

CANADA / JUDGMENT

Whitford v. Whitford

2020 BCSC 513

COURT

Supreme Court of British Columbia

DECIDED

2 April 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 513 Whitford v. Whitford

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Whitford v. Whitford,

2020 BCSC 513

Date: 20200402

Docket: S184195

Registry: New Westminster

Between:

Leslie James Whitford and Janet Lynn Whitford

Plaintiffs

And

Jeremy David Whitford and Kathleen Rachelle Whitford

Defendants

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

The Plaintiffs, appearing in person:

L. Whitford

J. Whitford

Counsel for the Defendants:

L. Williams

C. Leung

Place and Dates of Trial:

New Westminster, B.C.

May 27-30 and

June 3-7, 10-11, 2019

Place and Date of Judgment:

New Westminster, B.C.

April 2, 2020

I. Introduction

- [1] This case involves a most unfortunate dispute over real property between two generations of family members. The plaintiffs, Leslie (Les) Whitford and Janet Whitford, are the parents of the defendant Jeremy Whitford, and the defendant Kathleen (Kate) Whitford is Jeremy's wife. Because of the common family name I will, for convenience, generally refer to the parties by their first names.
- [2] The property in question is semi-rural property located in Langley, British Columbia that was jointly purchased in September 2010. Both sets of parties contributed monies for its purchase. The plan was that the defendants and their five children would live in the upper part of the home and the plaintiffs would live in the lower portion once it had been suitably renovated. The extent and nature of the respective ownership interests and responsibility for property-related expenses were not clearly defined either at the time of purchase or afterward. This lack of clarity is at the heart of the dispute in this case.
- [3] Over time, the disputes escalated to the point of serious misbehaviour and even deliberate destruction of property, which themselves are the subject of claims for damages.
- [4] The plaintiffs moved out in December 2016. They claim they were forced out. The defendants and their children remained in the home and continued to occupy it to the date of trial.
- [5] In brief, the plaintiffs claim they have a half-interest in the property. They also say there was an agreement that after five years the defendants would buy them out or, if not, the plaintiffs could require the property to be sold. They want the property sold and the proceeds evenly divided.
- [6] The defendants deny the several agreements or trusts claimed by the plaintiffs. They say that any division of the property must take into account the considerable sums they have paid, and the extensive time and labour expended, in maintaining and improving the property.

II. Plaintiffs' Case

A. Les Whitford

The Purchase of the Property

- [7] Les Whitford said the plaintiffs began looking for a house in 2009. Their search was put on hold for a time while Janet received treatment for breast cancer, but it resumed around July 2010. They located the subject property in August 2010. Les, Janet and Jeremy met with the realtor. They exchanged offers and counteroffers, ultimately offering to purchase the property for \$785,000.
- [8] Les testified that during this time they had numerous discussions with Jeremy, including discussions about "financial breakdowns" - the money needed to carry out the transaction and fund the ongoing expenses - and the period of time that the plaintiffs would stay on the property. He testified that "it was always agreed to be five years". The idea was that they would improve the property and then either sell the property or the defendants could get a mortgage and buy out the plaintiffs.
- [9] At the time, Janet was still not fully well, Les' income was "on the lower side" and Kate was on maternity leave. For those reasons, Les suggested that Kate's mother, Laureen Malfet, be put on title to help them qualify for a mortgage. Ultimately, this is what transpired, and so title was registered in the names of Les and Janet (as to 50 percent), Jeremy (49 percent) and Ms. Malfet (one percent).
- [10] The contract of purchase and sale shows that their purchase offer was accepted by the seller on August 24, 2010.
- [11] Les testified that "it was always stated we would have 50 percent and they would have 50 percent". He also said "the agreement we had was that because they had two-thirds of the house, they would pay two-thirds of the mortgage". He made (undated) notes (Exhibit 2) indicating that the plaintiffs' share of the monthly mortgage payment would be \$700, and other expenses would bring about a total of \$900. He said "we agreed we'd pay \$1,000" each month.
- [12] Les produced a collection of handwritten notes dated September 2010 (Exhibit 10) which he said were his breakdowns of the costs of acquiring the property, the makeup of the downpayment, the sharing of proceeds on a future sale, and what would be repaid to the plaintiffs if they were to be bought out. He said he went over these with Jeremy, gave him copies, and Jeremy agreed with the sharing and buyout arrangements.
- [13] The sale was completed on September 16, 2010 and they obtained possession the following day.

Work on the Property

- [14] The parties began work on the property right after obtaining possession. The first task was to clear and level the lot as much of the property was forested.
- [15] The plaintiffs lived in a motorhome parked on the property. Les did the work to create the basement suite, although Jeremy helped on two occasions. The plaintiffs moved in to the suite in December. I pause to note that Les said the year was 2011, but it appears this was a misstatement as all of the other witnesses said it was in 2010. Some of the improvements in the suite were completed later.
- [16] Les said he did other work on the property, including installing grass for a lawn, building a back deck, building chicken coops, re-roofing the workshop, building a vegetable garden and flower beds, and building a water shed. He said he "pretty well did all the grass cutting", using a riding mower, from 2011 to 2015. He said he did a lot of property maintenance.

The 2013 Transaction

- [17] In 2013, Jeremy approached his parents to say that he and Kate wanted to take over the mortgage, and to increase it by \$150,000 to \$850,000. The plaintiffs discussed whether they wanted to continue on title if this happened, and decided they did not. Les testified that the defendants "were prepared to guarantee we'd remain 50 percent owners", and so Les drew up a document to reflect that. The document, which is dated May 14, 2013 and was marked Exhibit 6, reads as follows:

This agreement is to confirm the equal ownership of [address] between Jeremy & Kate Whitford (50% interest) and Les and Janet Whitford (50% interest).

Property proceeds to be disbursed as per attached agreement with the inclusion of additional expenses paid towards the property and home by both parties.

- [18] All four parties signed the document.
- [19] The "attached agreement" (Exhibit 7), referred to in the excerpt above, was a typed document showing figures for the appraised value of the property (\$1,100,000), less the outstanding mortgage (\$700,000), less the "investment" of each couple (\$155,000 for the plaintiffs; \$97,500 for the defendants), leaving \$147,500 to be divided equally between the two couples. All four parties initialled this document.
- [20] As noted in an agreed statement of facts, title to the property was then transferred to the defendants as joint tenants, and they refinanced by retiring the original mortgage (which at the time had a balance of \$690,000) and entering into a new mortgage in the amount of \$850,000.
- [21] Les testified there was an earlier document dated in November 2011 (Exhibit 9), drawn up by Kate, which listed various expenses (property tax, hydro, gas, garbage and cable/internet/phone) and showed the proportions to be borne by each couple. Property taxes and cable/

internet/phone were shown as being equally shared, and the other expenses were shown as two-thirds payable by the defendants and one-third payable by the plaintiffs. The amount attributed to the plaintiffs added up to just under \$1,200, so they paid \$1,200 per month from that point forward.

[22] Les said all four of them agreed with this document.

[23] Les testified that by this point (November 2011) property taxes had been reduced substantially because they had successfully applied to have the property classified under "farm status", although Exhibit 9 still reflected the former amount. Taxes went from \$3,800 per year to \$550 per year. He said this should have resulted in a reduction of the plaintiffs' monthly contribution from \$159 per month to \$22 per month, but he discussed this with Kate and they agreed to continue their monthly \$1,200 payments as before on the basis that those additional monies would go towards the mortgage.

Relationship Conflicts

[24] In February 2015, Laura Whitford - the daughter of the plaintiffs and sister to Jeremy - a single mother with two boys, was living in California but was having some difficulties, and so the family pitched in to move her back. Initially, the idea was that they would live with the defendants, this proved to be unworkable. Arrangements were then made for Laura and her children to live in the basement suite, while the plaintiffs would sleep in the motorhome.

[25] Tensions arose between Kate and Laura and also, according to Les, Laura felt she was being harassed and forced out by the defendants. She and her children left the property in early 2016. Les testified that, from this point on, the defendants "embarked on a course of action to get us out".

[26] Les noted this timing corresponded to the "five years" that had been discussed at the time the property was purchased. It was also when the plaintiffs found out the defendants had taken out a \$90,000 second mortgage on the property.

[27] Les said the harassment included parking a running tractor by their door, spinning tires such that they threw rocks at the motorhome, breaking a window to get into their suite, removing a surveillance camera they installed, parking a boat in front of the motorhome, blowing leaves and twigs into the entranceway of their suite, and yelling at Janet any time she was in the yard.

[28] Les said they moved into the motorhome to avoid this behaviour but it continued. The defendants had 30 roosters that made a racket, but when the plaintiffs complained they were too noisy, Jeremy said, "The roosters are staying. We'd rather buy you out". At the same time, however, Jeremy would not negotiate.

- [29] In December 2016, the plaintiffs moved back into the suite. They were then subjected to the noise of a fire department scanner at loud volume and the noise of the upstairs washer and dryer running loudly at 3 a.m.
- [30] Between May and December 2016, the RCMP were called five times in order to deal with the conflict between the parties.
- [31] On December 21, 2016, they were subjected to the noise of shoes in the upstairs dryer, and the running of the dishwasher, both at 3 a.m. Les responded by turning off the power at the circuit breaker. Jeremy came down the next morning, and five minutes later an RCMP officer arrived. The officer negotiated an agreement that there would be no noise between 10 p.m. and 7 a.m. each day, but the next night there again was noise from shoes in the dryer, together with Christmas music at high volume, at 3 a.m. Again, Les turned off the power at the circuit breaker. At 6:15 a.m., Jeremy banged on their door. He then removed the plywood that had been placed over the previously-broken window, entered the suite and "assaulted us". The police were called, and arrived in numbers.
- [32] The plaintiffs left the suite later that morning (December 22) and returned on December 23 to retrieve belongings. At that point they had essentially vacated the property. Les said they did not feel safe from Jeremy.
- [33] They subsequently reduced the payments they made as they were no longer able to live on the property. They reduced their payments further until the bank account was closed.
- [34] Les admitted he cut some wires on the property after they moved away. He said in 2015 Jeremy told him the central vacuum unit had started to smoke, so Les unplugged it. Les visited the property in 2017 and saw that it had been plugged back in, and there was a strong smell of smoke in the room. He told Jeremy that the unit should be replaced. He cut the electrical connection to it because he felt the unit was a fire hazard. Les testified that a week later the plaintiffs' email addresses and internet service were cancelled and there was no service to the basement. When he called Shaw Cable he was told the Shaw box could be installed anywhere, so he disconnected the box and left it on the back step.

Property Left Behind

- [35] Property of the plaintiffs that they had left behind was removed from the property by Jeremy or Kate in October 2017. The plaintiffs sent several letters about that property before a response was received on November 9, which informed them that their goods had been placed in a storage locker, which Les later determined was located in the middle of a muddy field. It took them until February 2018 to get those goods.
- [36] Some items were never returned. These included a garden shed; three motorcycles belonging to Laura; kitchen appliances (purchased in 2010) - a refrigerator, stove, microwave, dishwasher, clothes washer and dryer; a metal garden bench; metal shelving that was installed in the garage; bedroom curtains; garden tools; a propane tank; hoses,

cables and extension cords of several types; four rifles (two that had come from Les' father, plus a .22 rifle and a pellet gun); a moving dolly; a saddle horse that he had made; and two outside wooden tables.

- [37] At trial, Les produced a list of the missing items on which he had put their estimated values. The total of those amounts (which includes \$2,100 attributed to the three motorcycles) is \$5,915.
- [38] Les testified that they incurred expenses relating to the property but he said he was unable to prove those expenses through documents because his filing cabinet was taken and not returned.
- [39] Les produced a series of photographs showing their household goods piled up in the suite after they had left.

Cross-Examination

- [40] In cross-examination, Les acknowledged that his list of unreturned items had been responded to by defendants' counsel. He also acknowledged that when he was asked at his examination for discovery about his September 2010 notes (Exhibit 10) he said he did not recall whether he had given those notes to anyone.
- [41] Les agreed: (1) they filed a notice of civil claim in September 2016, while they were still living on the property; (2) they had sporadically returned to the property throughout 2017; and (3) they had access to their documents during this time.
- [42] Les maintained that their interest in the property was 50 percent no matter what was done to, or spent on, the property, as per the agreement. He agreed, however, that at his examination for discovery he said his pre-purchase offer discussions with Jeremy had not materialized into "something concrete", and as to post-offer discussions with Jeremy, he had said "I'm assuming [I did], but I don't recall". He denied that his notes of what they would pay were made only after completion of the sale, despite the note on Exhibit 2 that a "6 x \$1,000" deposit had already been made, and a bank statement showing that this deposit was made on September 20, 2010. He said he added that portion of the note afterwards.
- [43] Les said the expenses were reviewed in 2011. He said, "We looked at it again and we agreed to increase [our payment] to \$1,200." Exhibit 9 (the 2011 analysis of expenses) was created by Kate, but Les denied it was provided to them as an illustration of how underfunded the expenses were. Nonetheless, they agreed to increase their monthly payment from \$1,000 to \$1,200. They paid this sum through April 2016, but reduced it afterward. They reduced their payment to \$982 starting in May 2016, \$683 in February 2017, and \$185 in April 2017.

- [44] Les prepared a document dated May 2013 (Exhibit 18) listing various expenses the plaintiffs had incurred relating to the property, which expenses totalled about \$155,000. This was the source of the "investment reimbursement" figure in Exhibit 7, the document that was appended to the May 14, 2013 agreement (Exhibit 6). On discovery, he agreed that: (1) these figures were compiled from memory, some from receipts and some from figures written down; (2) some figures were missing; and (3) the document was not accurate.
- [45] Within that document, Les showed a figure of \$66,000 as a credit to the plaintiffs for the basement suite. He agreed that he had previously estimated the cost to be \$25,000, but he said that the earlier figure was just an estimate he came up with prior to the purchase of the property.
- [46] Also in Exhibit 18 is a figure of \$14,500 for "loan to Jeremy". Les said this was a loan to Jeremy so he could pay his corporate taxes. He rejected the suggestion there was never any such loan.
- [47] Les said he gave the defendants a copy of Exhibit 18, but rejected the suggestion put to him that the defendants questioned the numbers. He agreed that his intention in creating the document was that each party would get their actual investment back and then divide the remaining equity.
- [48] Les agreed that the "farm operation" was just the chickens. He did not take care of the chickens, but he said Janet might have.
- [49] In the five years prior to the property purchase they had stayed with the defendants for parts of each year. The plaintiffs were looking for a house, but they could not have purchased this house on their own. They would have been limited to a house that was worth less than \$400,000.
- [50] Les denied that Jeremy did the majority of the lawn mowing and other maintenance on the property.
- [51] In June 2015, Les arranged for a \$125,000 loan to his company that was secured by a second mortgage on company property. The plaintiffs guaranteed the loan. Although the mortgage broker referred to this as a "high risk" loan, Les disagreed that this was a high risk loan.
- [52] The loan was to have been repaid in one year, but he did not repay the loan. Ultimately, the lender (Rockwell) obtained a default judgment against the plaintiffs.
- [53] Les agreed that the improvements made to the property have enhanced its value. He then qualified that statement by saying "up to 2016". He said they have done exactly the same amount of work as the defendants. He said he estimated he spent 1800 hours of work on the property, but he agreed that on discovery he admitted he did not keep track of hours.

- [54] Les disagreed that Jeremy helped with the basement suite construction other than one four-hour stint. He denied that Jeremy did any framing, demolition, hauling or electrical work. He also denied that Jeremy did any work grading the property or on the septic system.
- [55] Les agreed that he changed the locks on the basement suite. This meant the defendants had no access to it. The defendants were told they had to call either of the plaintiffs, or Laura, in order to access the suite. He agreed that the RCMP told him he had to provide access, but he was not sure if he did.
- [56] Les also agreed that he tore wires out at the house. These were cable wires, not electrical wires. He agreed he returned to the property a number of times, making a point of going to the property when Jeremy was not there. On one of those occasions he was confronted by Kate, and this led to raised voices. He denied that his oppositional behaviour was instigated in order to force the sale of the property.

B. Janet Whitford

- [57] Janet Whitford said they were looking for a house in 2010. Les found the subject property. She was not involved in any of the negotiations, but she was present during the times Les and Jeremy spoke. She estimated her husband and son spoke five to seven times. She was aware of the idea of a "five-year term", and heard Jeremy agree to this term. She understood there was to be a 50-50 split.
- [58] At the time they took possession of the property, the basement consisted of one room that was used as an office, dropped lights and indoor-outdoor carpet. There was nothing in the rest of the basement except the furnace and hot water tank. The house had three floors.
- [59] The clearing of the back yard started right away. This was done by Dave Hemsworth, Les and Jeremy, although Jeremy was not there a lot of the time. This involved two weeks of work with machines, and then labour after that.
- [60] Work on the basement suite started after the outside work was completed. That work was done by Les, with electrical and plumbing work done by contractors. Jeremy helped on two occasions.
- [61] Janet helped when she could, but she was still recovering from her illness.
- [62] Between 2010 and 2016 she looked after the farm animals (horses, chickens and dog) when the defendants went away. Janet said there were in fact 30 roosters there at one point, all practicing their crowing, as a batch of chicks had hatched. She said Kate did deal with that problem eventually and reduced the number of roosters to seven.

- [63] Janet said Les did the following work: built flower beds and garden area; built a shed for the water pump; re-shingled the workshop roof; built two chicken coops; painted the back deck; filled in the carport to turn it into a garage, and installed a garage door; installed siding and window trim; did 80 percent of the labour for the upstairs renovation; and built a storage area in the workshop.
- [64] Janet said Les also did other work on the property. She said that, at times, Les was "definitely doing more" than Jeremy.
- [65] Janet said she saw Les giving Jeremy cash for payment of their contribution to the property and expenses. She said it was paid to Jeremy and not Kate because Jeremy asked Les to pay him.
- [66] After Laura moved in, there was a breakdown in the relationship between Kate and Laura. Kate was displeased about not getting money from Laura. Jeremy got involved. He was yelling at Laura's children and being stern with them. Jeremy also became hostile towards Janet and he would call out insults to her if he saw her in the yard. She felt constantly harassed.
- [67] At one point in 2015, Janet noticed video cameras being installed. One was installed on the workshop, and another was pointed at their front door. She even thought there was some sort of surveillance in their suite.
- [68] Janet was asked if she ever told Jeremy anything just to get him to leave her alone. She said Jeremy kept asking her what he was supposed to tell Rockwell, and in an email (presumably to Rockwell) she said they had "little involvement" in the subject property. That statement was incorrect.
- [69] The police were called to the house on December 21, 2016. There had been a great deal of noise from upstairs during the night. The washer, dryer and dishwasher were on at 3 a.m., and a scanner was on so loud that they could hear the fire department calls. It seemed like there were shoes in the dryer. They moved from the bedroom to the living room in order to get some sleep, but Christmas music was left on all night.
- [70] The attending officer got the parties to agree on quiet time between 10 p.m. until morning. However, the next night the dryer was again clunking away at 3 a.m., along with noise from the washer, scanner and Christmas music. In response, they turned the power off to the washer and dryer. The next morning Jeremy was banging on the window at 6 a.m., demanding that the power be turned back on. He entered the suite through a broken window and started to shove Les, with his fists up. He pushed Les a number of times, pushing him to the floor and then kicking him. Janet saw Kate arrive. She was recording the event on her phone.
- [71] After that incident, it was too uncomfortable for them to stay there.

- [72] They left their furniture in the suite. When they came back, everything was pushed back and piled up, including on the leather chesterfield, which left marks. Later, they were told the furniture had been removed from the property. They were unable to find out where it was despite emails they sent and letters from their lawyers. A few weeks later they learned the items were stored in a container located in the middle of a pasture. They attended there with a truck, but it was a rainy day and it got stuck.
- [73] In cross-examination, Janet said she was diagnosed with breast cancer in October 2009. She was treated with chemotherapy and radiation, and was then on medications until 2015. She denied that this treatment resulted in a poor memory on her part, although she agreed that at her examination for discovery she had said her recollection is poor when it comes to "dates and papers", due to the medications.
- [74] She agreed she generally left finances up to Les. However, she knew how much money Les gave to Jeremy because she saw Les count it out. She was not involved in any discussions about the ownership basis, although she was there when the papers were signed. Her knowledge of the purchase discussions came from Les.
- [75] Janet agreed that they used half of the space in the workshop on the property.

C. Laura Whitford

- [76] As noted earlier, Laura Whitford is the daughter of Les and Janet and is Jeremy's sister. In 2015, she and her two boys were living in California. She had divorced the boys' father in 2013 and had sole custody of them.
- [77] Jeremy called her and suggested it would be best for her to return to British Columbia, where she could get family support. The prior discussion had been that she and her boys would live upstairs, but there was not enough room there and so they moved into the bottom suite. The plaintiffs moved to the motorhome, though they used the suite for meals and general living.
- [78] After about six months she noticed a lot of conflict between her parents and the defendants, and between the defendants and herself. Her children were also the subject of hostile comments. She felt she was being forced out by the defendants. She moved out after about eight months.
- [79] When asked about any discussions of a five-year plan, Laura said in some of the many conversations she heard there was mention that either party could be bought out after five years. She also talked to Jeremy about it, noting that their parents were getting older and were wanting to get their own place.
- [80] Laura owns three motorcycles. She did not give Jeremy permission to work on them, save for one minor repair. These motorcycles have still not been returned to her, despite her requests.

- [81] The plaintiffs see her children regularly and often. To her knowledge, the plaintiffs have not seen the defendants' children since 2016.
- [82] In cross-examination, Laura acknowledged that she did not pay very much towards household expenses. She was not working. There was no set amount that she paid, just a couple of hundred dollars here and there.
- [83] Laura denied that the defendants had asked her to take her motorcycles or other goods. She thought the motorcycles would have been in the storage container, but they were not there. She agreed her goods had been stored in the shop that was on the property. Her father had told her it was okay for her to leave her stuff there.

D. David Hemsworth

- [84] Mr. Hemsworth is a contractor who did clearing and other site work at the property in September or October 2010. As he recalled, the property was two and a half acres in size and at least half of it was bush that had to be cleared for a riding arena and other things, and to make the land more usable.
- [85] From discussions Mr. Hemsworth had with Les, he understood that the plaintiffs planned to be on the property for five years and then move on, possibly to White Rock. When asked if Jeremy was in agreement with this, Mr. Hemsworth said "that's correct". He added, "My understanding is that both of you were clear on five years and Jeremy was quite excited for that opportunity".
- [86] Mr. Hemsworth was on site for two weeks. He used both an excavator and a Bobcat. The brush was cleared and burned, the area was graded, he put down hog fuel, and excavated for ditches, sewer line and a septic tank. The majority of the time Les was there. Jeremy was there too, running a Bobcat. He helped out sporadically. Mr. Hemsworth billed them \$1,800, which Les and Jeremy split between them.
- [87] In cross-examination, Mr. Hemsworth said Les was on site a lot and he assumed Les was working while on site, although Les was also finishing the basement. As to the conversation about the five-year plan, he said this was a discussion between himself and Les, although Jeremy was "around" and "in the area". He agreed he never discussed that topic with Jeremy.

III. Defendants' Case

A. Kate Whitford

Background

- [88] Kate Whitford is a bookkeeper and office manager. She has worked at a local business for the past two years or so. Prior to that, she worked for C.I.B.C. in various capacities over a 20-year period.

- [89] She and Jeremy have five children, who range in age from 9 to 19. Two children are in elementary school and one child is in high school.
- [90] The property they live on is 2.35 acres in size. They have horses and chickens, and they sell eggs. They spend a lot of time on the property. They wanted the space because of the size of their family and because they wanted the children to be able to play outside, to have their own bedrooms and to have room for horses and a dog. They spent years improving the property and making it more usable.
- [91] Prior to acquiring that property they rented a three-bedroom rancher that was next to a fire hall. Jeremy's parents lived on the property in their motorhome for part of each year, and they would go south for six months each year. The plaintiffs did not pay any rent to them.

The Purchase of the Property

- [92] Les approached them about acquiring the property. They viewed the property, but at that point there were no discussions about how the finances would be divided. An offer was put in but it was not accepted. The defendants then left to go camping in the Interior. While they were away there were more offers and counteroffers. Les had met with their own realtor and worked on the offers while they were away. The owner then accepted their offer, which was subject to financing. The contract of purchase and sale was faxed to them while they were away.
- [93] When they returned from their trip they contacted a mortgage broker. Jeremy's income was reasonably high, but Kate was on maternity leave and Janet and Les were burdened by debts. They needed help to qualify, so Kate approached her mother, who agreed to go on the application. Kate told her mother it would probably just be for a couple of years.
- [94] Les told them he had money for a downpayment but the defendants would have to come up with the rest to keep it under the CMHC limit. Jeremy borrowed the necessary money from a friend. The friend was repaid over time.
- [95] The way the defendants viewed it, the plaintiffs had asked them to buy in. She was shocked when she saw a document suggesting the defendants had to pay more than half of the expenses. There was no discussion of an "end time". Their view was that they were buying it for their family for the long term.
- [96] The defendants and their children moved in on September 17, 2010. The plaintiffs stayed in their motorhome at the rental house, which was rented until October 15. At the new place there was no electrical hookup and the ground was not level, so they could not park the motorhome on the property until later.

Work on the Property

- [97] The plaintiffs and defendants discussed the clearing of the property, which was needed for the horses and to make a proper parking spot for the motorhome. Mr. Hemsworth brought his Bobcat, and Jeremy rented an excavator. She believed that the plaintiffs were in the suite by Christmas 2010.
- [98] Kate was on site every day during the time the property was being cleared. The clearing work was done by Mr. Hemsworth and Jeremy, who drove the Bobcat. Jeremy was there daily. She saw Les on site. She believed he was helping with the drainage work and with the moving of a shed. Janet brought lunch and visited, but otherwise stayed at the rental property.
- [99] The site preparation work also involved the installing of drainage works, including culverts, and an underground power supply.

The Sharing of Expenses

- [100] When asked if money was discussed at the outset, Kate said there was no discussion. The parties had already lived together for several years and the relationship seemed good.
- [101] All of the accounts relating to the property were in the defendants' names, and Kate paid those bills.
- [102] Shortly after they moved in, Les presented them with a note of what the plaintiffs could afford to pay. This made for an awkward situation. These were Jeremy's parents, they knew his parents had debts, and they did not want conflict with them. However, Kate was concerned the amount Les put forward was not adequate. At that point they did not even know what the actual expenses were. The defendants decided to take what was offered and to manage as best they could.
- [103] The plaintiffs deposited their contribution to an account that both couples used for the purpose. Other than cash that Les gave to Jeremy for some specific expenses, Kate was not aware of any payment from the plaintiffs in any other form.
- [104] Kate testified the plaintiffs paid \$1,000 per month until November or December 2011, when she received a hydro bill of \$1,000 for just one month of electricity. The bills were higher than they had thought they would be. She tried mentioning this to Janet, but nothing came of it. She and Jeremy felt they had to do something. Kate made up a spreadsheet using the actual expense figures in order to demonstrate to the plaintiffs that their contribution should be significantly more. The spreadsheet showed that the plaintiffs' contribution should be \$1,198. She showed it to the plaintiffs and discussed it with them. Les came back later and said the plaintiffs would pay \$1,200. They paid that monthly amount until May 2016.

- [105] Kate said she never received any money towards expenses from Laura. At one point, Laura gave her \$300 for groceries but Laura never paid anything for house expenses.
- [106] The regular house and property expenses were: (1) the mortgage; (2) house insurance; (3) property taxes; (4) electricity; (5) gas; (6) cable, internet and telephone; (7) security cameras; and (8) garbage collection. They used a garbage collection service for five years and thereafter they took their garbage directly to the garbage dump. The mortgage was a variable rate mortgage so they did not have the same mortgage payment each month.
- [107] In addition to the mortgage payments, there were payments for taxes, which were paid through an installment plan.
- [108] The first mortgage payment was \$2,755.98. The mortgage figure Les put in his note was \$700, which did not reflect even the one-third that Les felt he and Janet should pay.

The 2013 Transaction

- [109] In late 2012, the defendants decided to make arrangements to remove Kate's mother from title. They discussed it with Janet and Les. The idea was to take out a new mortgage, which would also get them some extra funds. They increased the mortgage to \$850,000, an increase of \$160,000. From that point onward they did not pay property taxes by installments.
- [110] They discussed this with the plaintiffs "on and off" for a few months. The plaintiffs were okay with not being involved in the new mortgage. The mortgage was arranged, with documents to be signed, and so they knew they had to put the arrangement into writing. The plaintiffs wanted to be listed as 50-50 owners.
- [111] Les then came up with a calculation as to how the property would be divided. The defendants were disappointed when they saw it. It was something they did not agree with, but a closing was imminent and the numbers were really just guesses. The 50-50 was fair, but not the listed contributions. There was no time to list all of the things the defendants had paid. They were under pressure to agree. Although the second page (that is, Exhibit 7) was not accurate, the defendants felt the wording still enabled them to include their own contributions at a later time.
- [112] In 2018, the mortgage payments went up due to the filing of a CPL by the plaintiffs' creditor, Rockwell. Their mortgage had come up for renewal in the usual course, but they could not get a favourable rate because of the CPL.

Property Expenses and Labour

- [113] The defendants assembled all of the expenses and labour cost claims into binders, organized by category. These binders were marked as exhibits.

- [114] Kate said the property requires a lot of maintenance and upkeep. Some of that includes mowing the lawn, cleaning the driveways, pruning the trees, weeding, snow removal, roof and gutter cleaning, lawn care, fence repairs, maintaining the water system and septic system, power washing and vermin control. The defendants have estimated the time spent on these items each year and, based on a contractor rate of \$50 per hour, estimate that these activities have a value of \$19,550 per year. The total of all property maintenance expenses and notional labour costs is \$246,647.28 (Exhibit 39).
- [115] When asked what the plaintiffs did in terms of maintenance, Kate said Les would cut the lawn occasionally, and Janet did gardening. They never contributed any funds for maintenance.
- [116] The labour component of the farm activities adds up to \$52,250 per year, using the same approach. Exhibit 35 is a collection of all expenses and labour relating to the farm operation. The amounts total \$430,660.86, of which \$391,874 is for notional labour costs from 2011 to the beginning of trial.
- [117] The expenses and notional labour costs incurred by the defendants between 2010 and 2019 for the improvements to the property total \$348,507.42, of which the labour component totals \$188,700.
- [118] Other binders contained collections of other expenses, as follows:
- a) mortgage payments made by the defendants to May 2019, totalling \$358,917.98 (Exhibit 24);
 - b) property tax payments up to and including 2019, totalling \$6,994.32 (Exhibit 25);
 - c) security system payments up to November 2018, totalling \$1,030.52 (Exhibit 26), which total reflects a small correction Kate made during testimony. She said they installed a security camera system in 2016, and there were monthly costs associated with it. The expenses listed in the binder do not include the initial outlay for the equipment, but they do include one charge for the purchase of a camera;
 - d) insurance through to September 2019, totalling \$13,325 (Exhibit 27);
 - e) electricity, no total shown (Exhibit 31). These records end in January 2017;
 - f) natural gas, totalling \$8,906.32 (Exhibit 32). These records end in January 2017;
 - g) cable, internet and landline telephone, to February 2016 (Exhibit 33). There is no total shown; and
 - h) garbage disposal, to December 2017, totalling \$4,469.74 (Exhibit 34).
- [119] Kate said the plaintiffs did not vary their contribution to expenses to reflect variances in the utility bills.

Relationship Conflicts

- [120] Laura came to live with them in the fall of 2015. Laura was going through a difficult time and they wanted to help her. The defendants told Laura she was welcome to live upstairs, but she said she had discussed it with her parents and it was decided she would stay in the suite.
- [121] Kate said there was a change in Les' behaviour starting in early 2015. The defendants had received a letter from (or on behalf of) Rockwell about the plaintiffs' unpaid loan, and asking about the plaintiffs' interest in the property. It was also around this time that Les told her, "Get rid of the roosters or buy me out". Kate said the roosters -there were only seven or eight of them - were 300 feet away from the house, much farther away than even the neighbours were. In any event, there was a bird flu going around and no poultry could be moved. She told him her hands were tied, and added that the plaintiffs "could help out a little more". She felt he had been rude to her, and so she did not engage with him as much after that point.
- [122] Kate said that in July 2015 they received a letter from a law firm concerning the plaintiffs' unpaid loan in which the lawyers said the plaintiffs had told them they had owned 50 percent of the Langley property but "no longer did". Jeremy went to speak to his father about it. He returned, telling Kate that "things were taken care of". A few months later they were served with notice of a CPL that had been filed. The defendants did not know what to do because the plaintiffs were taking the position that they had no interest in the property but the defendants had documents indicating the contrary.
- [123] Over the ensuing months, she noticed more change in Les. He avoided interaction with them and their children. Laura got into an argument with Kate, and "things were said". From that point on, Janet, Les and Laura would not talk to her.
- [124] In May 2016 their internet and phone cut out. The wires had been cut. She told Jeremy. Later, she heard banging in the basement. She did not feel comfortable checking it out. Janet had been gone for a month by this point. She thought perhaps Laura was packing up. The next morning she saw a pile of wires and electronics on the stairs. Evidently they had come from the utility room in the basement. Les admitted he had taken them out. Kate said he did not seem rational, "not himself". He said he was going to remove the hot water tank and electrical panel because he had paid for them. Jeremy called the police.
- [125] On another occasion, the surveillance cameras captured images of Les taking Jeremy's tools. There had been break-ins in the area, and Jeremy had tools go missing, so they decided to add more cameras. These cameras showed Les going through Jeremy's tools and taking some of them. They asked him to stop, but he did not stop; in fact, on one occasion they saw Les smack a camera off the wall with a shovel. Later, when Kate again saw him with a shovel, she told him to stop. Les told her to "shut the fuck up". This left her feeling unsafe, so she called the police.

- [126] There were several other occasions when Les swore at her. Even while doing dishes in the kitchen she would see Les through the window, showing her his middle finger. These events always happened when Jeremy was not at home. Their children were aware of the incidents and were scared of Les.
- [127] On one occasion their hot water was cut off. The only access to the utilities area was through their suite. Jeremy had to break into their suite to restore the hot water. The police attended as a result. The window had been broken from an earlier event when there had been a power outage in the area. The only access to their generator was through the suite. Les had not been there for days.
- [128] Events came to a head in December 2016. Janet was not there much by this time. She would pack a few things and then leave. Les would then come back by himself. He was much different when Janet was not around. Janet came back in the motorhome, then they moved into the suite from the motorhome. The next morning, the power was off. Jeremy asked the plaintiffs to turn the power back on. The police were called. The next morning the power was off again. The plaintiffs refused to put the power back on. Jeremy took the board off the window to the suite and Les "came at him" as Jeremy went inside. Kate could see Jeremy trying to hold his father back. Again, the police were called.
- [129] After that, the plaintiffs packed up and left. They returned later and took some of their belongings. Les also attended without Janet, once with his brother and another time with another man, but they were out in the barn area and there was no reason for them to be there. Kate asked what they were doing and another conflict started. Kate felt that Les was coming to the property to harass her when Jeremy was not there.
- [130] Through counsel, they asked the plaintiffs to get their belongings, but there was no response. They hired a mover and a container and packed up the goods and put them in a container.
- [131] Kate said they did not leave machines on, or play Christmas music, in order to disturb the plaintiffs. They never did anything different to bother them and, to the contrary, tried not to bother them.

Improvements Made to the Property

- [132] Kate described the improvements that were made to the property. These included:
- a) the back part of the property, which was basically unusable, was cleared and levelled, a drainage system was installed, and gravel was laid down to make firm ground;
 - b) a barn, horse shelter and chicken coops were built;
 - c) the main house level was renovated by essentially gutting and rebuilding it; and
 - d) new windows were installed.

[133] Those were the improvements the defendants carried out. Kate acknowledged that Les did drainage work, built the new stairs in the house and helped move a shed. He helped build the chicken coops. The plaintiffs also put in a full basement suite.

Effect of a Court-Ordered Sale

[134] Kate said a court-ordered sale would be very difficult on them. The children do not want to leave, and a stable home means a lot to her. The children's elementary school is right across the street, and her work is also across the street. Kate is on the school parent advisory council. Also, one of their children is autistic, and change would be very hard on her. It took her a year to adjust when they moved there and she was three years old. The daughter does not make friends very well, and it would be difficult for her to make new ones. Their daughter's behavioural interventionist lives close by, and on occasion she takes her to lunch just so that their daughter has a sense of a normal teenage life.

Cross-Examination

[135] In cross-examination, Kate said:

- a) she was the one who drew up the 2011 expense analysis. It was based on the expenses for the previous year, but it did not take into account any future fluctuations;
- b) prior to the purchase of the property she never heard anything about a five-year plan;
- c) although she and Jeremy had concerns about the interests being 50-50, they just "moved on" as they did not want to create a conflict. They did not raise the apportionment of expenses in 2013, but instead discussed remortgaging based on the way things were so that they could get her mother off title and free up money to renovate the upstairs.
- d) they had concerns about the figures Les presented, so that is why they added the additional line;
- e) the 2013 refinancing resulted in a mortgage that was \$150,000 more than the existing mortgage because they wanted to renovate the interior of the house and to pay off other debts. She was not sure of the amount of those debts but they might have totalled \$120,000;
- f) in 2015 they obtained a line of credit of \$90,000 that was secured by a mortgage. She was not aware of any obligation to tell the plaintiffs about that mortgage;
- g) she said that in 2013 the four of them got together and agreed the respective interests would be 50-50;
- h) the attachment to the agreement was written out by Les at first, and she typed it. She said all of the numbers in it were "just guesses". They all agreed that the numbers were just approximate amounts, or ballpark numbers, and they did not have documents to verify the numbers. It is for that reason that they added the line about needing or using correct numbers;

- i) she understood the amount the plaintiffs owed to Rockwell was \$170,000, based on a September 2017 letter from their counsel that she saw;
- j) the discussions over the 2013 financing took place over about six months. The 2010 mortgage had a five-year term. The bank told the defendants that they would not re-qualify for a mortgage due to the plaintiffs' debt load;
- k) the 2013 mortgage had a higher rate of interest. They refinanced early (that is, before the end of the five-year term for the 2010 mortgage) to fulfill her commitment to her mother to get her off title, as it was affecting her mother's own ability to get financing; and
- l) they accepted that they were responsible for the additional cost of the mortgage payments.

B. Jeremy Whitford

Background

- [136] Jeremy Whitford works as a firefighter at a local municipality. He also has a construction business, which he has run for 20 years. In that business he builds and renovates homes, carries out commercial renovations and does maintenance work.
- [137] The subject property is a family farm. It has a playground, a shop, riding area, equipment, a small sawmill, a house and a garden. It is 2.35 acres in size and it is located within the Agricultural Land Reserve.
- [138] Formerly, they lived in a rental house that was located near a fire hall. They lived there for about five years. His parents lived there, in their motorhome, although they did not contribute to the property or expenses in any way.
- [139] They wanted to move because they had outgrown the house. They wanted a place that could accommodate horses and have enough bedrooms for all the children to have their own.
- [140] His relationship with his parents at that time was fine. They had sold their Salmon Arm house and moved into the motorhome, which they used to travel and stay with friends. They then settled at the defendants' rental house, where they had a garden and sitting area. They used power and cable television from the house as well as the house's septic system.
- [141] His father did not really work - he had been in construction in prior years - and Jeremy occasionally paid him for work done. Janet was paid for child-minding.

The Purchase of the Property

- [142] Jeremy described how the house purchase came about. His mother was sick and so his parents wanted a more stable living situation. The subject property had room to build a separate suite and had space for an RV parking area. The defendants felt the living arrangements they had had at the rental suite would work better at the subject property.

- [143] Jeremy said there was not a lot of discussion about the details of the purchase. They knew they would have to renovate to make the suite. Les said he had \$40,000 to put down and other money to carry out improvements for a suite or a motorhome pad. He and Les never sat down to discuss such details as how to pay for things, or ownership percentages. Les merely said they should look at the property first and figure out the details later. The discussions between them focused on the suitability of the property, not on any ownership details.
- [144] They put in an offer, but it was declined. The defendants concluded they should carry on with regular life, but keep looking. They took the family camping.
- [145] While they were away, the owner came back with a lower price. There was some "back and forth", and the price was agreed.
- [146] The purchase was financed through the Bank of Nova Scotia. The defendants contributed \$50,000. The plaintiffs contributed \$40,000.
- [147] The defendants moved in on September 17, 2010. The plaintiffs did not move in then because the basement was essentially bare and there was no place to park their motorhome. They continued to stay at the rental property. They moved to the subject property about a month later once a suitable base and septic connection were put in for the motorhome. The plaintiffs moved into the basement suite after about three months.
- [148] Prior to the purchase of the property there was no discussion of any sort of timeline. The plan had been to buy a good, stable home, and the defendants planned to be there a long time.
- [149] There was also no discussion about the amount of equity each couple would have. Les' approach throughout was that they should just get the purchase done and they would work out the details later.

The Sharing of Expenses

- [150] Around the possession date, Les presented Jeremy with a letter (Exhibit 2) showing the plaintiffs' contribution at \$1,000 per month. It was not suggested this sum was negotiable; instead, it was put forward as the amount he thought they should pay. Jeremy was "somewhat surprised" by it. He knew the mortgage amount was higher than Les had shown, and Jeremy was not sure what the taxes would be. The other amounts Les had on Exhibit 2 were also low. Les told Jeremy this was all they could afford.
- [151] Jeremy said they felt "kind of stuck". They felt bad for them. It was all the plaintiffs could afford, so the defendants made up the difference. The plaintiffs deposited \$6,000 to the defendants' account, representing six months of contributions.

- [152] The defendants paid all the bills for the property, and their names were on those accounts. The regular expenses included the mortgage, property taxes, gas, cable, and water well maintenance and servicing.
- [153] The defendants had several discussions with the plaintiffs about the imbalance in contributions. The plaintiffs were paying more in fees to store their household goods (\$800 per month) than they were contributing to the mortgage on the property. Kate then drew up a summary of expenses (Exhibit 9) and they showed it to the plaintiffs. They asked the plaintiffs to pay more. Jeremy said "it was tough, but finally they agreed to pay \$1,200".
- [154] The plaintiffs paid \$1,200 each month until May 2016, when they reduced it to \$982.35. They decreased it further later on. In the case of the first reduction, Jeremy recalled that the reason they gave was that they would be moving out and so they were not using cable or the garbage service.
- [155] Les told Jeremy that the Rockwell litigation was prompting them to leave. He said he had told Rockwell that the plaintiffs had no interest in the property. As it turned out, the plaintiffs did not leave the property as they had said they would.
- [156] The plaintiffs' last contribution to the property was in September 2017. By this point, the plaintiffs were contributing just \$185 per month.

Improvements and Other Work on the Property

- [157] Jeremy spent a great deal of time describing the work he did on the property. I will not attempt to list all of the things he described, but some of the more significant ones are as follows:
- a) he removed a long section of old driveway and replaced it with gravel. Another section of driveway was repaired;
 - b) he removed a number of trees, including several large trees, as well as an overgrown hedge, and landscaped afterward;
 - c) he built fencing on the east side in order to complete the fencing of the property, a requirement for obtaining farm status, and he fenced a horse paddock and the back yard. He also repaired fencing that had been damaged by a fallen tree. He rented an excavator to carry out the work;
 - d) he built a playground and trampoline area for the children;
 - e) he ran underground data and power lines, as well as drainage, out to the workshop, which required excavation and trenching;
 - f) a new electrical panel was installed in the workshop, which was needed to service the RV. Television, cable and internet lines were run to the RV area. Les helped to restore the grass;

- g) in the RV area, he ran a 30-amp electrical service to a plug for the RV. Drains were installed in the area and he levelled the tank into which water and sewage drained from the RV. The RV area was then properly levelled and the area restored;
- h) a well shed was moved and a new water filtering system was installed. Les built a lean-to adjacent to the shop. Jeremy ran power to it. He moved the pumphouse to a location near the barn;
- i) drainage from the house was replaced with new pipe and run to the back of the property. Water lines were also run to the back to hook up with the main drainage system. A drainage ditch near the back was also replaced with drain pipe. Les helped with some of this work;
- j) he brought in 50 truckloads of fill and levelled it with a bulldozer;
- k) he built a barn, which is two storeys high. It is more of a shelter at present, and it houses feed, a tractor and sometimes an RV. Power, water and data lines were run to the barn;
- l) yard hydrants were installed in several locations;
- m) lighting was installed in the riding area;
- n) he built a horse shelter and two chicken coops, and the chicken area was fenced. Les built the first chicken coop and Jeremy built the second; and
- o) he re-did the riding arena, which had been finished with hog fuel, because the wetness of the area made the hog fuel too soft. He removed "countless loads" of hog fuel and replaced it with gravel.

[158] Jeremy also did extensive work on the house. Work done on the outside of the house included:

- a) re-siding the house. This involved removing stucco, which was leaking, and installing Hardy board;
- b) installing new windows;
- c) installing new LED lights;
- d) converting the carport to an enclosed garage. Les helped with some of the framing. Les purchased garage doors and they both installed them;
- e) enlarging the deck and replacing the stairs. Les stained the deck; and
- f) repairing the roof to fix a leak near the chimney.

[159] Work done inside the house included:

- a) On the upper floor:
 - i. repairing a bathtub;

- ii. repainting the entire upper floor;
- iii. installing smoke detectors; and
- iv. running data wiring upstairs.
- b) On the main floor:
 - i. gutting the kitchen and living room areas;
 - ii. re-aligning the stairs and reframing the rooms to make a more open layout. This involved the cutting of joists and installing new beams. Les helped with the beams;
 - iii. installing new wiring and lights, insulation, data wires, speaker wires, drywall and hardwood flooring; and
 - iv. refurbishing the fireplace, building a new mantle and installing a gas fireplace;
- c) In the kitchen:
 - i. installing a vacuum system and ceiling speakers;
 - ii. removing the existing stairs to the lower floor;
 - iii. installing new plumbing and lighting; and
 - iv. new kitchen cabinets, a pantry, a large window, building a kitchen island and installing granite countertops.
- d) Elsewhere:
 - i. the laundry room was levelled, tiled and drywalled. A new washer and dryer were installed, as was a new door;
 - ii. in the entranceway to the house, he re-tiled the bathroom and re-did the plumbing. The floor was levelled and the flooring replaced;
 - iii. an air conditioning unit was installed;
 - iv. all existing aluminum wiring was removed and replaced; and
 - v. in the utility room, he installed a new vacuum unit and ran all the data, phone and cable lines to the same location.

[160] Jeremy also described the work done in the basement. Aside from an office, the basement was essentially bare. The office was demolished by Les, and Jeremy removed the debris and took it to the dump. He paid the dump fees. He also purchased a new hot water tank and furnace, and moved these to a new utility room that was built. Jeremy helped Les frame the basement. Jeremy helped with the plumbing by drilling through the foundation and mounting the hot water tank. Jeremy helped design the furnace ductwork. He also ran data, phone and cable lines, and organized all of the wires in the panel. Les did all of the rest of the work, which included painting, flooring, some tiling and new kitchen cabinets.

- [161] They kept receipts for the renovation and improvement expenses they paid (Exhibits 37 and 38). They derived a labour cost by estimating the amount of time it took to do the work, and utilizing a rate of \$50 per hour, which is the rate Jeremy charges for his contracting work, and is also the rate Les charges for similar work.
- [162] The defendants also kept track of all expenses and labour incurred in maintaining the property. These were assembled in Exhibit 39.
- [163] Lastly, the defendants took photographs of the various pieces of equipment they have purchased, rented or borrowed in order to carry out the renovations and other improvements. These include a small tractor, a Bobcat excavator (this was borrowed in return for labour), a man-lift (also borrowed), a backhoe, a ride-on lawn mower, two leaf blowers and two weed eaters, a dump trailer, a chainsaw, a side-by-side ATV, and a power washer. Only the dump trailer and tractor are occasionally used in his contracting business, and even then it is only occasionally.

The 2013 Transaction

- [164] Jeremy said Kate's mother had helped them obtain financing for the 2010 purchase, but this had interfered with her ability to access credit for herself. Also, the defendants wanted to do a renovation because the kitchen, in particular, was too small for their family.
- [165] Jeremy approached his parents, and they were supportive of both of those objects. Discussions about remortgaging took several months. The defendants' mortgage broker said that they would not be able to qualify for a new mortgage if the plaintiffs were involved. In subsequent discussions with his parents they indicated they were fine with coming off title. Those discussions were fairly short and simple. Generally, it was agreed that things would stay as they were, but he said he spoke of getting back the money the defendants were putting into the property.
- [166] The documents marked as Exhibits 6 and 7 resulted. The defendants were concerned that the plaintiffs had been paying less than half, so they added the second line:

Property proceeds to be disbursed as per attached agreement with the inclusion of additional expenses paid towards the property and home by both parties.

- [167] When asked what expenses he had in mind at the time, Jeremy said all of the expenses listed in the exhibit binders, including maintenance costs.
- [168] The Exhibit 7 figures came from Les. He told them they were "rough numbers", a description he repeated many times. They had no idea about the plaintiffs' expenditures, and even the defendants' own number was a "ballpark figure". They felt under pressure, because if they did not sign then the plaintiffs would not release Kate's mother from the mortgage.

[169] Jeremy said he never saw Les' handwritten list of figures (Exhibit 8) prior to signing the agreement, and when asked if he had ever seen Les' list of expenses (Exhibit 18), he said he did not recognise it.

[170] Title to the property was transferred to Jeremy and Kate on May 17, 2013.

Relationship Breakdown

[171] Jeremy said he noticed a change in Les starting in early 2015. He seemed withdrawn and distressed. Jeremy did not know what was going on with him. Les was more aggressive with Kate, complaining about things like the roosters.

[172] In July 2015, the defendants received a letter from Rockwell's solicitors concerning a loan of the plaintiffs that had gone into default. The tone of the letter was very threatening. Jeremy thought this might explain some of Les' tension. He asked Les about it, and Les said he was looking after it and would handle it.

[173] They received more letters from Rockwell's solicitors after that. Jeremy brought these to Les and again Les said he was handling it. Jeremy was becoming concerned that Les was, in fact, not handling it. Les told him that he had consulted a lawyer who told him to "do nothing". He also told Jeremy that he had told Rockwell that the plaintiffs had little or no interest in the subject property.

[174] Les told Jeremy to ignore the letters, but Jeremy was not comfortable with that. He phoned the lawyer who Les said he had used, and the lawyer told him he did not represent Les and had only written a couple of letters for him. Jeremy said he was shocked at that news. Jeremy put that to Les, and Les denied the lawyer's statement.

[175] By this point, Rockwell's lawyers had demanded documents. Les told Jeremy "don't tell them anything". Jeremy said he was not comfortable with lying to Rockwell, and he felt Les was lying to him. Les then became "incredibly hostile". Jeremy assumed it was because Jeremy would not lie for him. Ultimately, Rockwell took default judgment against the plaintiffs.

[176] Process servers started attending at the defendants' home and also following both of them. Jeremy said he was served on multiple occasions, and this created more tension.

[177] Les started to do odd things. By this point, Janet had been absent for months. Les began doing things to harass them, including turning off the hot water, which sometimes occurred daily, and turning off the internet. He changed the locks on the suite so that Jeremy could not get in. Jeremy shimmied through the window to turn something on, and Les later fortified it.

- [178] One night there was a power outage in the neighbourhood. Jeremy needed to get access downstairs to the generator. He called the RCMP. An officer said, "It's your power, you have to get in". Jeremy reasoned that a window was cheaper to repair than a door, so he broke the window to get access. Several days later he received a letter from a lawyer accusing him of "doing a B & E".
- [179] Les' behaviour continued. He would turn the power off and then barricade the door, or the switch area, with goods. He damaged security cameras, and they had video recordings of him doing it.
- [180] One morning, Jeremy came home from work and saw a pile of wires and cable and electronic devices on the steps. Kate had told him the night before that their internet, television and cable was out, and she had heard loud banging. The wires to their various services had been cut and the equipment removed. Les came outside. He admitted cutting the wires. He said he had also cut the furnace, hot water and electrical panel because "he paid for them". He was yelling and screaming, demanding that the defendants buy him out. They tried to explain to him that with the Rockwell lien on the house, it was not a simple matter of writing him a cheque. He seemed not to understand that.
- [181] The repairs took a long time. Each of the cut wires had to be traced back.
- [182] At one point Les said he was not going to live there anymore, and was making his last payment. He said to Jeremy, "Your sister is out, your mother is on the Island, this is our last payment and now it's your problem".
- [183] Although the plaintiffs moved out in late 2016, they returned from time to time. The defendants felt these attendances were for the purpose of harassing them. On December 21, 2016, Jeremy got up from bed and realised the power was out in their area of the house. The outside lights were still on. He concluded the plaintiffs turned the power off. He knocked on the door and asked them to turn the power back on. There was no response. Jeremy called the RCMP. The officer went to the suite and the power came back on. The officer told the defendants that the plaintiffs had been concerned about noise. Jeremy said they had not made any noise or done anything different. Mention was made of noise from a dishwasher, washing machine and stereo, but those claims were false.
- [184] The officer told Jeremy that Les had said to him, "I guess we'll see you tomorrow".
- [185] The next morning the same thing happened - no power. Jeremy went downstairs and asked that they turn the power back on. Janet said she had turned the power off. Les then yelled something, but there was no response after that. Jeremy told them he was coming in, "I'll give you five minutes but if the power is not on, I'll come in". He grabbed a ladder and a drill, and unscrewed the window to the utility room. Les came at him, swinging. Jeremy held him off. He told Kate to call the police. He went upstairs and waited for the police. Four police cars arrived.

- [186] Shortly after this incident, the plaintiffs left.
- [187] The plaintiffs were not paying anything. The only time they came back was to harass the defendants. The defendants' children were terrified.
- [188] Jeremy arranged for movers. He took pictures of the goods just before the movers arrived. The goods were taken to a storage container. Nothing belonging to the plaintiffs was left on the property.

Effect of a Court-Ordered Sale

- [189] Jeremy said the sale of the property would have a drastic effect on their family and would cause disruption to the children. He is limited in where he can live, as it is a condition of his employment that he live in Langley township. Jeremy said they have worked very hard to make the subject property their home.
- [190] Both defendants are very close to the community. Kate is the manager of a minor hockey team. She has done a lot of work for the local school. The school is very small and tight-knit. Jeremy does community work with other firefighters.
- [191] Their daughter has some special needs that make it very important to maintain a consistent routine. She reacts adversely to change.

Cross-Examination

- [192] In cross-examination, Jeremy acknowledged that he said, on discovery, that his memory was not good, but he has had tests done, changed his diet and worked on the problem such that he now considers his memory to be good.
- [193] Jeremy agreed that, on discovery, he said he believed the plaintiffs were going to be 50 percent owners. It was his understanding, however, that this meant the plaintiffs would pay half of the costs relating to the property.
- [194] Jeremy was asked about the storage container, which was located on property elsewhere. He said the movers were hired on October 4, 2017. The goods were put in a secure container, and the container moved (by lift truck) elsewhere because they wanted to avoid harassment by the plaintiffs at the subject property. Through the defendants' lawyers, the plaintiffs were invited to attend to retrieve their goods. All the plaintiffs had to do was to make arrangements through counsel. On one occasion, arrangements were made but the plaintiffs failed to show up. He waited four hours that time. On another occasion he attended and the ground was fine and not muddy, as the plaintiffs claimed. He recalled there were several "no shows" by the plaintiffs.
- [195] Jeremy denied that any of the things he did were carried out as part of a plan to force the plaintiffs from the property.

C. Evan Dosdall

- [196] Mr. Dosdall owns the property next door to the subject property. The Whitfords' property is easily visible from his property.
- [197] Prior to 2010, the southern half of the subject property was not usable. It was heavily treed and swampy. After it was purchased by the Whitfords, trees were removed and drainage put in. Jeremy worked with Mr. Dosdall's father in law on drainage issues, as this was for their mutual benefit. These works made the rear half of the property usable.
- [198] Mr. Dosdall also noticed improvements to the house, with such things as a new front foyer, internal staircase, rebuilt front room, a carport made into a garage, a large new window, a revamped laundry room, new flooring, and new drywall. Mr. Dosdall sometimes saw the inside of the house because he helped Jeremy move things or was there to pick up his son, who is friends with the defendants' son.
- [199] From his observations, Jeremy worked very hard to improve the property. In addition to the work described, he also built a barn and riding ring. He notices Jeremy going back and forth on an ATV, doing fence maintenance, lawn and yard work, bringing food for the livestock and doing millwork.
- [200] Mr. Dosdall said he saw Les on site doing land clearing, but did not see him doing any other work. Janet maintained a garden.
- [201] In cross-examination, Mr. Dosdall recalled that Les also built a shed. The only time he saw Les and Jeremy working together was during the land clearing work.

D. Natasha Patey

- [202] Ms. Patey is the office manager for an organisation that provides supports for adults with disabilities. She knows the defendants because their children attend the same school and she is on the parent advisory council with Kate. Ms. Patey's 19 year old daughter is a behavioural interventionist who has worked with the defendants' daughter for over a year.
- [203] Ms. Patey worked together with Kate to install a new playground at the school, which was done with Jeremy's help, as well as a school garden project.
- [204] Ms. Patey said that the defendants' daughter has social anxiety and gets overwhelmed in social settings.
- [205] Ms. Patey visits at the defendants' house at least once a month. She said Kate and Jeremy are always doing work on the property, whether it is new siding for the house, chicken coops or a back pasture for the horses.
- [206] Ms. Patey said she would not be able to recognize the plaintiffs and she never saw them work on the property.

E. Paul Ellis

- [207] Mr. Ellis is a property appraiser. He prepared an appraisal report in which he appraised the market value of the property at \$1,400,000 as at February 20, 2019.
- [208] The plaintiffs did not require Mr. Ellis' attendance for the purposes of cross-examination, so his report went in (and was marked Exhibit 42) without any testimony by Mr. Ellis.

IV. Positions of the Parties

A. Plaintiffs

- [209] In submissions on behalf of both plaintiffs, Les Whitford reviewed some of the evidence and then said the plaintiffs view the 2013 transaction as a plan concocted by Kate to get them off title and to free up money to pay off credit card debt. Even so, the plaintiffs' say the 2013 transaction confirmed their 50 percent interest in the property.
- [210] The plaintiffs submit that by 2015 the defendants must have realized they could not afford to buy out the plaintiffs, so they drove them out instead.
- [211] After the plaintiffs left the property, their goods went missing. They only managed to retrieve goods from the storage container 165 days after being told their goods were in a container, and these were not all of their goods. Some of their goods were damaged. The missing goods included personal and business files, which hampered their ability to prove the expenses they incurred and other losses.
- [212] The plaintiffs seek damages for the missing and damaged goods.
- [213] The plaintiffs seek an order that the property be sold. They dismiss the appraisal of Mr. Ellis because it is "only an estimate". Only a sale will realize the true value of the property.
- [214] The plaintiffs submit that the expenses claimed by the defendants are "bogus". No one gets paid for working on one's own property. At minimum, the defendants should be required to prove their expenses through a registrar's hearing.
- [215] The plaintiffs suggest a simple approach for the assessment of their 50 percent interest in the property. From the value of the property (\$1.4 million), the original mortgage should be deducted using its 2013 balance of \$725,000 (although I note that the 2013 balance was in fact \$690,000), leaving a balance of \$675,000 to be divided equally, which is \$337,500 each.

B. Defendants

- [216] The defendants argue that the plaintiffs abandoned their legal interest in the property when they removed themselves from title in 2013. As to the 2013 agreement, the defendants say it is void for uncertainty, or was entered into by the defendants under duress. Resulting trust is not available to the plaintiffs because their conduct amounted to "unclean hands". The only remedy available to the plaintiffs is unjust enrichment.

- [217] The defendants acknowledge that the plaintiffs contributed to the property, but say the issue is how much. The defendants bore a much larger proportion of the costs and risks associated with the property, and after 2017 the plaintiffs stopped all contributions. The defendants have a counterclaim for unjust enrichment based on similar arguments.
- [218] The contributions of the respective parties are vastly disproportionate.
- [219] The defendants urge the Court not to order a sale of the property. They allege serious hardship based on a number of grounds.
- [220] As for the plaintiffs' claim for alleged loss of or damage to goods (which is pleaded as conversion), the defendants say there is no evidence the plaintiffs were denied access to their property, and when the property was moved, it was moved by professional movers and securely stored. The plaintiffs picked up the property they wished to recover, and abandoned the property which they apparently did not.
- [221] The defendants say, in any event, that there is no evidence that they have retained any goods of the plaintiffs, there is no evidence of the value of any goods allegedly retained and most of the items complained about by the plaintiffs would have values in the de minimus range in any event.
- [222] By way of counterclaim, the defendants seek punitive damages against Les Whitford for his malicious damage to their property and for his deliberate acts in cutting power and other services to the defendants' living area. They also seek judgment for the shortfall in the monthly payments they agreed to pay, with the defendants calculating that shortfall to be \$23,034.60 to September 2017, which is when the plaintiffs vacated the property.

V. Discussion

A. Credibility

- [223] The nature of the claims and the state of the evidence require that I comment on the credibility of the principal witnesses. This dispute has obviously generated strong emotions and enmity in all of the parties, which influenced their testimony to varying extents. This has caused me to be cautious in accepting certain testimony without testing it against other objective evidence, examination for discovery evidence, or the circumstances generally.
- [224] Les Whitford stood out as being the least objective of the party witnesses. He was very quick to attribute evil motives (or mala fides) to seemingly ordinary events, such as the installation of security cameras. His evidence was also undermined in key respects by contradictory statements from his examination for discovery. I must add, however, that he was respectful in court and he presented the plaintiffs' case very capably for a self-represented litigant.

- [225] Janet Whitford had little involvement in any of the important discussions as all substantive matters were dealt with by her husband. Her lack of involvement meant her credibility was not really in issue. Her medication-caused memory issues give rise to concerns about the reliability of her testimony.
- [226] Jeremy Whitford was much more objective than his father, giving Les reasonable credit for work that Les did on the property, for example. Given the level of animosity between Jeremy and Les, however, I nonetheless conclude that his testimony must still be scrutinized with care.
- [227] I found Kate Whitford to be the most credible of the four principal witnesses. She strove to be objective in her testimony, did not overstate things, and conceded matters reasonably that were against the interest of the defendants. She was a good witness.

B. Findings of Fact

- [228] Under the sub-headings that follow, I set out my findings of fact on the key issues relating to the property.

The 2010 Agreement

- [229] It is clear - and all parties agree on this - that upon the purchase of the property the legal ownership was to be split 50-50. The plaintiffs say, however, that prior to the completion of the purchase the parties also entered into an agreement about the sharing of expenses. I do not accept that submission.
- [230] Les Whitford said the evidence of a prior agreement on expense sharing is found in Exhibit 2, his handwritten note to that effect. However, the note, on its face, must have been made afterward as it refers to a bank deposit already made, which other documents show was made on September 20, 2010 - after completion. In response to that apparent inconsistency, Les said that he added the part about the deposit afterward. I do not believe that explanation. The evidence indicates he gave the note to the defendants to show them what the plaintiffs would or should pay. He would have had to retrieve the note to add the further note about the deposit. There is no evidence that this happened, and I find it highly unlikely in any event.
- [231] I accept the evidence of the defendants that after the completion of the purchase, Les presented them with a note indicating the amount the plaintiffs would pay towards the house expenses. While the defendants may not have expressly agreed with it, they went along with it.

- [232] I also do not accept that the collection of notes prepared by Les in or around September 2010 (Exhibit 10) were given or shown to Jeremy, as Les claimed. Jeremy denied that he ever saw those notes. There are items within those notes to which Jeremy almost certainly would have objected, an alleged outstanding loan from Les to Jeremy being perhaps the most obvious. Importantly, on discovery Les said he did not recall giving those notes to anyone. For those reasons, I find Les' assertion to be unproven.
- [233] The other issue concerning the 2010 transaction is whether the parties agreed that there was a five-year term, at the end of which the plaintiffs would be bought out or the property sold. I am not satisfied there was an agreement to that effect. It was really only Les who said he reached such an agreement with Jeremy. Mr. Hemsworth thought Jeremy was "in the area" when Les mentioned it to Mr. Hemsworth (not to Jeremy), which is very thin evidence indeed, and Janet's evidence on that topic was notably vague.
- [234] I am not sure that it matters whether there was an agreement on a five-year term, since these proceedings themselves will resolve the issue of a buyout or sale.

The 2011 Adjustment

- [235] There was no real disagreement about this adjustment or about how it came about, although Les denied that Kate's spreadsheet was presented to them to show the inadequacy of their contribution. This denial was an example of the type of testimony that did not do his credibility any good. It seems obvious that this was exactly the purpose of the document.
- [236] The significance of this adjustment to the plaintiffs' monthly payment lies in the fact that the parties came to an actual agreement on the division of certain expenses relating to the property.
- [237] Les asserted that there was a further adjustment that was to be made as a result of the successful application for farm status, which reduced the property taxes payable. He said that because the plaintiffs were paying a monthly amount reflecting the former tax figure, he came to an agreement with Kate that the excess would be credited to the plaintiffs as their contribution to the mortgage. Kate recalled no such discussion or agreement. Importantly, Les testified differently at his examination for discovery. There, he said the additional amount would go "towards the back yard, buying materials, whatever was used for the farm". From my assessment of the evidence on this point, I conclude there was no agreement for additional mortgage payment credit, as Les claimed.

The 2013 Transaction

- [238] There is no dispute that the parties confirmed the plaintiffs would continue to have a 50 percent interest in the property following the 2013 transaction, although the defendants say the agreement was void for uncertainty or voidable for duress. I will discuss those two issues later. The primary issue here centres on the expenses that were to be credited.
- [239] I conclude that the attachment (Exhibit 7) to the 2013 agreement (Exhibit 6) was for the purposes of illustration only and it was not intended to prescribe the actual numbers involved in the division of proceeds or, in other words, to have binding effect. I will explain my reasons for this in a moment, but first I will deal with a related issue.
- [240] Les said he prepared Exhibit 18, a list of various expenses incurred by the plaintiffs as well as other credits, which came to a total of about \$155,000, and which was the source of the figure he used for the "Les and Janet Investment" number in Exhibit 7. On discovery he agreed that the figures in Exhibit 18 were not accurate. He said he gave a copy of Exhibit 18 to the defendants and they raised no objections. The defendants said Les presented only the Exhibit 7 document to them (according to Kate, then in written form), and this was done at the last minute, with the assurance that the numbers were "really just guesses" (as per Kate) or "rough numbers" (as per Jeremy).
- [241] I accept the evidence of the defendants on this point. Whether the defendants actually saw Exhibit 18, the more detailed list, is not clear, but what is clear is that the numbers in that list and, as a consequence, the numbers used in Exhibit 7, were not accurate. I also accept that the defendants had no adequate opportunity to question the \$155,000 figure, to take steps to get accurate figures for the items in question, or to assemble a list of their own expenses. Accordingly, I find it more likely than not that Les told them that the figure or figures were rough figures, or used similar wording.
- [242] To return to my earlier conclusion - that the Exhibit 7 distribution was illustrative only - I come to that conclusion for the following reasons:
- a) Les admitted the numbers in Exhibit 18 (his list of figures that made up the plaintiffs' "investment" figure in Exhibit 7) were not accurate;
 - b) Exhibit 7 did not include expenses incurred by the defendants or other credits in their favour;
 - c) as I have concluded, Les told the defendants the numbers were merely "rough numbers" or used a phrase to similar effect; and
 - d) a phrase was added to the Exhibit 6 agreement that the proceeds would be disbursed with the "additional expenses paid by both parties".

Cash Payments Allegedly Made

- [243] Janet Whitford testified that she saw Les pay Jeremy in cash, the suggestion being that some of the plaintiffs' monthly contributions were made in this manner.
- [244] This allegation is unproven because: (1) Les Whitford never testified he made any cash payments to Jeremy; (2) from my notes at least, it appears that this allegation was never put to Jeremy; and (3) even if cash payments were made, there was no evidence of the amount or amounts.

C. Analysis

- [245] Because the plaintiffs represented themselves, the Court did not have the benefit of submissions on the law from both sets of parties. This added considerably to the Court's burdens in preparing reasons for judgment.

Whether a Trust was Created

- [246] In their submissions, the defendants argue that in order to assert an interest in the property, the plaintiffs must prove they have an equitable interest in it, either on the basis of an equitable trust or unjust enrichment. In the case of unjust enrichment, they argue that the plaintiffs "could not possibly have an expectation of a 50/50 interest", given the disparity in contributions from the respective parties. In the case of equitable trust, they raise - and dismiss - only one form of equitable trust, that of a purchase money resulting trust, as articulated in *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33. As the court said in that case (at para. 1), a purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property. That is not the situation here.
- [247] With one brief exception, the defendants did not make any submissions about other forms of trusts, such as express, constructive and resulting trusts. Resulting trusts were mentioned only insofar as the defendants said the plaintiffs could not rely on a resulting trust because they acted with "unclean hands".
- [248] To revert to the pleadings for a moment, in their amended notice of civil claim, the plaintiffs (who had counsel until the eve of trial) have pleaded that the defendants hold the plaintiffs' interest in the property in trust on the basis of an express, resulting or constructive trust. The issue has therefore been properly placed before the Court.
- [249] The evidence of the parties may not be a sufficient basis on which to find an express trust. No party used that term, or one like it, to characterize the transaction they carried out in 2013; for example, no party said the plaintiffs' 50 percent interest was to be held in trust by the defendants. The intention to create a trust might be implied (thus creating a precatory trust), but in my view this approach complicates the analysis more than it need be because the situation is better analysed in terms of a resulting trust.

[250] In Waters' Law of Trusts in Canada, 4th ed. (Toronto: Carswell, 2012) at 21 [Waters], the author states:

A resulting trust occurs where, gratuitously, A transfers property to B or into the names of himself and B .

[251] Waters expands on that principle at 405-406:

Where a person transfers his property into another's name, or into the names of himself and another, and does so gratuitously, the principle underlying *Dyer v. Dyer* would seem logically to apply to this situation also. Since Equity assumes bargains, and not gifts, he who has title gratuitously put into his name must prove that a gift was intended, or else he will hold on resulting trust for the transferor.

[Footnotes omitted.]

[252] The situation described in those excerpts is the situation here. In 2013, the plaintiffs transferred their 50 percent interest in the property to the defendants, they did so gratuitously, and no gift was intended.

[253] Post-transfer contributions are not to be taken into account in fixing the parties' respective ownership interests because a person's interest in property crystallizes at the time of acquisition: *Pecore v. Pecore*, 2007 SCC 17, at paras. 56-59; *Dhaliwal v. Ollek*, 2012 BCCA 86, at para. 42 [Dhaliwal]. Instead, these are matters to be dealt with by way of an accounting: *Dhaliwal*, at para. 42.

[254] The defendants argue that the plaintiffs cannot rely on a resulting trust because they do not have clean hands. They list the following matters as amounting to "unclean hands": (1) failing to pay half of the property expenses; (2) harassing or intimidating the defendants in order to force them to sell or buy out the plaintiffs' interest; and (3) defaulting on a loan, misrepresenting their interest in the property to that creditor, and creating a situation whereby a CPL was filed against the property.

[255] In *Wang v. Wang*, 2020 BCCA 15, the court explained the "clean hands" doctrine as follows:

[46] The clean hands doctrine decrees that "[h]e who comes to equity must come with clean hands": *Mayer v. Mayer*, 2012 BCCA 77. The doctrine is narrowly applied, however, and does not entitle a court to canvass all aspects of the party's behaviour known to the court. Its use must be kept to the circle of behaviour related to the relief sought. In *DeJesus v. Sharif*, 2010 BCCA 121 at para. 85, Chief Justice Finch adopted this passage from *Snell's Equity*, 30th ed. (London: Sweet & Maxwell, 2000) at 32:

The maxim ... must not be taken too widely; 'Equity does not demand that its suitors shall have led blameless lives.' What bars the claim is not a general depravity but one which has 'an immediate and necessary relation to the equity sued for,' and is not balanced by any mitigating factors.

He adopted, also, this statement from *The Principles of Equitable Remedies*, 6th ed. (UK: Sweet & Maxwell, 2001) at 169-170:

... it must be shown, in order to justify a refusal of relief, that there is such an "immediate and necessary relation" between the relief sought and the delinquent behaviour in question that it would be unjust to grant that particular relief. ... So it was once emphasised "that general fraudulent conduct signifies nothing; that general dishonesty of purpose signifies nothing; that attempts to overreach go for nothing; that an intention and design to deceive may go for nothing, unless all this dishonesty of purpose, all this fraud, all this intention and design, can be connected with the particular transaction, and not only connected with the particular transaction, but must be made to be the very ground upon which the transaction took place, and must have given rise to this contract".

[Emphasis in original.]

[256] In brief, none of the matters raised by the defendants as constituting unclean hands has such an "immediate and necessary relation" to the relief sought that it would be unjust to grant that relief. The relief sought is a resulting trust for a one-half interest in the property in relation to a transaction that took place in 2013. The events complained of took place at least two years after that transaction.

[257] Accordingly, I conclude the defendants hold the plaintiffs' 50 percent interest in the subject property on a resulting trust, but subject to an accounting of the contributions and expenses properly claimable by the parties.

Uncertainty and Duress

[258] My finding that Exhibit 7 was a mere illustration of the manner in which any sale proceeds would be distributed effectively eliminates the defendants' argument about uncertainty. The agreement that was reached confirmed the 50-50 interests of the parties, with the eligible contributions of the parties to be sorted out later. Given that any dispute over contributions can be resolved through an accounting, there is no uncertainty that prevents the creation of a contract.

[259] The defendants argue that they had no choice but to sign Exhibit 6 (which attached Exhibit 7), but they took no steps to disavow it afterward, when the pressure of the situation was long gone. I am also not satisfied that the situation at the time of the 2013 transaction meets the test of duress because the defendants had the ready option of not proceeding with the remortgaging of the property. The defendants have not established duress.

D. Unjust Enrichment

- [260] In this context, an accounting is a process to determine the amount of an unjust enrichment. There are three elements to unjust enrichment: (1) an enrichment or benefit to one party; (2) a corresponding deprivation to another party; and (3) the absence of juristic reason for the enrichment: *Kerr v. Baranow*, 2011 SCC 10, at para. 32 [Kerr].
- [261] The accounting in this case is not a straightforward matter of dividing all expenses and other contributions equally (based on equal interests) because: (1) the parties agreed to a sharing arrangement that was other than equal for some of the expenses; and (2) the expenses and other contributions are limited to the acquisition, preservation and maintenance of the subject property. On the first point, the existence of the agreement on certain expenses is a "juristic reason" for what might otherwise be an enrichment on those items arising from unequal sharing. On the latter point, see *Suen v. Suen*, 2016 BCCA 107, at para. 58 [Suen].
- [262] I address a further issue relating to the expense sharing agreement. In their second amended response to civil claim, the defendants plead that there was an agreement between the parties to share expenses equally. There was, however, no evidence to this effect.

E. Work Done on the Property

Improvements

- [263] Both the plaintiffs and defendants did a great deal of work to improve the property. Jeremy, in particular, did an enormous amount of work in improving and maintaining the property. However, unjust enrichment does not mean that all expenses or contributions relating to the property are included; instead, it is only those contributions that enrich or benefit one party to the detriment of the other that fall within the scope of the principle.
- [264] There are many cases that confirm that point, *Suen* being one of them. There, the court said:
- [59] The parties led the judge astray when they led evidence and presented argument concerning expenditures by Andy for such things as cable TV, gas, electricity, security services, Internet, groceries and personal debts. Whether or not Albert was unjustly enriched by Andy's payments for those items, they were factually (except as I shall indicate) unrelated to their equity interests in the Richmond home. Those expenditures, in short, have nothing to do with the present litigation.

- [60] I do not overlook the fact that certain of the expenditures - notably those for electricity, gas and home security services - may have served to preserve the home from damage. Such preservation, however, was merely an ancillary benefit of those expenditures. They were undertaken to ensure the comfort of the home's occupants, for their safety, and to protect their belongings. I do not think that it is appropriate to include any of those items in the assessment of unjust enrichment with respect to the Richmond home.
- [265] In the present case, the parties agreed that some of the ordinary costs of occupation (electricity, gas, garbage and cable/phone/internet) would be shared, and so that distinguishes this case from Suen insofar as those particular expenses are concerned.
- [266] In *Kerr*, the Supreme Court of Canada, in discussing unjust enrichment in the context of constructive trusts, elaborated on the nature of the link that must be shown between the contribution and the property in question:
- [51] As to the nature of the link required between the contribution and the property, the Court has consistently held that the plaintiff must demonstrate a "sufficiently substantial and direct" link, a "causal connection" or a "nexus" between the plaintiff's contributions and the property which is the subject matter of the trust (*Peter*, at pp. 988, 997 and 999; *Pettkus* at p. 852; *Sorochan*, at pp. 47-50; *Rathwell*, at p. 454). A minor or indirect contribution will not suffice (*Peter*, at p. 997). As Dickson C.J. put it in *Sorochan*, the primary focus is on whether the contributions have a "clear proprietary relationship" (p. 50, citing Professor McLeod's annotation of *Herman v. Smith* (1984), 42 R.F.L. (2d) 154, at p. 156). Indirect contributions of money and direct contributions of labour may suffice, provided that a connection is established between the plaintiff's deprivation and the acquisition, preservation, maintenance, or improvement of the property (*Sorochan*, at p. 50; *Pettkus*, at p. 852).
- [267] Many of the expenses and notional labour costs included in the defendants' binders do not qualify as expenditures or contributions to the acquisition, preservation, maintenance, or improvement of the property. Instead, these were costs associated with the defendants' occupation and enjoyment of the property. To take the most extreme examples, raking leaves and blowing debris off the driveway are not activities that enhanced, preserved, maintained or improved the property in the proper sense of those terms.
- [268] I am satisfied that much of the work done in the initial stages was done as part of a common or joint family venture to ready the property for joint occupation and should be included in the accounting, subject to the comments below. This includes all of the land clearing, levelling, placement of fill, drainage works, the preparation of a parking area along with the installation of connections for the motorhome, the upgrade of the water filtering system, the work done to create the suite in the basement, and any other work to prepare the house for joint occupation (the new furnace and hot water tank, for example). Though perhaps a close call, I include the work done to complete the fencing of the perimeter of the property.

- [269] I would also include the later work to replace hog fuel with gravel in the riding area as I consider this to be part of properly completing the drainage work on the property.
- [270] The work done to convert the carport to an enclosed garage and the enlarging and finishing of the deck were done by both Les and Jeremy, thus suggesting these were also part of a joint family venture. I would allow these items.
- [271] I find it unnecessary to delve into the dispute about notional labour costs because I conclude that, for the allowed items, the labour put in by Les and Jeremy was probably roughly even. Given that conclusion, it is unnecessary to include any labour component and the accounting can be confined to out-of-pocket expenses for those items.
- [272] I would not include any expenses related to the farm. This was a hobby or pastime in which the defendants chose to engage. The absurdity of those expenses in terms of an unjust enrichment claim is demonstrated by the fact that the defendants claim farm expenses and labour totalling \$430,000 for a farming operation that garnered revenue in the range of just \$2,500 annually, with the only other benefit being an annual reduction in property taxes of perhaps \$2,300.
- [273] I would not include in the expenses any notional labour costs incurred for other improvements such as the barn, horse shelter, chicken coops, hydrants, driveway replacement or repairs, landscaping, gardens, interior fencing, playground, lighting in the riding area, or the renovation of the kitchen and upper living areas of the house. These were amenities done for the enjoyment of the defendants or were otherwise associated with their continuing occupation of the property, and they were not part of any joint effort to ready the property for joint occupation.
- [274] To the extent that these improvements, or indeed any of the improvements, added actual value to the property, that added value would be properly taken into account in an unjust enrichment analysis. There was no expert or other evidence before the Court to establish what that added value, if any, might be. Since, as I will explain later, there will be an order for an accounting before the registrar in the event the parties cannot come to an agreement, I will leave this aspect to be dealt with on that accounting. To be clear, I will allow the defendants to adduce expert or other evidence to establish that the improvements they alone carried out added to the overall value of the property. In the meantime, in order to facilitate a resolution I will say this: the improvements in question likely added to the value of the property to some extent, although it is unlikely that amount is very large. I hazard the view that \$30,000 might be an appropriate figure to reflect that.
- [275] I would allow the expenses (including a labour component at \$30 per hour) incurred for the re-siding of the house and the repair of the roof, as these were repairs which maintained the physical integrity of the house. I have used the \$30 figure, reduced from the \$50 billing rate, as the \$50 rate no doubt includes elements of overhead and profit that are typical with contractors.

F. The Accounting

- [276] The defendants opposed a reference to the registrar. They argue the Court has all the information it needs to perform the necessary accounting and to grant final judgment.
- [277] While much of the evidence may well be before me in a general sense, the evidence is not organized in a manner that matches my findings and, in any event, two aspects are missing (those being the potential increase in value, discussed above, and the amount spent on the basement suite). In submissions, both sets of parties provided rough analyses on which they said judgment might be founded, but these analyses had more in keeping with mediation or settlement proposals than they did to calculations that reflected the actual evidence.
- [278] I encourage the parties to come to an agreement on the allowed costs and expenses, and to deal with those in broad fashion, rather than in minute detail.
- [279] I appreciate the plaintiffs may be hampered in their ability to prove their contributions due to the fact their records are not available. Nonetheless, if there is no agreement on this item it will be assessed by the registrar, perhaps with evidence from an estimator.

G. Framework for the Accounting

- [280] In order to assist the parties, and hopefully to increase the likelihood of agreement, I provide the following framework for the accounting;
- a) the value of the property is fixed at \$1,400,000;
 - b) the downpayments and any acquisition costs are to be credited as appropriate;
 - c) the plaintiffs' obligation to pay \$1,200 towards the mortgage and other expenses will run through to the end of December 2016, when they left the property;
 - d) thereafter, property taxes will be shared equally;
 - e) property insurance costs will be shared equally from 2010 to present (see Suen, at para. 62);
 - f) ordinary upkeep, cleaning and regular or minor repairs are to be borne by the defendants, as these are ordinary costs of occupying the property; and
 - g) security system charges are not to be shared.
- [281] As for the mortgage payments, from January 1, 2017 onward, the cost of the mortgage will be shared one-third to the plaintiffs and two-thirds to the defendants, in accordance with their 2011 agreement. The share payable by the plaintiffs will not include any additional amount that is attributable to the \$160,000 increase in the amount borrowed by the defendants. Should the defendants show that the mortgage payment increased (or was greater than it otherwise might have been) due to the filing of the CPL, then that additional amount will be payable by the plaintiffs. Similarly, if the plaintiffs show that the mortgage

payment increased because the defendants took out a second mortgage to secure a line of credit, then that additional amount will be payable by the defendants.

[282] The defendants argue that they should be given credit for the equity that has been gained during the time they bore the burden of all of the mortgage payments. I conclude, however, there is no unjust enrichment because the defendants have had the benefit of both the sole occupation of the property and the use of the plaintiffs' equity in the property. This also addresses the plaintiffs' claim for occupational rent, which was pleaded but not mentioned in the plaintiffs' submissions.

[283] At the risk of repetition, I will also address the defendants' argument that they should have greater equity because even before the plaintiffs stopped their contributions, the respective mortgage contributions of the parties were not equal. As noted earlier, the mortgage contributions were not equal because the parties agreed they would be unequal, and this agreement is a "juristic reason" for what might otherwise be an unjust enrichment.

H. Whether Property Should Be Sold

[284] I am persuaded that the defendants should have the opportunity to buy out the plaintiffs' interest in the property. In the event the defendants are unable to do so, then the property will have to be sold.

[285] Accordingly, I decline to make an order for the sale of the property at this time, but the parties have leave to apply for an order for sale at a later time.

I. Claims for Lost, Missing or Damaged Goods

[286] The plaintiffs claim for goods they say were lost, missing or damaged. The defendants deny that any of the plaintiffs' goods were lost, missing or damaged. They say any remaining goods were carefully packed up, stored in a container and ultimately retrieved by the plaintiffs.

[287] I am unable to resolve this issue. Essentially, one party (Les Whitford) said goods were missing or damaged, and another party (Jeremy Whitford) said no goods were lost or damaged. These are the two witnesses whose testimony I am particularly cautious about, and there is no evidence on which I can conclude that one version is more likely than the other. Accordingly, this claim is unproven.

[288] The defendants claim damages, including punitive damages, for the deliberate cutting of cable, telephone and central vacuum cords. This engages, at least indirectly, the accusations of each sets of parties of misbehaviour by the other.

[289] It seems likely there was bad behaviour on both sides. The fact that matters ended in a physical confrontation between father and son is almost certainly an indictment of both of them for allowing matters to get to that point. Whether there was deliberate harassment by one side or the other is, again, not clear, but what is clear is that Les Whitford deliberately and maliciously cut wires that provided services to the upper living area of the house. In fact, he admitted those acts.

[290] The defendants claim damages for that deliberate damage to property, but they provided no proof of pecuniary or other loss, and for that reason I decline to make any award of compensatory damages for those acts. I do, however, consider that punitive damages are appropriate to punish and denounce Les Whitford for those deliberate and reprehensible acts. I consider \$2,000 to be an appropriate sum.

VI. Conclusion

[291] I conclude as follows:

- a) the plaintiffs and defendants each have a 50 percent interest in the subject property, with the defendants holding the plaintiffs' 50 percent interest on a resulting trust, but subject to an accounting of the contributions and expenses properly claimable by the parties. I have outlined the framework of that accounting in these reasons for judgment;
- b) in the event I have missed any class of expense or contribution that should be considered in the accounting, the parties have leave to speak to that matter;
- c) should the parties not come to an agreement on the accounting, the matter will be referred to the registrar for a report and recommendation;
- d) I decline to make an order for sale of the property at this time. The parties have leave to apply for an order for sale at a later time;
- e) the plaintiffs' claim for lost or damaged goods is dismissed;
- f) I award the defendants punitive damages in the amount of \$2,000 against Les Whitford for his deliberate damage to property;
- g) the defendants' claim for compensatory damages for the property damage caused by Les Whitford is dismissed; and
- h) the issue of costs will await the outcome of the accounting.

"Blok J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/05/2020BCSC0513.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/whitford-v-whitford-2020>

Prepared on 25 October 2026 · Esheria