the arrangement he made with Mr. Wang is that there was a "Cash Agreement" between them whereby Mr. Wang would accept money in Canada and subject himself to the inconvenience and costs of sending funds from Canada to China. No documents were produced in evidence of this "Cash Agreement". There was one text message from Sharon:

Do you think my dad was happy to exchange money with you? That was helping you. If he didn't exchange for you and didn't care about you, that's normal. To exchange for you was to help you. My dad's money in China is not idle for you. He can use it too. You feel only you know how to make money. With money, my dad knows how to make money too. Even if it's not profitable, why

did he have to exchange money for you again and again, invest with you, lend you money? Even my dad spent it somewhere else or gambled it away, it'd be very satisfying. Your morality stinks. If people don't help you, you bear grudges, you also generally don't know how to behave.

[595] This was to explain that Mr. Wang was exchanging money from RMB into Canadian dollars, in "a very troublesome process". Mr. Wang explained that he actually lost money sending funds through Money TT. He explained that it was a service he chose if there was no other choice. There is no reason for this and it does not make sense and is not supported by any documentation.

[596] Section 4(1) of the Partition of Property Act provides that a party has standing to maintain partition proceedings if he or she could have brought a partition application under English law as it existed in 1858.

[597] In *Pallot v. Douglas*, 2015 BCSC 1296, rev'd in part on other grounds, 2017 BCCA 1296 after carrying out an exhaustive review of the law on that topic, Mr. Justice Leask summarized the applicable principles as follows:

35 Although different cases have interpreted the requirement of a possessory interest differently, at its core, this simply requires that the petitioner is entitled to possess the land. When that possessory interest arises from a trust, the court must examine whether that trust grants the beneficiary a right of possession. A beneficiary does not have a possessory interest if his interest is granted under an express trust that gives the trustee managerial powers over the property and limits the beneficiary's control of the property. In contrast, a beneficiary does have a possessory interest if the beneficiary can realize his interest regardless of the trustee's cooperation, such as through a resulting or constructive trust or a bare trust: see generally *Sandor v. Hamilton*, [1991] B.C.J. No. 4075 at para. 14 (S.C.); *Boogerman v. Boogerman* (1978), 19 O.R. (2d) 188 (Co. Ct.); and *Ben 102 Enterprises Ltd. v. Ben 105 Enterprises Ltd.*, 2007 BCSC 1071. In such cases, beneficiaries have a possessory interest in land that is not dependent on the discretion of the trustees and therefore have standing to bring a partition application.

[598] I accept the positions advanced by Mr. Wang and by Sharon. As the owner of a beneficial interest in West 20th, Mr. Wang is entitled to the following relief:

- (a) An order that West 20th be sold, with Mr. Wang to have sole conduct of sale on the usual terms;
- (b) The proceeds of sale, after payment of all necessary costs of sale and discharge of encumbrances, be paid entirely to Mr. Wang;
- (c) Any funds to which Mr. Wang is entitled to paid out to him immediately; and
- (d) Any funds to which Sharon or John are entitled be held in trust pending written agreement between Sharon and John or further order of this Court.

[599] Mr. Wang is also entitled to seek leave to appear in court for any additional relief necessary.

A. The Second Mortgage

- [600] I have already recited some of the facts relevant to this claim by Mr. Wang. I accept Mr. Wang's submissions on this point, as follows.
- [601] John registered a second mortgage against West 20th without Mr. Wang's knowledge or consent.
- [602] This mortgage forms part of the security for WIT's line of credit from TD, in the sum of \$500,000.
- [603] John has not produced documents in either of the civil proceedings which outline the current indebtedness under WIT's line of credit.
- [604] Mr. Troyer, the forensic auditor jointly appointed by Sharon and John in the family proceeding, has identified that, as of December 31, 2017, the balance owing on WIT's line of credit was \$1,505,071.
- [605] John agreed that he had "racked up" WIT's line of credit since this litigation was commenced.
- [606] Based on the evidence at trial, WIT's line of credit is fully drawn, such that the full \$500,000 security has been advanced.
- [607] As he was holding West 20th in trust for Mr. Wang, in whole or in part, John was not entitled to encumber the property and, thereby, decrease Mr. Wang's equity in it. Equity demands that Mr. Wang be made whole.
- [608] I grant the relief sought by Mr. Wang. Accordingly, Mr. Wang is entitled to judgment against John in the sum of \$500,000. This mortgage covers the Windsor Court property as well. John is entitled to follow that money until he is fully paid out. There shall be liberty to apply if the amount is not enough to make Mr. Wang whole.

B. The Further Funds

- [609] John alleges that Mr. Wang's money was a gift. He bears the onus of proving that. Sharon says that given the best that can be made of his evidence is that it was an "understanding" that the money went into Sharon's account that burden has not been met. The evidence is that John explained that holding West 20th in his name would be beneficial to his business, and that John did not want anything from Mr. Wang, which he addressed at various times to Mr. Wang and to Sharon independently.
- [610] I accept the evidence of Mr. Wang. I do not find John credible in any respect. I do not accept that Mr. Wang gave John money as a gift.
- [611] I also accept the submissions put forward by Mr. Wang in respect of the funds provided by him, in the amount of \$280,752.50.

[612] John has not made any repayment toward this debt. Mr. Wang is entitled to have it repaid, with interest.

[613] As I have stated, I accept the calculations of interest set out in the table at the commencement of these reasons. As of August 17, 2018, that sum, with interest, is \$392,046.80, with per diem interest thereafter of \$70.64. This will have to be adjusted to reflect current values. Liberty is granted to apply.

XVII. LEGAL ARGUMENT ON SUNNYMEDE

[614] As set out above, in respect of Sunnymede, Mr. Wang claims that the property is an investment, with Ms. Jiang holding title effectively as trustee, and that he should take ownership of the majority of the equity in this property totaling over 90%, pursuant to the written agreement between himself and John. Ms. Wu (Mr. Wang's wife) is not named in that action, and does not oppose the relief Mr. Wang seeks.

[615] Mr. Wang seeks that the property be sold with most or all of the net sale proceeds being allocated to him. He acknowledges the need for an accounting as to the mortgage payments made, as well as rent received. Mr. Wang seeks occupation rent as well.

[616] According to Mr. Wang, the Sunnymede agreement provides that 5% of the net profit goes to Ms. Jiang, with a return of equity and a return of profits based on the investment of John and Mr. Wang. In the event John is found to have any interest in the Sunnymede property or proceeds thereof, or in the event any portion of Sunnymede thereof is found to be a family asset:

- (a) that monies advanced by Mr. Wang is a loan and family debt, repayable with interest;
- (b) In further alternative, if the monies advanced by Mr. Wang is a gift, it is a gift to Sharon only;
- (c) In still further alternative, if the monies advanced by Mr. Wang is a gift to both parties, then it should be unequally divided 100% in Sharon's favor;
- (d) That any monies contributed by John shall be unequally divided 100% in Sharon's favor, as they come from missing cash;
- (e) To the extent the Sunnymede property is a family asset, that Ms. Jiang holds her legal interest in trust for Sharon and John, a determination of their respective interests and an order that Ms. Jiang transfer her interest to Sharon and John in proportion to their respective interests.

[617] In order to determine Mr. Wang's entitlement to relief under the PPA, it is first necessary to determine Mr. Wang's entitlement to a beneficial interest in Sunnymede.

[618] Mr. Wang says that Ms. Jiang holds Sunnymede in trust for him, pursuant to an agreement among him, John and Ms. Jiang or, alternatively, pursuant to a resulting or constructive trust.

- [619] I accept the submissions advanced on behalf of Mr. Wang, and rely on them in the following recitation. As already stated, I do not accept John and Ms. Jiang's evidence, as is already very clear from these reasons, and no persuasive argument was advanced by them, other than simple denials of what was patently true.
- [620] Mr. Wang, John and Ms. Jiang entered into an agreement respecting Sunnymede that was partly written and partly oral.
- [621] As Mr. Wang explained, the Sunnymede agreement was the result of a number of discussions between him and John on the topic of a joint investment in a property.
- [622] An early iteration of this agreement is in evidence at trial. As it was clearly prepared prior to Sunnymede being selected, it is necessarily vague in its terms. It refers to the example of a property purchased for \$1,000,000, financed in part by a mortgage of \$650,000, and refers to various other projected funds for construction.
- [623] On January 17, 2014, while these discussions between Mr. Wang and John continued, John entered into the contract of purchase and sale for Sunnymede for a purchase price of \$1,478,000. The financing subject contemplated that a mortgage in the amount of \$897,000 would be obtained.
- [624] Ultimately, Ms. Jiang applied and was approved for mortgage financing in the amount of \$889,000.
- [625] The Sunnymede agreement is a simple one, which clearly sets out the obligations of each party.
- [626] Both John and Mr. Wang would contribute funds for the purchase and renovation of Sunnymede. John would "manage and be fully responsible for" the renovation. Once Sunnymede was sold, the profits would be divided between them, based on their respective contributions.
- [627] Ms. Jiang would apply for a mortgage, with the necessary corollary that Sunnymede would be held in her name. In exchange for that limited role, Ms. Jiang would receive 5% of the profits after the sale.
- [628] This represented a windfall of sorts to Ms. Jiang, who would do very little in order to earn her 5% share of the profits.
- [629] Mr. Wang agreed to these terms as well, and he confirmed his agreement by advancing the funds necessary to purchase Sunnymede. In other words, Mr. Wang signaled an intention to the world that he felt himself bound by this agreement.
- [630] Mr. Wang and John also agreed to open a new bank account, and to have Sharon manage that account.

[631] Later, Sunnymede was rented out. John proposed that any rents collected would be deducted from his contribution. Mr. Wang agreed to this.

[632] Also, John proposed, and Mr. Wang agreed, that Mr. Wang would make further investments in Sunnymede and thereby increase his investment, and the two also agreed that John could make withdrawals of those funds and thereby reduce his investment in Sunnymede.

[633] From the above, the relevant terms of the Sunnymede agreement are:

- (a) Both John and Mr. Wang would contribute to the cost of purchasing, renovating, and paying the mortgage;
- (b) John would oversee the renovation of Sunnymede;
- (c) Ms. Jiang would obtain a mortgage of \$889,000, in exchange for which she would receive 5% of the profits;
- (d) A bank account would be set up for the investment, which account would be managed by Sharon;
- (e) After the renovation, Sunnymede would be sold in one or two years, "to be decided based upon the specific market situation";
- (f) "The profit after sale of the house shall be allocated according to the ratio of investment by both parties";
- (f) Further cash investments by Mr. Wang would increase his proportionate share of the profit; and
- (g) Withdrawals by John from those funds, and rent collected from tenants in Sunnymede, would decrease his proportionate share of the profit.

[634] Both John and Ms. Jiang deny the existence of any agreement.

[635] John admits having made a proposal, but denies that any agreement was concluded.

[636] John did agree to the terms of the written agreement. He signed it, although he claims to have no recollection whatsoever of this document.

[637] Having signed the contract, John is bound by its terms. If authority is necessary for this proposition:

When a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not.

L'Estrange v. F. Grauco Ltd., [1934] 2 K.B. 394 (C.A.), as quoted in John D. McCamus, *The Law of Contracts*, 2nd ed. (Toronto: Irwin Law, 2012) at 223.

- [638] It is also clear, on the evidence at trial that John agreed to the additional oral terms that a bank account be created, and those oral terms respecting decreases to his proportionate interest for rents collected and monies withdrawn. John arranged for funds to be withdrawn from the Sunnymede account for his benefit, to invest in WIT and to purchase property in the name of WFI and John collected rent without accounting to Mr. Wang for it.
- [639] In short, John agreed to all of the terms set out above.
- [640] Ms. Jiang alleges that there was no meeting of the minds, based on her assertion that she "was not consulted on this alleged agreement."
- [641] When one looks at how Ms. Jiang conducted herself, however, it becomes abundantly clear that Ms. Jiang did indeed agree to all of the terms for which her agreement was necessary.
- [642] The leading case in Canada on whether an agreement can be implied by conduct is *Saint John Tug Boat Co. Ltd. v. Irving Refining Ltd.*, [1964] S.C.R. 614. There, the Court identified the following principles:

The test of whether conduct, unaccompanied by any verbal or written undertaking, can constitute an acceptance of an offer so as to bind the acceptor to the fulfilment of the contract, is made the subject of comment in *Anson on Contracts*, 21st ed., page 28, where it is said:

The test of such a contract is an objective and not a subjective one, that is to say, the intention which the law will attribute to a man is not always that which his conduct bears when reasonably construed, and not that which was present in his own mind. So if A allows B to work for him under such circumstances that no reasonable man would suppose that B meant to do the work for nothing, A will be liable to pay for it. The doing of the work is the offer; the permission to do it, or the acquiescence in its being done, constitutes the acceptance.

In this connection reference is frequently made to the following statement contained in the judgment of Lord Blackburn in *Smith v. Hughes*, which I adopt as a proper test under the present circumstances:

If, whatever a man's real intention may be he so conducts himself that a reasonable man would believe that he was consenting to the terms proposed by the other party and that other party upon that belief enters into a contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.

- [643] The objective nature of this test is crucial to the integrity of our legal system, as it prevents unscrupulous parties from resiling from an otherwise enforceable agreement. As it was framed in one scholarly text, quoted favourably in this Court:

No legal system can require that there be an actual "meeting of the minds", for that would provide too much of an incentive to those who would like to contract with their "fingers crossed". The requirement that a subjective agreement exist would permit one party to stay with a contract only so long as it suited its convenience; when it did not, the party, could claim that it had never really agreed to the other's terms. *Timberwolf Log Trading Co. Ltd. V. Columbia National Investments Ltd.* 2011 BCSC 864, paras. 80, 81.

[644] Ms. Jiang admits that John told her of a proposal whereby John and Mr. Wang would invest about \$500,000 to purchase a property, and her name would be used to get a mortgage of approximately \$1,000,000, a necessary corollary of which is that the property would go into her name in exchange for which she would be given 5% of the profit. Clearly, notwithstanding her evidence to the contrary, Ms. Jiang had discussed this proposal with her son.

[645] On the face of the document, it is apparent that Ms. Jiang had already agreed to these terms as well. For instance, the Sunnymede agreement refers to the precise amount of the financing for which Ms. Jiang had applied and was ultimately approved. This is further evidence that John and Ms. Jiang proceeded in lock-step.

[646] Ms. Jiang asserts that she refused to agree to the proposal because of an alleged concern about her liability under the mortgage:

If they use my name to apply for a \$1,000,000 mortgage, if anything happens, the bank would go after me to hold me responsible for that \$1,000,000 mortgage.

[647] Even if Ms. Jiang did have this concern at the time, there was ample equity in the property, such that the mortgage would be wholly secured by the value of the land. There was no risk to Ms. Jiang.

[648] Ms. Jiang also complains that, contrary to what was discussed at the time, there were no benefits arising from the fact she was a first time home buyer. Of course, the absence of any benefit hurt Mr. Wang more than it hurt either of Ms. Jiang or John, given that he contributed the vast majority of the funds.

[649] As is also apparent on the face of the Sunnymede agreement document, Ms. Jiang had already performed the only active duty required of her; to apply for the mortgage. In such circumstances, Ms. Jiang fits the textbook definition of a bare trustee, Mr. Wang and John could call for Sunnymede on demand, and Ms. Jiang had already performed all of her active duties.

[650] The additional oral terms, that further cash investments and rents collected would reduce John's proportionate interest, had no impact whatsoever on the 5% Ms. Jiang was to receive upon a sale of Sunnymede. As a result, even if she was entirely unaware of these terms, as she alleges, her agreement to those terms was not necessary.

[651] In the end, each of John, Ms. Jiang and Mr. Wang carried out their respective obligations:

- (a) Both John and Mr. Wang provided funds to purchase, renovate and pay the mortgage for Sunnymede;
 - (b) John oversaw and carried out the renovations;
 - (c) Ms. Jiang obtained mortgage financing, used the funds provided by John and Mr. Wang to complete the purchase, and allowed Sunnymede to be registered in her name - all without contributing one penny;
 - (d) Ms. Jiang opened the Sunnymede account, and provided cheques to Sharon so that she could make payments from it;
 - (e) Once the renovations were completed, Sunnymede was listed for sale, and Sharon was granted a power of attorney to obviate the need for Ms. Jiang's continuing involvement.
- [652] As well, Mr. Wang provided further funds, and John withdrew those funds and collected rents from tenants, thereby altering their respective proportionate interests.
- [653] John and his mother repeated their version of events, evidence which I have not accepted, that John gave cash to Mr. Wang, and that John owed his mother substantial debts, such that anytime funds changed hands from Mr. Wang to John, and then from John to Ms. Jiang, it was simply a series of repayments.
- [654] In opposing Mr. Wang's claims, Ms. Jiang and John raise, essentially, two defences.
- [655] First, they both point to the "Cash Agreement" and argue that John was entitled to all the funds he received from Mr. Wang.
- [656] Second, they point to the alleged loans by Ms. Jiang to John and argue that Ms. Jiang was entitled to all the funds she received from John.
- [657] For the reasons set out comprehensively elsewhere in these reasons, these defences fail.
- [658] I agree with the submissions of Mr. Wang. Whether by virtue of the Sunnymede agreement and the bare trust created thereby, by resulting trust, or by constructive trust, Mr. Wang is entitled to a declaration that has beneficial ownership of Sunnymede in the proportion that his contributions are to the total contributions of John and Ms. Jiang, if any.
- [659] I can see no basis upon which Sunnymede is a family asset. Sharon's involvement was very minimal and simply a matter of convenience for business purposes.

A. Partition of Property

- [660] Mr. Wang says, and I accept, based on the arguments set out above, that he has standing to seek relief under the PPA.
- [661] Pursuant to section 6 of the PPA, Mr. Wang seeks the following relief:
- (a) An order that Sunnymede be sold;

- (b) Mr. Wang to have sole conduct of sale on the usual terms;
- (c) The proceeds of sale, after payment of all necessary costs of sale and discharge of encumbrances, be divided among Mr. Wang, John and Ms. Jiang as follows:
 - 1. First, Mr. Wang and John each be paid their respective contributions, as set out in Appendix C, namely the sum of \$667,665.75 to Mr. and Wang and \$60,041 to John;
 - 2. Second, the remaining proceeds be divided as follows: 87.16% to Mr. Wang, 7.84% to John, and 5% to Ms. Jiang, These proportions are taken from the calculations provided. If there are changes there is liberty to apply;
- (d) Any funds to which Mr. Wang is entitled be paid out to him immediately; and
- (e) Any funds to which Sharon or Ms. Jiang are entitled be held in trust pending written agreement between Sharon, John and Ms. Jiang or further order of this Court.

[662] That relief is granted, along with Mr. Wang's request to come before this court to approve the sale, or for any other relief if necessary.

[663] Mr. Wang seeks leave to address the issue of costs, once the reasons for judgment are released and considered. This request is granted.

B. Use and Occupation of Sunnymede

[664] Mr. Wang seeks occupation rent on the basis that he suffered an ouster from Sunnymede.

[665] Mr. Wang never agreed that John and Ms. Jiang could occupy Sunnymede for their own benefit. Nobody alleges such an agreement was made.

[666] Ms. Jiang and John were never entitled to exclude Mr. Wang entirely from Sunnymede. Ouster is, in the circumstances of this case, easily established.

[667] As a result, John and Ms. Jiang must account to Mr. Wang for their use and occupation of Sunnymede.

[668] As is also evident from that rental agreement, Sunnymede has been habitable since at least August, 2014.

[669] Given a rental value of \$4,000 per month, over the 49 months since Sunnymede has been habitable, that equals \$196,000 in rent.

[670] Mr. Wang seeks judgment against John and Ms. Jiang in the amount of \$170,833.40 representing his 87.16% entitlement to those rents that were, and that ought to have been collected.

[671] There was no agreement that John and Ms. Jiang could occupy Sunnymede for their own benefit. Using \$4,000 per month as rent for the amount owing for 49 months is \$196,000. This must be adjusted to the present time.

[672] Accordingly, there must be an accounting of occupational rent. There shall be liberty to apply.

XVIII. LEGAL ARGUMENT ON THE MATRIMONIAL ACTION

[673] There are a number of legal issues that arise out of the evidence, as well as out of the various claims that have been made in the matrimonial action. I have relied on the submissions of Sharon's counsel to some extent, although I must in fairness, and despite the fact that John and his family were less than forthcoming about their circumstances, recognize that it is inappropriate to allow Sharon's claims to the extent urged upon me.

A. Adverse inferences: Ownership of W&W and Gordon Way

[674] As is clear from my comments during the discussion of the evidence, I have accepted Sharon's position that certain adverse inference should be drawn from the failure of the Defendants to call certain witnesses.

[675] I will set out Sharon's argument in respect of the significance of this issue on certain aspects of the evidence.

[676] The point of the rule is that an unexplained failure to call a material witness may justify an adverse inference against the party that the witnesses' evidence would have been contrary to or unhelpful to the party's case. Lord Mansfield stated, in *Blatch v. Archer* (1774), 1 Cowp. 63 at 65:

It is certainly a maxim that all evidence is to be weighted according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted.

[677] The notion of adverse inference is related to the best evidence rule. The inference is only to be drawn where the testimony would be superior in respect of the facts to be proven *Buksh v. Miles*, 2008 BCCA 318 at para. 30:

30. The notion of adverse inference is related to the best evidence rule. The observation in *Wigmore's Evidence in Trials at Common Law*, Chadbourne Rev. (Toronto & Boston: Little Brown & Company: 1979) vol. II, s. 287, at 202-3, offers valuable guidance:

Furthermore, it seems plain that possible witnesses whose testimony would be for any reason comparatively unimportant, or cumulative, or inferior to what is already utilized, might well be dispensed with by a party on general grounds of expense and inconvenience, without any apprehension as to the tenor of their testimony. In other words, put somewhat more strongly, there is a general limitation (depending for its application on the facts of each case) that the inference cannot fairly be drawn except from the non-production of witnesses whose testimony would be superior in respect to the fact to be proved.

[678] The court will sometimes accept an explanation from counsel but counsel should be prepared to call evidence or run the risk that an adverse inference will be drawn.

[679] Sharon seeks adverse inferences specifically in relation to the evidence of the following witnesses:

(a) Mr. Chi Ming (William Wan):

i. This is the minority shareholder W&W;

ii. He was listed on John's Trial Brief, but was not called as a witness;

iii. Mr. Wan, from all accounts, knew John from their days working at Fresh Choice. Further, he manages W&W day-to-day, and apparently invested \$75,000 into it;

iv. The issue of ownership of W&W was hotly debated at trial. Sharon says John owns it; John says his mother, Ms. Jiang owns it. Mr. Wan clearly would have had evidence on this issue.

[680] As Mr. Wan did not appear, Sharon seeks the adverse inference that his evidence would be in favour of John owning W&W. I agree that an adverse inference against John should be drawn in these circumstances.

[681] The Respondent Tian Qi Jiang was added to the action on October 19, 2017. He is the father of John Jiang and Grace Jiang and the husband of Xiao Ling Jiang. Since 2013 he has stayed only partly in Canada and in China. He takes care of his mother in China.

[682] Mr. Jiang would have been called as a witness but was not. His evidence would have been relevant to the ownership of the Gordon Way and the warehouses and whether they are family assets.

(a) The issue of the non-arms-length salaries to Tian Qi Jiang, even after he left WIT, and the high rent paid by WIT for warehouses in Tian Qi Jiang's name, both supported by the expert reports, were contested issues;

(b) As he did not testify, Sharon seeks an adverse inference against him on both issues, namely:

i. That he was indeed paid salary for no reason than to divert profits from WIT and thus from John's income, and

ii. That the rent was indeed over market value, thus further diverting profits from WIT and thus from John's income.

[683] The claims of rent and salary are criticized on the basis that the evidence is not adequate, on the basis that the accountants are not appraisers nor qualified to give evidence of fair market value for rent. There is no evidence of the terms of the lease. There is no evidence of comparables, and no evidence on which the adequacy of rent could be determined.

[684] There is a similar complaint that there is no evidence of when Mr. Jiang was in town or any evidence of the reasonableness of the amount paid.

[685] In response to the Respondent Tian Qi Jiang's submission in pages 9 and 10 about evidence of the expert Doug Ryder about rents paid for various units, Sharon submits that the Respondent Tian Qi Jiang had the opportunity to cross examine the expert witnesses, including the expert's qualification and the evidence that the expert gave. However, the Respondent Tian Qi Jiang did not cross examine Mr. Ryder. Sharon submits that the court should accept that Mr. Ryder's evidence on the issue of higher than market rent has been paid to Mr. Tian Qi Jiang. I agree.

[686] Regarding salary payments to Mr. Tian Qi Jiang as fraudulent conveyances, Sharon submits that onus of proof has shifted to Mr. Tian Qi Jiang. Sharon points out that:

Mr. Tian Qi Jiang went back to China in 2013 and does not live here, yet he received salary in 2017;

Sharon gave evidence that Mr. Tian Qi Jiang had been fired by John and they had a big fight about him taking the company's money;

John's practice in issuing "fake" salaries to non-arm's length parties, including:

Paying salary to ex-wife Jessie Wu, while giving conflicting evidence on her job duties;

Paying current spouse Cathy \$3,000 a month while she only worked part-time on Saturdays;

Grace and Ms. Jiang's salaries and draws doubled each year from 2015 to 2017;

Various other attempts made by the Jiang family to defeat the Sharon's claim for her fair share of the WIT Business.

All this suggests that Tian Qi Jiang is being paid fraudulently.

[687] I agree that the circumstances in this case justify a shift of the burden of proof to Mr. Tian Qi Jiang to prove these transfers are not fraudulent. However, he chose not to testify and I accept that Sharon has proven her claim. The Gordon Way property is a family asset divisible in the terms of this Judgment.

B. John's Guideline Income

[688] Sharon claims that she is entitled to a declaration of imputed income against John.

[689] Section 18 of the guidelines deals with the determination of income where the parent is a shareholder, director or officer of a corporation.

[690] In *Kowalewich v. Kowalewich*, 2001 BCCA 450, the court considered the application of s. 18. The purpose of the section is to lift the corporate veil to ensure that funds recovered fairly reflect those available to pay child support. As said in *Baum v. Baum* (1999), 7 R.F.L. (5th) 231 (B.C.S.C.)

[13] When the corporate veil is lifted in a commercial context, certain factors are considered: for example, whether the individual exercises complete control of finances, policy, and business practices of the company, whether the control has been used by the individual to commit a fraud or wrong that would unjustly deprive a claimant of his or her rights, and whether the control has been used by the individual to commit a fraud or wrong that would unjustly deprive a claimant of his or her rights, and whether the misconduct (for example the transfer) is the reason for the loss. These factors are also relevant, although not applied as stringently, in the family context.

[691] In *Chapman v. Summer*, 2010 BCCA 237, the court held:

That a payor's income should not be limited to his drawings but should recognize the money available to him from the company's income. Further, the court stated that H's guideline income should include his salary, his drawings and bonuses from the company and ordered child support to be paid based on an imputed income of \$300,000. The claimants seek a declaration of imputed income against the respondent John.

[692] Sharon says that a breach of the duty to disclose, including providing tax returns or affidavit materials in support of the payor's position, entitles the court to draw an adverse inference and impute income under s. 19. The court may look to other evidence, including circumstantial evidence, for the purpose of imputing income: *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453.

[693] Sharon says that John has withheld and delayed information and documents at every turn. She refers to the evidence supporting her position that there is at least \$2,700,000 in unreported cash. This is despite John's previous counsel's letter of April 15, 2016 stating the amount is \$700,000, and despite John admitting to only about \$853,000 at the contempt hearing on November 2, 2016 and despite providing the auditor only with about \$1,427,000 as in the draft report of August 2017 and only providing further information to Mr. Troyer in or about January 2018.

C. Nondisclosure of imputed assets

[694] I reproduce much of Sharon's argument on this issue, as it contains statements of law which are relevant to the circumstances of this case.

[695] In *Saric v. Banden*, 2017 BCSC 1508, the court observed:

49 Mr. Banden has failed to participate in these proceedings as required in order to advance his interests and allow the court to adjudicate the issues properly. In formal terms he is not a party at all, as I have stated. In general terms he merely responded to Ms. Saric's interlocutory applications by filing affidavits and appearing in court to oppose them. Mr. Banden also failed to provide documentary disclosure as required by the court orders, particularly that of Bruce J. As a result of that failure the efforts of Ms. Orton and the \$25,000 spent for a forensic accounting investigation were largely wasted, other than providing support for conclusions as to Mr.

Banden's lack of cooperation that would have been made at trial in any event.

50 I accept the conclusions of Ms. Orton as summarized previously. In particular, I accept that Mr. Banden did not provide the disclosure he was required to provide, and that his income tax returns are unreliable. I conclude that his sworn F8 financial statements are inaccurate and unreliable.

51 I conclude that Mr. Banden has consistently failed to abide by court orders requiring disclosure of documents and assets.

[696] The legal principles were summarized by Fleming J. in *Chang v. Xia*, 2015 BCSC 1994 (CanLII) at paras. 47-50:

47 Where a spouse fails to disclose financial assets and dissipates family assets after separation, the court may impute assets to the spouse and/or reapportion family assets or debt pursuant to s. 95(2) of the FLA if the court finds it would be significantly unfair to order an equal division, or the common law.

48 In *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.), the court referred to the non-disclosure of assets in family cases as the cancer of matrimonial property litigation. The court determined it was not sufficient to respond to such conduct with an award of costs or by dealing only with the known assets. Instead, the court divided the parties' family assets on the basis that the husband's undisclosed assets had an imputed equal value to the disclosed assets. The court then vested all the known assets in the name of the wife.

49 In *Laxton v. Coglon*, 2008 BCSC 42, the court clarified that where the non-disclosing party has not satisfied the court that full disclosure has been made, the court may infer the value of the undisclosed assets is at least equal to the value of the disclosed assets. The inference operates to ensure equal division between the parties. The court in *Laxton* also observed that the principle in *Cunha* applies only where there is a strong evidentiary basis for the proposition that one of the parties to the litigation has hidden assets.

50 More recently, in *Wu v. Sun*, 2011 BCCA 239, the Court of Appeal made a similar point. It affirmed that strong measures are justified in discouraging non-disclosure, but cautioned that there must be some evidence of the value of the undisclosed assets before the inference is appropriate, although that evidence may be sparse.

[697] In *S.K. v. A.K.*, 2004 BCSC 37 (CanLII) the husband failed to provide full disclosure of all sources of income. The court found that where a husband has the opportunity to explain his financial affairs and does not, and further seeks to minimize the wife's claim, the court will not draw inferences in the husband's favour;

113 "In cases of this kind, where the duty of disclosure comes to lie on a husband, where a husband has and his wife has not, detailed knowledge of his complex affairs, where a husband fully capable of and has had opportunity to explain those affairs, and where he seeks to minimise his wife's claim, that husband can hardly complain if, when he leaves gaps in the court's

knowledge, the court does not draw inferences in his favour. On the contrary, when he leaves a gap such that two alternative inferences may be drawn, the court will normally draw the less favourable inference." See: *Turpin v. Turpin*, [1991] B.C.J. No. 35 (S.C.) quoting with approval from *Clark v. Clark* (1974), 16 R.F.L. 214 (B.C.S.C.)

[698] In *M.C.V. v. F.V.*, 2018 BCSC 96, the court noted that nondisclosure of assets may be considered as a factor under s. 95(2)(i) in ordering unequal division of property. In this case, however, the court found that the wife did not meet the threshold of "significant unfairness" because the evidence did not show that the husband was concealing assets.

[124] Ms. C. relies on the approach taken by Mr. Justice Fraser in *Cunha v. Cunha* (1994), 99 B.C.L.R. (2D) 93 (S.C.), a case decided under the FRA. The Cunha approach urged a robust exercise of the adverse inference power when one party in matrimonial litigation conceals assets: at paras. 11-13.

[125] In *Laxton v. Coglon* 2008 BCSC 42, Mr. Justice Kelleher clarified that the Court in *Cunha* did not reapportion family assets pursuant to s. 65 of the FRA. Rather, the Court having not been satisfied that adequate disclosure had been made, inferred that the value of the undisclosed assets was at least equal to the value of the disclosed assets: at paras. 27-29. It is key that the principle in *Cunha* only applies where there is a sound evidentiary basis to support the notion that one of the parties to the litigation has hidden assets. See also *Nearing v. Sauer*, 2015 BCSC 58, at para. 126

[126] In *Wu. v. Sun*, 2011 BCCA 239, the Court of Appeal, while affirming that strong measures are justified in discouraging nondisclosure, cautioned that there must be sufficient evidence upon which the court may draw any adverse inferences regarding the existence of undisclosed family assets: at paras. 40-42.

[699] In the circumstances of this case, John made concerted efforts, also involving his mother and sister, to mislead the court. He lied continuously. After contempt proceedings he was jailed. During the trial, he was specifically ordered several times to stop lying and to tell the truth. This made no difference to him. Unless an admission was specifically extracted from him by counsel he persisted in attempting to mislead the court. Sharon argues, and I agree, that this has left the state of the evidence in poor shape with much left to be inferred.

[700] Sharon contends, in my view correctly, that John and his mother, and Grace, to a lesser extent, must bear the responsibility for this. There is no cogent defence to the claims that have been made. It is urged upon the court that the Cunha example should be followed and that the court ought to assess the missing cash at half again what has been established. It is impossible to base any reliable amounts on the reports of Shane Troyer or Doug Ryder, whose efforts were frustrated by the amount of non disclosure. I am left to do "rough justice" in accordance with the facts that have developed. The Jiangs were no help in coming to a fair determination. They obstructed it at every turn.

- [701] Sharon's Notice of Family Claim estimates John's income at \$1 million; John's Response to Family Claim says his income is \$60,000 per annum, although he also says Sharon knew of all his hidden cash.
- [702] According to Mr. Troyer, John's guideline income is at least \$1,600,000. The support John has paid works out to be based on a much lower figure for guideline income. This amount was set pending the forensic audit and guideline income calculations.
- [703] The auditors excluded the 2018 year end as being an anomaly given it showed a bizarre loss on record sales. Sharon submits the 2018 fiscal period was a deliberate "tanking effort" by the Jiang family working in concert to defeat Sharon's property and support claims.
- [704] Sharon says that the reports support her position that the financial statements produced by the companies seriously understate their true profitability and cannot be relied upon. For instance, John admitted that it was absurd that his original company with high sales would earn less than the WSP with sales of 1/6 of his companies.
- [705] As has already been stated, Sharon alleges there is ongoing undeclared cash income, kickback schemes which are now admitted, and dramatic increases in salaries to John and his family members. There are dramatic increases in the line of credit and dramatic increases in the shareholders loan to John. There are multiple versions of "typed cash ledgers" that differ substantially and which Grace admitted are "selective" copy and paste jobs.
- [706] Sharon submits the figure of \$2,700,000 is too low for these reasons, and seeks an adverse inference that the actual amount of unreported cash is at least half again higher, or \$1,300,000. She refers to the case law, including Cunha and Laxton v. Coglon, to suggest the appropriate approach to hidden assets.
- [707] I agree that there has been a concerted effort to hide the truth from the court and that a reasonable inference arises from the evidence that the amount of cash exceeds the number Mr. Troyer was finally able to estimate.
- [708] As already discussed, Mr. Troyer has set out his conclusions in his report of July 6, 2018 that the companies operate as one unit and that John's available income for guideline support is between \$780,000 and \$1.35 million and that there is unreported cash of \$2,709,000.
- [709] Sharon submits, that when coupled with what she terms a massive attempt to deceive this court during pretrial and even more blatantly their own viva voce evidence and that of their witnesses who were coopted to assist in the conspiracy it is clear \$2,709,563 million of missing cash is considerably less compared to millions more earned illegally and secreted.
- [710] Mr. Troyer explained that the missing cash was not declared for tax purposes. Sharon submits that, pursuant to section 19 of the Child Support guidelines, which section governs awards of child and spousal support, this money needs to be grossed up by up to 50% depending on the income level in the taxation year.

- [711] Doug Ryder, using a valuation date of February 2017, also produced a valuation report for WIT which I have already referred to. His draft report dated June 11, 2018, concludes that the value of the companies is in the range of \$5.3 million; \$2,709,000 of the value relates to a shareholder's loan that John owes to his own company. A correction for non-existing debts and proper income yields a much higher value.
- [712] Both Shane Troyer and Doug Ryder confirm Mr. Troyer has no way of knowing if he found all the cash or even got all the electronic records. There was destruction of 4 key source documents:
- (a) 4-digit invoices. This was a way of differentiating these accounts that were secreted so that no tax was paid on them;
 - (b) Handwritten cash ledgers;
 - (c) Truck driver's payment receipts; and
 - (d) Copy and paste typed cash ledger multiple versions.
- [713] Sharon says the destruction of the 4 key source documents was done to hide the real millions of missing cash, and the court must accept, on a consideration of all the evidence that there is no doubt that the secret cash schemes are all still in play.
- [714] As mentioned, Mr. Troyer has prepared a Guideline Income Report for John and says \$1,600,000 is the correct figure based on gross sales of \$24,000,000.
- [715] I accept Sharon's claim as to guideline income and child support which is amply supported by the evidence. I set John's income for guideline purposes at \$1.6 million per year.
- [716] I also accept the calculations put forward by Sharon. The figures must be adjusted to reflect current values. There shall be liberty to apply if the parties cannot agree.
- [717] The Guideline amount for \$1,600,000 annual income corresponds to \$12,053 per month for the years of 2015 and 2016 and \$12,666 per month for the years of 2017 and 2018 (as per the DivorceMate Calculation contained at Tab 4 detailed below).
- [718] Sharon seeks child support retroactive to separation of September 1, 2015 to September 1, 2018 (37 months in total), is
- (a) $\$12,053 \times 16$ (September 1, 2015 - December 1, 2016) = \$192,848;
 - (b) $\$12,666 \times 21$ (January 1, 2017 - September 1, 2018) = \$265,986;
 - (c) Payments made pursuant to Order of November 1, 2015 to September 1, 2018 is $\$2,440 \times 35$ months = \$85,400;
 - (d) $(\$192,848 + \$265,986) - \$85,400 = \$373,434$.
- [719] This figure, adjusted to the present date is the amount that should be paid for child support.

[720] Special expenses would be paid in proportion to incomes. In Sharon's submission, at most, the court could attribute the amount of \$35,000 per year to Sharon if she works but then a nanny at \$2,000 a month minimum will be required. Details of Sharon's income from 2015 - 2018 are shown below in the spousal support section. As such Sharon seeks retroactive special expenses on the basis of John's income being \$1,600,000 for the following years:

- (a) 2015: $\$580 \times 4 = \$2,320$
- (b) 2016: $\$584 \times 12 = \$7,008$
- (c) 2017: $\$592 \times 12 = \$7,104$
- (d) 2018: $\$587 \times 9 = \$5,283$

TOTAL = \$21,715

[721] This amount with changes necessary to the present is the amount that should be paid for special expenses until further order of the court.

D. Division of Property

[722] The evidence is clear that Sharon Wang's stock account and her bank account, discussed above under the heading "Wuding", belong to her father, not to Sharon herself, and are not family property. I accept that this is the case and will not deal with them further.

[723] Sharon raises the following points in support of her position that the division of property should be unequal and seeks the following exclusions:

- (a) Sharon's circumstances, including being out of the workforce during the marriage, raising the child, and having primary residence of the child following separation;
- (b) In concert with raising the child, Sharon's contribution to John's business, including the actual amounts advanced of \$60,000 and \$90,000 and obtaining various initial investors, without which the business might never have started or grown as it did;
- (c) With respect to John's tax debt that it be 100% attributed to John himself, and further taken from his share of the West 20th and Windsor Court properties if he has any interest at all after the civil claim is decided, as it was incurred by John alone as part of John's illegal scheme, unbeknownst to Sharon;
- (d) John's repeated attempts, both before and after the finding of contempt, to defeat Sharon's claims for family property;
- (e) To the extent applicable to the West 20th and Sunnymede properties that the monies advanced by Mr. Wang were excluded gifts to Sharon and should be 100% attributed to her.
- (f) Millions of hidden cash based on the Cunha analysis that the court should assume missing assets are equal to the known assets.

[724] As such Sharon seeks unequal division of family assets and submits she should be granted the first \$2.7 million, representing the missing cash. This submission is limited by what I say at the end.

E. Family Debt

[725] Sharon says, and I accept, that the tax lien attached to West 20th and to Windsor Court, which resulted from John's own act, should not be a family debt, and this should be taken into account when determining compensation.

[726] Sharon also argues that the guarantee of West 20th by her for the benefit of WIT should not be a family debt. She says John must use his best efforts to remove West 20th and Sharon from this liability.

[727] I conclude that that is the way the debt attached to West 20th should be managed.

F. Asset Dispensation and Compensation Order

[728] Sharon seeks compensation for at least \$2,700,000 in missing cash plus the \$1,300,000 imputed, as above.

[729] Section 97(2) of the Family Law Act provides that the court may do any of the following:

- (a) Declare who has ownership of, or right of possession to, property;
- (b) Require that title to a specified property granted to a spouse be transferred to, held in trust for, or vested in the spouse, absolutely, for life or for a term of years;
- (c) Require a spouse to pay compensation to the other spouse if property has been disposed of, transferred, converted, or exchanged into another form, or for the purpose of dividing the property;
- (d) Require partition or sale of property and payment to be made out of the proceeds of sale to one spouse or both in specified portions or amounts;
- (e) Require property forming all or a part of the share of either or both spouses to be transferred to, held in trust for, or vested in a child;
- (f) Require a spouse to give security, in any form the court directs, for the performance of an obligation imposed by an order under this section, including a charge on property;
- (g) Require a spouse to waive or release in writing any right, benefit or protection given by section 23 of the Chattel Mortgage Act, R.S.B.C. 1979, c. 48, section 19 of the Sale of Goods on Condition Act, R.S.B.C. 1979, c. 373, or section 58 or 67 of the Personal Property Security Act;
- (h) Subject to subsection (3), declare that one spouse is responsible for payment of an item of family debt and must indemnify the other spouse for the item of family debt;
- (i) Require the sale of property for the purposes of paying an item of family debt;

(i) Transfer property to a spouse.

[730] Section 97(2)(c) is similar to s. 66(2)(c) of the Family Relations Act see s. 4.167 to s. 4.169). The Family Relations Act referred to property that had been "disposed of" as the basis for a compensation or adjustment order. The Family Law Act refers to property that has been "disposed of, transferred, converted or exchanged into another form". These additional terms are consistent with the broad interpretation given to property "disposed of" in the jurisprudence under s. 66(2)(c).

[731] Sharon refers to the following cases.

[732] In *Kim v. Hong*, 2013 BCSC 587, the husband dissipated \$2 million of family assets after separation and before trial. Based on his bank statements, the money was largely used for gambling, golfing and personal expenditures, as well as many unexplained money transfers. The court found that husband's spending "was wasteful and a dissipation of family assets for which the respondent should account."

323. The above totals \$741,318 plus 120.93 million. Using a conversion rate of 0.000893 converts the amount in Korean Won to approximately \$107,990. Adding in the \$17,860 (or 20 million) taken by the respondent to purchase the Korean Term Deposit, I conclude that it is fair to estimate that the respondent has used or dissipated \$867,168 of the family assets pending trial. I consider this a very conservative estimate, as there were many other unexplained transactions and the respondent's lack of credibility and non-disclosure of documents could support a larger estimate in the claimant's favour.

[733] In *N. (M.L.) v. N.(D.)*, 2006 BCSC 249, affirmed 2006 BCCA 561, the husband began disposing of RRSP's after separation and by the time of trial had spent \$50,000 on himself for drugs, gambling, travel and a new car. As a result, the trial judge reapportioned family assets 75/25 in favour of the wife.

[734] At trial, on application of Sharon on June 29, 2018, Ms. Jiang and Grace Jiang were ordered to draw an annual salary of no more than \$30,000 collectively from all the Family Businesses.

[735] However, from the evidence of the Jiang Family's Draws, it is clear that Ms. Jiang and Grace Jiang were in receipt of money from the companies since 2016 in amounts that were far more than they should have received based on their contributions to the business. Sharon says this was to divert income from the companies and John.

[736] Sharon seeks compensation for the overpayment of salary, commissions, and dividends by, or attribution of the same to John's income. As such, she seeks an order for compensation as against Ms. Jiang and Grace Jiang as well for those amounts. These will need to be assessed.

G. Division of Assets and Spousal Support

- [737] A great deal of evidence was called in respect of the various businesses and I have concluded those companies are all John's, despite the efforts to divert and hide assets from Sharon. However, there is little reliable evidence to allow valuation of those assets in a way that would provide a reliable method to assess an amount to which Sharon is entitled. Mr. Troyer and Mr. Ryder did their best to assist the court with a valuation of the various businesses but the task of establishing a true value was beyond their ability to come up with reliable estimates.
- [738] There are many gaps in the evidence in this case and many areas in which the court is left to guess and speculate, which is not a judicial way to approach any analysis. The Respondent is to blame for that, along with his mother, sister, and his father to some extent. They have perpetrated a protracted fraud not only on his family members, but also the public harm of tax fraud.
- [739] Sharon's calculations, on the other hand, would result in extremely high figures, which, in my view, are not justified in all the circumstances. To accept those figures would leave John in an impossible situation.
- [740] The evidence in this case is overwhelming but while the Claimant and the father have largely succeeded against the Respondents in this trial, and the Respondents deserve in some ways to have the full implication of Sharon's calculations imposed on them, there must be a balance in everything.
- [741] The evidence has allowed me to set a guideline income for John, but when it comes to division of assets and spousal support, the task is much more difficult.
- [742] The marriage lasted only three years, four if one counts back to the beginning of the relationship. The Claimant was not supported by John until the marriage began. She was supported by her family, and lived at home whenever her father was in Canada. As I have stated earlier, for these reasons I do not feel she is entitled to a share in the Windsor Court property except as it may be necessary to access its value to pay for anything else to which she is entitled.
- [743] Sharon did not work during the marriage. These are not typical circumstances in which to assess whether Sharon was disadvantaged by the marriage or has otherwise established that she is entitled to spousal support. She took care of the child and assisted John whenever required to facilitate various minor aspects of his businesses. Her own career prospects were subverted to the interests of the marriage for its short duration.
- [744] While it was a short marriage, and, given her family circumstances, Sharon cannot be said to be in need, I am of the view that she is entitled to some spousal support. There has only been some paid to date.

- [745] Sharon submits that where one party misleads the court by failing to make full disclosure of his financial position, the proper remedy is a retroactive variation order to reflect the monthly support that would have been payable, had the proper information been before the court (*Turpin v. Turpin*, [1991] B.C.J. No. 35 (QL) (S.C.)). For example, in *Metzner v. Metzner*, [1993] B.C.J. No. 1839 (QL) (S.C.), appeal allowed in part (1997), 28 R.F.L. (4th) 166 (B.C.C.A.) the trial judge ordered the husband to compensate the wife for the amount of interim support she would likely have been awarded if the husband had properly disclosed his income when the award of interim support was made.
- [746] I have accepted that John's income for guideline purposes is \$1.6 million, and I will also use that income to inform the issue of spousal support. However, in my view, a lump sum payment is appropriate in these circumstances.
- [747] In *Blatherwick v. Blatherwick*, 2015 ONSC 2606, the wife was awarded spousal support of \$58,000 per month, to be paid in a lump sum of \$6.5 million based on a 10 year obligation. In making this order, the court considered the husband's conduct throughout the litigation, including his failure to provide complete financial disclosure, history of not paying interim support and cost orders, history of ignoring and breaching court orders, and the fact that the primary assets were located outside of the jurisdiction. The court did not apply a discount for future contingencies due to nondisclosure on the husband's part.
- [748] As I have already stated, if this trial were simply a matter of doing the math Sharon urges upon me, John would be left in an impossible position. Despite the completely outrageous way he approached the case, there are appropriate limitations to be applied in order to reach a fair result.
- [749] While one might wish to have a more reliable basis upon which to proceed, the fair way to deal with this matter, given the deficiencies in the evidence, is to order a lump sum that will take care of spousal support and Sharon's share of the family assets.
- [750] I fix \$1.2 million as the fair and appropriate amount for Sharon's share of the family assets, and \$800,000 as the value of lump sum spousal support.
- [751] This sum shall be paid within 90 days or such other period as the parties may agree or upon further order of the court.

H. Special Costs

- [752] Mr. Wang and Sharon seek special costs. They have submitted the usual cases in support of their claim. The basic principle is set out in *Garcia v. Crestbrook Forest Industries*, (1994) 45 BCAC 222, para. 17. The conduct in question must be characterized as "reprehensible".
- [753] The categories of "reprehensible" conduct are set out in *Hu v. Dickson*, 2015 BCSC 218 (CanLII) these include:

- acting with an improper motive, such as to intimidate, exhaust or financially drain the other party in the hopes that they will give up or soften their position in the litigation;
- dissipating and/or not disclosing assets;
- abusing the court's process by, among other things, failing to disclose documents, delaying in disclosing documents, failing to respond to reasonable requests, causing unnecessary interlocutory applications, and breaching the Rules of Court in a manner that prejudices the other party;
- misleading the court, through outright fabrications or through evasive and/or equivocal responses; and
- disobeying a court order.

[754] In *Bains v. Bains*, 2006 BCSC 1187 (CanLII) the Court observed (at para. 19 2019):

19 The defendants' financial non-disclosure in this case was serious and extensive. It occurred in defiance of numerous Supreme Court orders, and continued throughout the trial. Accordingly, I find that it can be characterized as "reprehensible conduct" warranting the awarding of special costs to the plaintiff. The non-disclosure had a major impact on the ability of the plaintiff to mount her case. Costs alone will not be a sufficient sanction in response to this conduct.

[755] In *Sarkodee-Adoo v. Sarkodee-Adoo*, 2004 BCCA 105 (CanLII) the court makes the following observations:

27 The trial judge's reasons for awarding special costs are set forth at para. 37 of his decision:

I turn to costs. The plaintiff seeks special costs. This is a case similar to, if not worse than, that of *Emery v. Emery* 113 D.L.R. (4th) 592, a decision in which Coulter J. of this court awarded special costs. I have concluded that the defendant has failed to follow court orders, has deliberately attempted to stall and prolong the proceedings, has supplied false documents, and has lied to the court. I am satisfied that had this litigation been conducted properly, an eight day trial would not have been necessary. I can see no reason why the plaintiff should be burdened with the significant extra costs that have resulted. The plaintiff will have special costs, to be taxed by the registrar.

[756] There are numerous other iterations of the basic principle to be applied to a consideration of special costs.

[757] Lump sum special costs are confirmed by the Court of Appeal in *Buchan v. Moss*, 2010 BCSC 121 affirmed 2010 BCCA 393. In *Leung v. Chang*, 2014 BCSC 1243, the court found summary assessment of special costs to be appropriate.

77 I find that this is an exceptional case where a summary assessment on special costs is in the interests of justice. The history of the litigation overwhelmingly supports such a determination. This litigation has already consumed considerable judicial resources. An assessment of special costs would require significantly more time before the Registrar, result in further delay, and

significantly increase expense for Ms. Leung. As in Bradshaw, the absence of a special bill of costs here should not bar a summary reassessment. It is likely that if legal accounts were produced, Mr. Chang would relentlessly demand detailed information regarding those accounts. Bearing in mind the difficulties encountered to date and the likelihood of Mr. Chang persisting in his attempts to delay a final adjudication of any outstanding matters, Ms. Leung should be spared further protracted proceedings to the extent possible.

[758] In *Bradshaw v. Stenner*, 2012 BCSC 237, the court awarded special costs:

19 Considering the factors in Rule 14-1(3), I note that this matter has been excessively lengthy due to the defendant's misconduct. Credibility was factually complex and required detailed examination by counsel which was very skillfully and thoroughly undertaken by Mr. Angus, plaintiff's counsel at trial. The matter was bitterly fought with substantial amounts at stake and character put in issue. Elaborate deception by the defendant greatly extended the time required for trial. There have been lengthy proceedings after judgment and the portent is that a hearing before a registrar would also be protracted with the defendant acting for herself except at crucial hearings.

[759] It is clear from a reading of these reasons that the trial was significantly lengthened and made much more complicated because of the approach taken by John and his mother. The whole approach of the Respondents made the entire trial difficult, costly and time consuming, all of which could have been avoided.

[760] Mr. Wang requested that costs be dealt with a later date and I am of the view that costs in the matrimonial action also require the consideration of the court at a later date. There shall be liberty to apply when counsel are ready to address the issue. Also relevant will be the extent of compliance with the orders made herein.

[761] Lump sum costs may be appropriate from and after the contempt hearing, November 26, 2016. There will be an opportunity to raise these issues at the end of these proceedings.

I. Contempt

[762] The principles of contempt are set out in the Claimants' submissions. In *Blatherwick v. Blatherwick*, 2016 ONSC 4630 (Can LII) the court identified the following aggravating factors:

27 The aggravating factors are:

- a) There has been extensive and conclusive evidence of a course of serious, deliberate, flagrant and continuing misconduct by Mr. Blatherwick including lying to this court, disregarding numerous court orders, continued financial non-disclosure, deliberate obfuscation, and misrepresentation of his financial affairs;
- b) There are too many breaches of court orders to list here. They are set out in the Reasons for Judgment and Contempt Reasons;

- c) Mr. Blatherwick continues to be a majority owner of a very valuable business and essentially "thumps his nose" at Mrs. Blatherwick and, more importantly, at this court and this court's jurisdiction;
 - d) Mr. Blatherwick has and continues to financially benefit from his actions at the expense of Mrs. Blatherwick;
 - e) The apology was, in my view, not sincere. When suggested it be under oath by Mrs. Blatherwick's counsel, Mr. Blatherwick was not prepared to offer his apology or set out any steps he has taken to purge or attempt to purge his contempt under oath;
 - f) There has been ample time for Mr. Blatherwick to purge his contempt but his actions do not even show a bona fide attempt to comply with the Terms of the Judgment; and
 - g) Mrs. Blatherwick has spent countless hours and millions of dollars to have this matter adjudicated by this court but to no avail despite Mr. Blatherwick's enormous wealth.
- [763] An essential feature of this case is that there has already been a contempt hearing. At that time, an order for contempt was made of 6 months incarceration with 5 months suspended. Special costs were awarded in the amount of \$410,000.00, payable in resolution of this matter. The lies at the contempt hearing were not as serious as those the Respondents persisted in telling at trial, despite repeated warnings.
- [764] I have said that costs should be dealt with later and the issues assessed in light of the Respondents' performance of the terms of the judgment. Any issues of contempt should be dealt with later as well, in light of the facts and Mr. Jiang's obligations. There shall be liberty to apply in the future if necessary.
- [765] As I have stated, Mr. Wang has sought to have the issue of costs reserved. Issues of costs in respect of his actions should be heard at the same time as the determination of the costs and any contempt applications of the Respondents.

J. Further Orders re Accounting

- [766] The Claimants will be at liberty to seek an order or orders for further disclosure from the Respondents for the purpose of accounting and tracing.

K. Bankruptcy

- [767] There will be a further declaration that John is not permitted to declare Bankruptcy without further order of the Court until the entire judgment has been paid in full, both as to lump sum support and compensation.

XIX. SUMMARY OF ORDERS

A. Mr. Wang's Actions

1. West 20th

[768] In the Wang v. Jiang action:

- (a) Mr. Wang is entitled to a beneficial interest in the West 20th property.
- (b) Mr. Wang is entitled to judgment with interest for the further funds.

[769] The West 20th property is held by John and Sharon as bare trustees. The evidence establishes the existence of the West 20th agreement. There are no circumstances which establish a gift.

[770] Mr. Wang is entitled to his remedies under the Partition of Property Act as set out earlier in this judgment (at paras. 660-663).

[771] The mortgage registered against West 20th in the amount of \$500,000 is repayable by John with such additional amounts as were agreed or ordered by the Court, liberty to apply.

[772] Mr. Wang loaned the sum of \$257,849.78 to John Jiang. John agreed to pay 10% interest. The total to August 17, 2018 with interest is \$392,046.80. He is entitled to 10% on that sum to date of judgment. There is liberty to apply to adjust to current values.

2. Sunnymede

[773] The Sunnymede property was governed by a contract that was partly oral and partly in writing. The terms have been addressed at paras. 630-679.

[774] For the reasons set out there, the defences of "Cash Agreement" and the alleged loans from Ms. Jiang to John must fail.

[775] Mr. Wang is entitled to a beneficial interest in Sunnymede in proportion to his contributions. Any amount owing to Ms. Jiang or John shall be held in court pending further order.

[776] The respective contributions of John and Mr. Wang are 7.84% to John and 87.16% to Mr. Wang.

[777] There shall be an order that Sunnymede be sold and Mr. Wang shall have sole conduct of sale. The proceeds of sale shall be divided between Mr. Wang and John in proportion to their contribution. John's share shall be held in trust until the payment of the other obligations under this order.

[778] Mr. Wang seeks an order that this judgment be paid to Mr. Wang from John and Ms. Jiang's share of the net sale proceeds of Sunnymede. To the extent that that is enough this may be spoken to after Sunnymede is sold.

[779] There is liberty to apply for approval of sale or any further issues.

[780] Ms. Jiang's claims are dismissed.

3. Occupation Rent

[781] Mr. Wang is entitled to receive occupation rent as set out above in these reasons at para. 664-671.

B. Sharon's Matrimonial Action

[782] The guideline income for John is \$1,600,000 per annum, and child support will be based on this.

[783] West 20th shall be divided as described above with Mr. Wang being paid his interest. The advances made by Mr. Wang are not a gift. Sharon's interest is limited to her portion of the rent payments which may be attributable to her.

[784] 108-22888 Windsor Court shall be John's property. An evaluation of its current value will have to be done if it is necessary to consider it as part of any payout.

[785] Sunnymede is not a family asset.

[786] Westin International Trading Inc. is an excluded asset.

[787] There will be a declaration that John is the sole and legal owner of all the shares and underlying assets in WIT, WFI and W&W, save and except the shares of Chi Ming William Wan, valued at \$74,999 and WSP, (collectively, "John's Companies").

[788] With respect to WSP, there will be a declaration that the shares of Autumn Laramee, CYP Management and Zhaobin Wan, be attributable to the undivided one-half interest of John, to be determined between John and those parties, and not to affect the undivided interest of Sharon.

[789] There will be an order that John provide payment for Sharon's undivided one-half interest in John's Companies, being \$1,200,000 together with court order interest, together with lump sum spousal support in the amount of \$800,000.

[790] This sum shall be paid within 90 days or such other period as agreed to between the parties.

[791] In this regard, it is clear that the WIT group continues to make money, but that the known assets may fall short of the required payment. If this is so, a compensation payment may be required. As such, Sharon seeks an order that spousal support be increased for any shortfall in the compensation payment. This will have to await the determination of whether the judgment can be satisfied from the present assets.

[792] Sharon seeks orders to enable her to ensure that payment is made. Given the history of this matter, I am of the view that her request is reasonable. As security for the lump sum payment for family assets and spousal support:

a) Sharon shall be entitled to, with respect to each and all of John's Companies:

i. Attend and monitor them;

- ii. Speak with the banks or other financial institutions that have dealings with John's Companies;
- iii. Speak with any customers, employees, salespersons, and other persons;
- iv. Review any financial documentation.

- b) The existing s. 91 Orders will continue to be in full force and effect and the parties shall consult with respect to the reasonableness of the expenses for the WIT Group including the expenses shown at Exhibit 10, Tab 49, Table 12.0.

[793] With respect to other property, the following declarations are made:

- a) A declaration that the amount held by MacLean Law in trust, being the amount received from Pryke Lambert Leathley Russell LLP of \$109,923.22, may be disbursed to Sharon, and credited towards the Company Compensation Payment;
- b) A declaration that the remaining amounts held by Pryke Lambert Leathley Russell LLP of \$128,876.78, and by CNS Law Corporation of \$19,676.69, be paid to MacLean Law in trust for Sharon, and which amounts further may be disbursed to Sharon and credited towards the Company Compensation Payment.
- c) In respect of assets registered in the Claimant's name in China - a declaration that the Claimant has no beneficial ownership of the same, and that they are not family assets.
- d) A declaration that the stock account in Ms. Jiang's name is John's property and a family asset and divisible accordingly.
- e) A declaration that the following are excluded property:
 - i. Sharon's 2010 Benz E550;
 - ii. Sharon's 2015 Range Rover; and
 - iii. Gifts acquired by the Sharon pre-cohabitation and during the marriage from her family and friends.

[794] Sharon's interest in Wuding is not a family asset.

[795] Costs are reserved.

[796] If there are matters that require clarification or further orders, given the number and complexity of issues in this case, counsel may arrange further hearings through the registry.

[797] The Honourable Mr. Justice McEwan will be seized of any further applications in regard to this matter. If he is unavailable, the matters may be set down in Chambers.

"McEwan J."

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