

CANADA / JUDGMENT

Zucker v. Zucker

2022 BCSC 2025

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2022 BCSC 2025 Zucker v. Zucker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zucker v. Zucker,

2022 BCSC 2025

Date: 20221121

Docket: S220011

Registry: New Westminster

Between:

Ralph Zucker and Lucille Zucker

Plaintiffs

And

David Cory Zucker and Katy Maria Zucker

Defendants

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Counsel for the Plaintiffs:

J. Zaitsoff

Counsel for Defendant Kathy Zucker:

D. Schmidt

Place and Date of Hearing:

New Westminster, B.C.

October 17, 2022

Place and Date of Judgment:

New Westminster, B.C.

November 21, 2022

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I. Introduction

- [1] By way of summary trial, the plaintiffs Ralph Zucker and Lucille Zucker apply for judgment in the amount of \$400,000 against the defendants David Zucker and Katy Zucker.
- [2] Since the parties share surnames, it is convenient to refer to them by their first names.
- [3] Ralph and Lucille are the parents of David. David and Katy are married but they separated on September 23, 2019.
- [4] In 2016 - 2018, Ralph and Lucille transferred a total of \$573,912 to David and Katy (the "transfers"). The money was used by David and Katy to purchase a property in Armstrong, British Columbia, and to construct a home on the property. David and Katy moved into the home in November 2017. Shortly thereafter they granted a mortgage on the property. They used most of the proceeds of the mortgage to pay Ralph and Lucille \$140,000, thus reducing the net amount transferred by the plaintiffs to the sum of \$433,912.
- [5] The plaintiffs say that the transfers were a loan to the defendants, jointly. They claim the sum of \$400,000 as a debt due, either on the basis of the loan itself, or alternatively on the basis of a promissory note in the amount of \$400,000 signed by the defendants February 14, 2019. In the further alternative, they claim in unjust enrichment.

- [6] David consents to judgment. He agrees that the monies advanced were a loan. Katy contends that the monies advanced were a gift, rather than a loan. She also alleges that the promissory note is unenforceable, on various grounds. She contends that this matter is unsuitable for determination on the basis of a summary trial, and that a conventional trial is required. A three day trial is scheduled to take place in New Westminster commencing February 28, 2023.
- [7] The property has been sold. The net proceeds of sale of \$419,782 are held in a solicitor's trust account, to be paid out upon consent of the parties or court order.

II. Background

- [8] The defendants were married November 22, 2008. They have two children, aged nine and twelve. After their marriage they resided with the plaintiffs in the home of the plaintiffs in Surrey, for several years. In 2015 they moved with their children to Armstrong, B.C. They resided in a rented home there.
- [9] It is common ground that in 2016 the plaintiffs agreed to assist the defendants financially with the purchase of a home in Armstrong. The defendants decided to purchase a lot and build a new home. All of the money needed to purchase the lot and build the new home was provided by the plaintiffs, by way of the transfers.
- [10] The purchase of the land completed on December 29, 2016. The purchase price was approximately \$130,000. Title to the property was placed in the names of the defendants. Construction of the home began soon after the transfer of the land. The transfers were made between November 17, 2016 and October 16, 2018, and were in varying amounts. The defendants copied construction invoices to the plaintiffs, who either transferred funds to the defendants' joint chequing account to allow them to pay the invoices, or paid the invoices themselves, directly.
- [11] The defendants moved into the home in November 2017. The plaintiffs continued to fund expenses for things such as landscaping and fencing thereafter.
- [12] While the house was under construction, in July 2017, title to the property was transferred from David and Katy to Ralph.
- [13] According to Ralph, he and Lucille were made aware that David and Katy were having marital problems. Ralph and Lucille travelled to Armstrong to speak with them. Ralph says that during these discussions, the loan was discussed. Ralph says that David and Katy agreed that if they were to separate, the property would be sold and the loan would be repaid. He contends that in the following weeks, further discussions between the plaintiffs and defendants occurred. He says that David and Katy agreed to transfer title to the property from themselves to Ralph, "to acknowledge the loan, and the interest in the property of my wife and me".

- [14] Lucille agrees with Ralph as to the general nature of the discussions about repaying the loan, but her evidence is unspecific as to details. She says that she participated in many family discussions by telephone and in person among the four parties during 2016 through 2018, and that on many occasions during those discussions David and Katy agreed that if they were to separate, the property would be sold and the loan repaid.
- [15] Katy says that the defendants transferred title to the property to Ralph at his request in July 2017 "due to the discord in David and I's marriage." She denies that that the defendants agreed that if they separated, the property would be sold and the plaintiffs would be repaid. She concedes that discussions took place with the plaintiffs at this time, but says that most of the discussions about the money were between David and the plaintiffs directly, and that she was not involved in the majority of the discussions.
- [16] There is no affidavit from David, but in his Response to Civil Claim he admitted the facts alleged by the plaintiffs in their Notice of Civil Claim, including that the transfers were a loan. As noted, he consented to judgment.
- [17] Title to the property was transferred back from Ralph to the defendants in November 2017, around the time when the defendants moved into the new home. The parties agree that the re-transfer occurred during a time when it appeared the marital relationship problems had improved. Ralph says that there appeared to be marital harmony between David and Katy, and they requested that the plaintiffs transfer title back to David and Katy, and the plaintiffs agreed to do so. He says that the defendants acknowledged and agreed that the plaintiffs had an interest in the property, which would be sold and the loan repaid if the defendants separated.
- [18] In January 2018, the defendants granted a mortgage on the property in an amount slightly greater than \$140,000.
- [19] They paid \$140,000 to the plaintiffs from the mortgage proceeds. The plaintiffs say that this was a payment against the amount due, which reduced the amount due to \$433,912. Katy's position is that nothing was owing to the plaintiffs after this amount was paid to them.
- [20] Ralph says that in or about December 2018 they became aware that David and Katy appeared once again to be having marital troubles. On several occasions the plaintiffs travelled from their South Surrey home to Armstrong to meet with them. They also had discussions over the telephone.
- [21] Katy says that she was assaulted by David on January 5, 2019. She says that she had serious concerns about David's behaviour and was in fear of David. She asked the plaintiffs for help. They attended Armstrong once again. She says that they demanded she sign the promissory note, which she signed February 14, 2019, before a Notary Public in Armstrong. All the parties attended at the same time to sign the note. She says that she felt forced and bullied into signing the promissory note.

[22] On October 9, 2019, soon after the defendants separated in September, 2019, the plaintiffs made a written demand for payment under the promissory note, demanding payment of \$400,000 within 90 days. They commenced these proceedings on October 18, 2019.

III. Analysis

A. Suitability for Summary Trial determination

[23] Rule 9-7(15) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules] states:

(15) On the hearing of a summary trial application, the court may

- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
- (b) impose terms respecting enforcement of the judgment, including a stay of execution, and
- (c) award costs.

[24] Pursuant to the terms of the Rule, then, the court may grant judgment on a summary trial, unless: (i) the court is unable to find the facts necessary, on the whole of the evidence, or (ii) it would be unjust to decide the issues on the application.

[25] The principles governing the issue of suitability for summary trial were discussed in *Gichuru v. Pallai*, 2013 BCCA 60:

[30] In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.), the court confirmed that the court under this rule "tries the issues raised by the pleadings on affidavits", that "a triable issue or arguable defence will not always defeat a summary trial application", and that "cases will be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law" provided that the judge does not find "it is unjust to do so" (p. 211). In determining the latter issue (whether it would be unjust to proceed summarily), the Chief Justice identified a number of relevant factors to consider (at p. 215):

In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, *inter alia*, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

- [31] To this list has been added other factors including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: *Dahl v. Royal Bank of Canada et al.*, 2005 BCSC 1263 at para. 12, upheld on appeal at 2006 BCCA 369.
- [32] All parties to an action must come to a summary trial hearing prepared to prove their claim, or defence, as judgment may be granted in favour of any party, regardless of which party has brought the application, unless the judge concludes that he or she is unable to find the facts necessary to decide the issues or is of the view that it would be unjust to decide the issues in this manner. This requirement was underscored by Madam Justice Newbury in *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275:
- [34] It is trite law that where an application for summary determination under Rule 18A is set down, the parties are obliged to take every reasonable step to put themselves in the best position possible. As this court noted in *Anglo Canadian Shipping Co. v. Pulp, Paper & Woodworkers of Canada, Local 8* (1988) 27 B.C.L.R. (2d) 378 (B.C.C.A.) at 382, a party cannot, by failing to take such steps, frustrate the benefits of the summary trial process. Where the application is brought by a plaintiff, the defendant may not simply insist on a full trial in hopes that with the benefit of viva voce evidence, 'something might turn up': see *Hamilton v. Sutherland* (1992), 68 B.C.L.R. (2d) 115, [1992] 5 W.W.R. 151 (B.C.C.A.) at paras. 66-7. The same is true of a plaintiff where the defence has brought the R. 18A motion. [Emphasis added.]
- [34] In summary, the jurisprudence is clear that, subject to certain guidelines, the decision as to the suitability of proceeding by way of summary trial to determine an action (or issue), is a discretionary one.
- [35] The authorities are also clear that a summary trial, although heard on affidavits in chambers, remains a trial of the action for which the plaintiff (even if not the applicant) retains the onus of proof of establishing his or her claim(s) and the defendant (even if not the applicant) retains the burden of establishing any defence that is raised.
- [26] In *Hryniak v. Mauldin*, 2014 SCC 7 [Hryniak], the Supreme Court of Canada recognized that most Canadians cannot afford the cost of a conventional trial, and that a culture shift was required in order to create an environment promoting timely and affordable access to the civil justice system: at paras. 1 - 2. The Court endorsed the use of what are in British Columbia called summary trials, in appropriate cases: at para. 3. The Court stated that the relevant rules of court must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims: at para. 5. The Court of Appeal of this province has endorsed the principles discussed in *Hryniak* in the context of the British Columbia summary trial rule: *Universe v. Fraser Health Authority*, 2022 BCCA 201, at para. 21; *Knight v. British Columbia*, 2021 BCCA 251, at para. 25. This is all consistent with the object of the Rules, as set out in Rule 1-3:

Object

- (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to

- (a) the amount involved in the proceeding,
- (b) the importance of the issues in dispute, and
- (c) the complexity of the proceeding.

[27] With these principles in mind, I have no difficulty concluding that I am able to find the facts necessary to decide the issues of fact and law, and that it would not be unjust to decide the issues on the application.

[28] The central issue is a factual one; that is, whether the transfers were intended by the plaintiffs, the transferors, as gifts, or loans. In the circumstances of this case, that is not a complex issue. It is a discrete issue on which the entire action may be decided. The amount involved is not large, as compared to the costs of a conventional trial. The principle of proportionality favours summary trial determination in this case. There has been ample time for the parties to prepare for this application. The action was commenced more than three years ago on April 18, 2019. The application was filed February 22, 2022, approximately eight months prior to the hearing of the application. Examinations for discovery of the main protagonists, Ralph and Katy, have been conducted. There are no document disclosure issues. Many of the significant facts are not in dispute.

[29] It is unlikely that the oral testimony of the witnesses would be substantially different than their affidavit and examination for discovery evidence available to me on this application. It is unlikely that the court would be in a better position to decide the issues upon a conventional trial than I am on this application.

B. Loan or Gift?

[30] As noted, this issue depends upon determination of the actual intention of the transferors, Ralph and Lucille, at the relevant times. That is, when the transfers were made between November 17, 2016 and October 16, 2018. This is a question of fact. However there is a presumption of law that gratuitous transfers are held on a resulting trust. If the presumption is not rebutted, then, in effect, the defendants continue to hold the monies in trust for the plaintiffs, and would be obliged to return the money to them.

- [31] The transferor's actual intention is determined on a balance of probabilities. The trial judge commences the inquiry with, in this case, the presumption of a resulting trust, and weighs the evidence in an attempt to ascertain the transferor's actual intention. The presumption only determines the result where there is insufficient evidence to rebut it on a balance of probabilities: *Pecore v. Pecore*, 2007 SCC 17 [*Pecore*] at para. 44.
- [32] In this case, as I will explain, Katy has failed to rebut the presumption, on a balance of probabilities. On a balance of probabilities, I conclude that the plaintiffs intended a loan of the money rather than a gift, and that the defendants accepted the money, as a loan.
- [33] Unlike in many cases, such as *Pecore*, in this case the transferors are not deceased, and have given sworn evidence as to their intentions. Their evidence is, of course, self-serving, as is Katy's evidence. However, I consider the evidence of the plaintiffs substantially more persuasive than that of Katy.
- [34] The plaintiffs' evidence is primarily provided in Ralph's affidavit and his examination for discovery evidence, adduced by Katy. His evidence is logical and consistent. There are no major discrepancies in his evidence, and I accept it, on the substantial points that are relevant to this issue.
- [35] Katy is at a disadvantage, in that, she concedes that she had little direct dealings with the plaintiffs about the material financial matters. To her credit, her evidence does not seem to be embellished. For example she says that:
- [28] When David, the children and I moved to Armstrong in 2015 we rented a house at Rosedale Avenue. However, we desired to purchase a home. The Plaintiffs agreed to assist David and I financially with the purchase of a home.
- [31] The Plaintiffs then advanced funds to David and I to engage a general contractor and various subcontractors to construct a residence at the Property.
- [Emphasis added.]
- [36] She does not say here that the money was a gift.
- [37] She concedes that her evidence about the transfers is at least largely hearsay. She states:
- [34] David was the one dealing directly with the plaintiffs on the construction of the home and I was in the background, not regularly discussing these issues with the Plaintiffs.
- [39] It was my understanding from discussions with David and the Plaintiffs in late 2017 and January 2018 that most of the money provided by the Plaintiffs for the Property was a gift.
- [38] As to the mortgage and payment of \$140,000 to the plaintiffs in January, 2018, she says:
- [39] I recall the Plaintiffs told David and I that they wanted some of the money back respecting what they had provided for the purchase of the Property and construction of the home, but that the \$140,000 repayment satisfied this request and that nothing more was owing.

- [39] At best, Katy's evidence would suggest that in late 2017 or early 2018, well after the arrangements were first put into place, and when most of the transfers had already taken place, that the plaintiffs agreed to accept payment of some of the money, in satisfaction of the whole amount owing. No actual accord and satisfaction is pleaded. However, even this evidence tends to suggest that the transfers were not gifts when they were made.
- [40] Since the inquiry focuses on the intention of the transferor, in cases of this type, the state of knowledge of the opposing spouse about the transaction is not determinative: *Tobias v. Tobias*, 2016 BCSC 125, at para. 42, citing *Byrne v. Byrne*, 2015 BCSC 318, at para. 47.
- [41] There are no contemporaneous documents relevant to the inquiry, but there is some important circumstantial evidence supporting the evidence of the plaintiffs.
- [42] The transfer of the property from the defendants to Ralph in July 2017 is inconsistent with the transfers being gifts. There is common ground between Ralph and Katy that this conveyance was instigated or caused by marital troubles between David and Katy.
- [43] It is clear to me that the transaction was intended to protect the interest of the plaintiffs in the property, as security for the transfers that they had made, and were continuing to make during 2017. If gifts were intended, there would be no need for security of any kind. Obtaining a security interest is obviously inconsistent with the concept of a gift.
- [44] The plaintiffs contend that at this time the defendants agreed that if they separated, the property would be sold and the loan would be repaid.
- [45] Katy agrees that there were discussions about the money provided by the plaintiffs at that time, but says the majority of these discussions were between David and the plaintiffs, directly, and she was not present. She does not deny that the conversations the plaintiffs rely on occurred, but says that she does not recall them. She does not recall the specific "kitchen table" discussion that the plaintiffs allege occurred. Her examination for discovery evidence is similar to her affidavit evidence in this respect.
- [46] The fact that the defendants transferred the title to Ralph in July 2017 is persuasive, reliable circumstantial evidence that the plaintiffs did not intend a gift of the money. They continued to have an interest in the money, and the transfer was intended to secure that interest.
- [47] The plaintiffs continued to make bank transfers or pay invoices in substantial amounts during and after July 2017. \$53,202 was transferred or paid in July 2017. \$189,645 was transferred or paid after July 2017. It seems very unlikely that they would have advanced these further funds to the defendants as joint gifts, in the circumstances. They were aware that the defendants were having marital problems and the relationship was in jeopardy. The plaintiffs were worried about their money. It makes sense that they would advance further funds on the basis of their belief that if the relationship ended, the house would be sold, and they would be repaid.
- [48] As noted, Ralph re-transferred the title to the defendants in November 2017.

- [49] It is common ground that the defendants' marriage relationship had stabilized as of November 2017, and that the re-transfer of the title coincided with this. The timing also coincides with the defendants occupying the new home. I accept Ralph's evidence that the plaintiffs transferred the title to the defendants upon, at least, their belief that defendants would repay the money if they separated. The re-transfer is not evidence that the plaintiffs relinquished their interest in the monies they paid.
- [50] The monies were partially repaid in January 2018 when the defendants took a mortgage on the property, and paid the plaintiffs \$140,000. A partial repayment can be evidence that a loan was intended: *Locke v. Locke*, 2000 BCSC 1300, at para. 20; *Kuo v. Cho*, 2009 BCCA 405, at para. 9. This transaction also tends to suggest that the monies advanced were loans, and not gifts. On this point, once again, I accept Ralph's evidence that the payment was a repayment against the loan. I am unable to accept Katy's assertion that the plaintiffs told her that "nothing more was owing" to them after this payment.
- [51] In my view, there is simply no reliable evidence to indicate that the transfers were intended as a gift, rather than a loan. The evidence is substantially to the contrary. Katy has not met the onus of establishing that the monies advanced were intended as a gift. Accordingly, she is unable to rebut the presumption of resulting trust. In summary, the monies advanced by the plaintiffs were intended as a loan, and not a gift.
- [52] Katy argues that the terms of the loan are too uncertain to be contractually enforceable. This appears to be a contention that the loan agreement is void for vagueness. There is no pleading to this effect. If the monies advanced were not a gift, then of course it follows that the money must have been intended as a loan. There is no question that Katy willingly accepted the money. Even if no terms for repayment were initially stipulated, the loan is enforceable as a demand loan: *Kong v. Saunders*, 2014 BCCA 508, at para. 18; *Piga v. Uffelman*, 2022 BCSC 983, at para. 144; and *Skuy v. Greenough Harbour Corporation*, 2012 ONSC 6998, at para. 31. The amount of the loan and the parties to it were clear. In any event, the defendants are liable to the plaintiffs on the basis of the resulting trust.
- [53] Katy argues that the loan agreement is a "contract respecting land" within the meaning of s. 59 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, and is unenforceable pursuant to the terms of the statute. I do not agree. The loan incidentally related to land, but was not a "contract respecting land". It was an agreement to loan money. The fact that the money was to be used for the purchase of land does not render the loan agreement itself a "contract respecting land".
- [54] By analogy, loans of money used to purchase land do not, without more, create an interest in land sufficient to support a certificate of pending litigation: *Grenier v. Williams*, 2020 BCSC 1827, at para. 16; *Beijing Tian Zi Property Group Trading Ltd. v. Jia*, 2021 BCSC 423, at para. 46; *Bilin v. Sidhu*, 2017 BCCA 429, at paras. 54, 63.

[55] In any event, the exceptions set out in s. 59(b) and (c) are applicable. The defendants agreed to receive the money, or at the very least acquiesced in the payment of the money by the plaintiffs, which are acts consistent with the loan. The plaintiffs reasonably relied on the loan agreement in advancing the funds. The advance of the monies and the receipt of the monies by the defendants would render non-enforcement of the loan agreement inequitable. It would be inequitable for the defendants to simply keep the money they borrowed.

C. The Promissory Note

- [56] The plaintiffs also rely on the promissory note in support of their claim for judgment. Whether the promissory note is relied on or not, the plaintiffs limit their claim to the sum of \$400,000, the amount of the note. They claim no contractual interest.
- [57] In view of my findings, it is not necessary to decide whether the promissory note is valid and enforceable. Nevertheless some commentary about the note is required.
- [58] Katy argues that the insistence of the plaintiffs on obtaining the promissory note indicates that the monies previously advanced were not owing to them. However in my view, obtaining the promissory note is not evidence that the money previously advanced was a gift, rather than a loan. Preparation of the note indicates that the plaintiffs were concerned about formally documenting the financial obligations of the defendants in the event that their relationship ended, since this had become a very serious prospect. This is consistent with their concern in July 2017 when they obtained the transfer of the title to Ralph.
- [59] Katy makes various arguments against validity and enforceability of the promissory note.
- [60] She argues that there was no consideration for the promissory note. However, there was consideration, in that the plaintiffs limited their debt claim to \$400,000, forgiving the balance of \$33,912. In addition, an antecedent debt, which I have found, is valuable consideration for a promissory note: Bills of Exchange Act, R.S.C. 1985, c. B-4, s. 52(1)(b).
- [61] Katy argues that the terms of the note are uncertain. Again, she does not plead that the note is void for uncertainty. In any event, as in the case of the loan itself, in my view the note is clear about the essential terms. The fundamentals of a promissory note are very simple. This note identifies the parties and the amount of the debt. There is some inconsistency about the terms for repayment.
- [62] Paragraph two of the note states that it is repayable on 90 days' written notice, whereas paragraph seven states that the loan is due and payable only if Katy and David are no longer residing together as a family in the home, or the home is sold.

- [63] This inconsistency is not sufficient to render the note void for uncertainty, in my view. Both terms for payment could be fulfilled, and have in fact been fulfilled. Written demand for payment was made October 9, 2019, shortly after the defendants separated. Despite the ambiguity about the repayment condition, the note would not be void for vagueness.
- [64] Katy also argues that she was coerced into signing the note under duress, and at a time when the plaintiffs knew she was the victim of family violence. She contends that enforcement of the promissory note would be unconscionable. Determination of these issues would likely require a conventional trial. However as the plaintiffs do not need to rely on the promissory note in order to obtain judgment in their favour, it is not necessary for me to decide these issues.
- [65] Katy does not say that the plaintiffs knew that she was a victim of family violence when they made the payments to the defendants. There is nothing unconscionable about the plaintiffs insisting on repayment of the debt. As noted, it is clear that the defendants willingly accepted the money, which they needed and used to obtain the property. Accordingly, home security video and medical records relating to the assault Katy alleges occurred January 5, 2019 are not relevant to this application.
- [66] Katy also relies on a transcript of a discussion she had with Ralph at a Dairy Queen restaurant in Armstrong on October 8, 2019. She secretly recorded the conversation. In the conversation, Ralph suggested terms for a separation agreement between the defendants. He also sought to have Katy sign a document agreeing that the house would be sold and the sum of \$400,000 be paid to the plaintiffs. He stated that the plaintiffs would engage lawyers and bring legal action, if necessary. Katy refused to sign the document. The plaintiffs made written demand for payment the next day. The contents of the conversation are not relevant to the issues on this application.
- [67] As the plaintiffs are entitled to judgment based upon the loan, and on the basis of the resulting trust, I do not need to address their further alternative argument based upon unjust enrichment.

IV. Conclusion

- [68] The plaintiffs are granted judgment against the defendants, jointly, in the amount of \$400,000. Since they have a trust claim, the judgment is payable from the money held in trust. The plaintiffs are also entitled to court order interest on their judgment. While they might have claimed court order interest from October 9, 2019, the date of demand, they have limited their claim to court order interest from 90 days from that date, in accordance with the terms of the promissory note. Court order interest is therefore to be calculated from 90 days after October 9, 2019.
- [69] David consented to judgment, so he should not be liable in costs. The plaintiffs are entitled to costs of the proceedings against Katy.

"Verhoeven J."

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