

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Xu v. Yang*,
2023 BCSC 743

Date: 20230504
Docket: S205642
Registry: Vancouver

Between:

Yuhua Xu

Plaintiff

And

Huiqing Yang also known as Claire Yang

Defendant

Before: The Honourable Justice Francis

Reasons for Judgment

Counsel for the Plaintiff:

J.R. Pollard
A. Lee

The defendant, appearing in person:

H. Yang

Place and Date of Trial/Hearing:

Vancouver, B.C.
November 21-25,
December 12-16, 2022
and February 9-10, 2023

Place and Date of Judgment:

Vancouver, B.C.
May 4, 2023

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Introduction

[1] In April 2019, the plaintiff, Yuhua Xu, commenced work as a housekeeper and nanny for the defendant, Huiqing Yang. In May 2019, Ms. Yang and her family moved to a new house (the “Property”). Shortly after this, Ms. Xu began periodically advancing large sums of money to her new employer. In total, somewhere between \$600,00 and \$700,000 was advanced from Ms. Xu to Ms. Yang between June 2019 and April 2020 (the “Advances”).

[2] The nature of the Advances is in dispute. The parties have provided wildly different evidence about the reason Ms. Xu made the Advances, the terms of repayment of the Advances, and the amount presently owing by Ms. Yang to Ms. Xu.

[3] Ms. Xu’s position is that Ms. Yang asked her to make the Advances in order to enable Ms. Yang to purchase the Property. In exchange for the Advances, Ms. Yang made a promise to Ms. Xu (the “Promise”) that consisted of three assurances: she promised to put Ms. Xu’s name on title to the Property; she promised her that when the Property was sold, Ms. Xu would receive half the increase in value of the Property; and she assured Ms. Xu that she intended to sell the Property in six months’ time. According to Ms. Xu, the Promise was made to her many times by Ms. Yang.

[4] As such, Ms. Xu seeks not only the return of the Advances, but also an equitable interest in the Property. Ms. Xu advances a number of equitable claims against Ms. Yang, including unjust enrichment and proprietary estoppel.

[5] Ms. Yang submits that the Promise was never made. She testified that Ms. Xu gave her money to invest on her behalf because Ms. Yang worked as a stock trader and agent, whose business was making investments on behalf of clients. In addition to being her housekeeper, Ms. Xu was one of her clients. Some of the investments Ms. Yang made on Ms. Xu’s behalf did not do particularly well, and money was lost. Ms. Yang has repaid some portion of the Advances back to

Ms. Xu, but she admits that there are amounts still owing. She denies that Ms. Xu is entitled to any kind of equity interest in the Property.

[6] There are two deemed admissions that limit the number of issues that must be determined in this case. As a result of repeated failure on the part of Ms. Yang to comply with document production orders made against her, particularly with respect to proving her claim that the Advances were used for the purposes of investment and that she did not owe Ms. Xu the amount claimed, the plaintiff successfully applied for an order at the outset of trial that Ms. Yang is deemed to have admitted that she is liable in debt to Ms. Xu, and she is deemed to have used the plaintiff's money to purchase the Property.

[7] As a result of the deemed admissions, it is not necessary to resolve the conflicting evidence about whether Ms. Xu gave money to Ms. Yang to invest in securities, or whether she gave Ms. Yang money to invest in the Property. The primary remaining facts in issue that I must determine on the evidence are:

- a) whether Ms. Yang made the Promise to Ms. Xu, giving rise to an equitable interest in the Property; and
- b) the quantum of Advances that remain outstanding and payable by Ms. Yang to Ms. Xu.

[8] For the reasons that follow, I find that any equitable claims Ms. Xu has to an interest in the Property must fail because I do not find that Ms. Yang ever promised to give Ms. Xu an interest in the Property. Ms. Xu's claim against Ms. Yang is a simple debt claim, and Ms. Xu is entitled to be repaid the amount of the Advances that have as yet not been returned to her.

Credibility and Reliability

[9] The evidence of Ms. Xu and Ms. Yang is diametrically opposed on almost every material factual issue in this case. Because of the wildly different accounts of the parties, this is not a case in which it is open to me to find that both parties are

seeking to tell the truth, but one party's evidence is more reliable than the other's. In this case, at least one of the parties has been untruthful with the court. A careful credibility assessment is therefore required.

[10] In considering the credibility and reliability of evidence, this Court has recourse to the methodology articulated in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal ref'd, [2012] S.C.C.A. No. 392:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[Emphasis added].

[11] In *Phoenix Homes Limited v. Takhar*, 2023 BCSC 184, Kent J. noted that in assessing credibility, the court must be mindful of the cultural context in which a dispute took place, and be vigilant about avoiding bias or stereotypical reasoning in undertaking a credibility assessment:

[63] I would note, however, that a determination of what is "reasonable" or "inherently believable" is, like concepts of "common sense" and "implausibility", often a subjective assessment reflecting personal experience and one that may be unintentionally informed by implicit bias and even inappropriate stereotyping or myths. This is particularly true in cases involving testimony of witnesses from different cultures and backgrounds not necessarily understood by the trier of fact. As noted in *Kim v. Choi*, 2019 BCSC 437,

[17] Caution should be exercised in assessing the testimony of witnesses from other cultures or where English is a second language and the evidence is received through an interpreter. The reason for caution was explained in *Fu v. Zhu*, 2018 BCSC 9 at paras. 39-42:

[39] Some caution had to be exercised in assessing credibility because the witnesses were from another country and culture and did not speak English. Often cultural and linguistic differences can affect the demeanour of witnesses in ways not necessarily understood by the trier of fact. For this reason, I was hesitant to conclude that a witness was evasive, in case what appeared to be evasiveness could be due to language or cultural differences.

[40] I have approached the evidence aware that nuances might be lost in translation, both in terms of the translation of the question to the witness and in the answer. Word choice and word order in a sentence might be an interpreter's preference and I have been careful not to form judgment based on the wording of a single answer. Rather, I have considered the whole tenor of the evidence in coming to conclusions as to the facts. In my view it would be a mistake to take a single passage from a witness's evidence as a conclusive admission against interest, given the nuances that might be lost in translation.

[41] As well, I have kept in mind that motives and conduct that might seem improbable to a person raised in a Canadian culture might not be improbable in another cultural context. The very structure of the transactions at issue in this case was unusual in the Canadian context, as it involved large sums of money changing hands over several years, without any written agreements in place or any common accounting practices. I have been mindful that different cultural contexts can affect the court's perspective as to inherent probabilities or improbabilities.

[42] On the other hand, certain characteristics probably cross all cultures, and that includes the instinct and ability to be self-serving in one's memory so as to advance one's own interests, especially when it comes to matters of money.

[18] The *Fu* caution is instructive, but it does not provide a license for a witness to lie. Simply because a witness comes from a different culture and speaks a different language does not result in a free ride in the witness box. A truthful witness is not diminished and an untruthful witness is not elevated. A truthful witness is to be believed and a liar is to be rejected.

[12] As a general matter, in assessing the evidence in this case, I am mindful of the risks of ascertaining credibility through a culturally-imposed lens. Because there is almost no documentary evidence that would assist the court in determining the central factual issue in this case, namely whether the Promise was made, there is very little objective evidence against which the testimony of the witnesses can be

tested. This has required the court, in weighing the credibility of the witnesses, to consider the inherent plausibility or implausibility of the evidence of the witnesses more than would be necessary in a case with a more robust evidentiary record. In undertaking such an exercise, I have attempted to take into account how cultural and linguistic differences might affect assessments of plausibility and sought to avoid “common sense” assumptions about how people might engage in financial or commercial transactions that are informed by a specific cultural outlook that is mine and not that of the parties. Specifically, I have found neither Ms. Xu’s nor Ms. Yang’s evidence to be less credible simply because of the informality and lack of documentary evidence to support either party’s characterization of the Advances. Rather, I have sought to anchor any assessment of credibility on the facts and evidence specific to this case.

Factual Background

Commencement of Employment Relationship

[13] Ms. Xu is 54 years old. She immigrated to Canada from China in 2013. On her arrival in Canada, she started working in restaurants but eventually met Jun “Emma” Xie, who runs an agency called AAA International Homes Services Company. Ms. Xie connected Ms. Xu with a number of employers and potential employers for the purposes of working as a housekeeper.

[14] In April 2019, Ms. Yang contacted Ms. Xie as she was looking to hire a housekeeper/nanny to look after her home and her children. Ms. Xie connected Ms. Xu with Ms. Yang. On April 9, 2019, Ms. Xu and Ms. Yang signed an employment agreement whereby Ms. Xu agreed to provide domestic services to Ms. Yang, and Ms. Yang agreed to pay Ms. Xu a salary of \$4,500 a month.

Purchase of the Property

[15] Shortly after Ms. Xu commenced working for Ms. Yang, in April 2019, Ms. Yang began negotiations to purchase the Property, a home located at 5553 Cornwall Drive in Richmond. On April 14, 2019, Ms. Yang signed a Contract of Purchase and Sale to purchase the Property for \$1,898,000 with a completion date

of October 17, 2019 and a possession date of October 18, 2019. Notwithstanding the October 2019 possession date, Ms. Yang moved into the Property on April 28, 2019 and, for the period between April 28, 2019 and October 17, 2019, she rented the Property from the vendor pending the completion of the sale of the Property to her. Ms. Yang purchased the Property outright, with no mortgage financing.

The First Advances

[16] Ms. Xu testified that Ms. Yang asked her for money for the first time on May 31, 2019. Ms. Yang told Ms. Xu that she did not have enough money to purchase the Property. She asked Ms. Xu to lend her money. According to Ms. Xu, this was the first time the Promise was made to her. The next day, Ms. Xu went home, retrieved \$10,000 in cash that she had saved, brought it back, and gave it to Ms. Yang.

[17] According to the testimony of Ms. Xu, two weeks later, Ms. Yang asked for more money from Ms. Xu for the purpose of purchasing the Property. On June 20, 2019, Ms. Xu borrowed \$5,000 from TD Bank and provided the funds to Ms. Yang.

[18] According to Ms. Xu, neither the Advances nor the Promise were ever the subject of any kind of written agreement between the parties. Ms. Xu trusted Ms. Yang and saw no need for a formal agreement.

[19] Ms. Yang denies that she ever asked Ms. Xu for money, and she denies that she ever made the Promise. She testified that, in June 2019, Ms. Xu learned that Ms. Yang invested money on behalf of others and Ms. Xu asked if she could invest her money with Ms. Yang. Ms. Yang agreed and, by the end of June 2019, Ms. Xu had invested \$40,000 with her. Ms. Yang testified that she only allowed Ms. Xu to invest with her because she felt very close to Ms. Xu and she wanted to help her.

[20] Ms. Yang testified that, while the two women had no written agreement between them, she agreed to guarantee Ms. Xu's principal, and they agreed that Ms. Yang would give Ms. Xu a certain percent of the profit from the investments she made on Ms. Xu's behalf. Originally, the investments were successful, and Ms. Yang

was able to give Ms. Xu a handsome return on her money. As a result, Ms. Xu continued to invest money with Ms. Yang, and started borrowing large sums from other people for the purposes of investing more.

[21] There is only one document in evidence, made contemporaneously with the early Advances, that sheds some light on the arrangements between Ms. Yang and Ms. Xu at that time. It is a handwritten note, written in Chinese, entitled “Gains for July”. Ms. Yang testified that she wrote this document for the purpose of recording the return on Ms. Xu’s investment for the month of July 2019. Beside the words “Sister Xu” are a number of calculations that suggest that Ms. Xu had \$40,000 invested with Ms. Yang and received a return in July 2019 in the amount of five percent of her investment, or \$2,000. To the extent that this is a record of Ms. Yang paying a five percent return to Ms. Xu a month after she gave her \$40,000, it supports Ms. Yang’s position that she made no promise of an interest in the Property to Ms. Xu, since Ms. Xu was apparently getting a cash return on her investment one month after she made the first Advances.

Nanaimo Trip

[22] Ms. Xu testified that, in late June 2019, Ms. Yang asked her to borrow money from her friend, Xiang Ling Yu, and advance it to Ms. Yang because Ms. Yang required more money to purchase her Property.

[23] According to Ms. Xu, Ms. Yu was hesitant to lend the money, so Ms. Xu arranged for the women to meet in Nanaimo over the Canada Day long weekend so that Ms. Yu could satisfy herself that she was comfortable lending money to Ms. Yang. It was not clear from Ms. Xu’s evidence why this meeting between two women who both resided in the Lower Mainland was arranged to take place in Nanaimo.

[24] According to Ms. Xu, she travelled from the Lower Mainland to Nanaimo in a car with Ms. Yang and her children on June 28, 2019. Ms. Yu travelled in a separate vehicle with Mike Xu, Ms. Xu’s adult son. The two groups took different ferries from

the Lower Mainland to Vancouver Island, and met in the parking lot of a hotel in Nanaimo.

[25] Ms. Xu testified that, while the parties were standing in the parking lot, they had a conversation about the Property. Ms. Yu asked Ms. Yang whether she was going to use Ms. Yu's money to purchase the Property. Ms. Yang said yes, and told Ms. Yu that she would put Ms. Xu's name on title to the Property, would give her half of any increase in value of the Property, and she would repay the money in six months. On the basis of these assurances, Ms. Yu handed Ms. Xu \$20,000 cash to give to Ms. Yang. Ms. Xu added \$10,000 of her own funds and, in the parking lot, handed \$30,000 in cash to Ms. Yang.

[26] Ms. Xu's 27-year-old son, Mike Xu, testified about the weekend in Nanaimo. His version of events was exactly the same as the testimony of Ms. Xu. Like Ms. Xu, he testified that he heard Ms. Yang say to Ms. Yu that she needed money to purchase the Property, she would put Ms. Xu's name on title to the Property, she would split any increase in value with Ms. Xu, and she would repay the money in six months.

[27] When asked about his reaction to his mother and Ms. Yu handing \$30,000 in cash to Ms. Yang in a hotel parking lot in Nanaimo, Mike Xu testified that he had no reaction to this, because he was completely focussed on how excited he was at the time to be on a trip to Nanaimo. In response to questions about this meeting, Mr. Xu gave repetitive answers that had a rote quality. For example, when asked a number of times for details about the parking lot meeting, he simply repeated that "we met and greeted in the parking lot and we had a conversation."

[28] Ms. Yu also testified about the Nanaimo meeting. She testified that she went to Nanaimo in June 2019 for the purpose of meeting Ms. Yang and ascertaining whether she was genuine in her promise to give Ms. Xu an interest in her Property. She testified that, while standing in the parking lot of the Nanaimo hotel, Ms. Yang promised to put Ms. Xu on title to the Property, to share half of any increase in value with her, and to repay Ms. Xu in six months.

[29] Ms. Yang testified that the entire story about meeting Ms. Yu in a parking lot in Nanaimo and exchanging \$30,000 is fabricated. She testified that she went to Nanaimo for a holiday over the Canada Day long weekend in 2019 with her children, Ms. Xu, and Mike Xu. She testified that she met Ms. Yu for the first time in a Japanese restaurant in Nanaimo later in the day on June 28, 2019, and that no money ever changed hands between them.

Financing of Chinese Property

[30] Ms. Xu testified that, in early July 2019, Ms. Yang once again approached Ms. Xu and asked her to mortgage property Ms. Xu owned in China to obtain a loan for the purposes of advancing more money to Ms. Yang. Once again, according to Ms. Xu, Ms. Yang promised to put Ms. Xu's name on title, share half of any increase in the value of the Property with Ms. Xu, and repay Ms. Xu in six months' time.

[31] At around the same time that she asked Ms. Xu to go to China to obtain a loan against her property there, Ms. Xu testified that Ms. Yang also asked Ms. Xu to borrow \$35,000 from her friend, Xiao E. Pan. On July 26, 2019, Ms. Xu borrowed \$35,000 in cash from Ms. Pan and advanced the funds to Ms. Yang the following day.

[32] Ms. Pan testified that she is a friend of Ms. Xu. She testified that she lent money to Ms. Xu to lend to Ms. Yang on the basis of Ms. Yang's representation that she would put Ms. Xu's name on title to the Property, would give her half the increase in value, and would pay the loan back in six months' time.

[33] On July 28, 2019, Ms. Xu left for China. She was there for one month. While in China, Ms. Xu obtained a loan from a Chinese bank, using her property in China as security, in the amount of ¥490,000. Of these funds, ¥65,000 was withdrawn as cash and exchanged to Canadian dollars that were provided to Ms. Yang. Additionally, ¥400,000 was transferred from Ms. Xu's account to Ms. Yang. There was interest payable on the loan from the Chinese bank in the amount of ¥18,000 per month. Ms. Yang made these payments on Ms. Xu's behalf.

[34] While Ms. Yang was aware that Ms. Xu mortgaged her property in China to obtain funds to invest with her, Ms. Yang denies that she ever knew Ms. Xu was borrowing money from others, including Ms. Pan, in order to make the Advances to her.

Termination of Employment and Advances Made in Late 2019

[35] On September 9, 2019, shortly after Ms. Xu returned from China, Ms. Yang terminated her employment. At that time, the two women had a conversation about the funds that Ms. Xu had advanced to Ms. Yang. According to Ms. Xu, Ms. Yang assured Ms. Xu that her money was safe so long as the Property was there.

[36] Notwithstanding the end of the employment relationship, Ms. Xu testified that she continued to advance large sums of money to Ms. Yang after September 2019. In late October 2019, Ms. Xu received settlement proceeds in the amount of \$13,826.45 from an ICBC claim. On October 26, 2019, she loaned a further \$15,000 in cash to Ms. Yang.

[37] On November 19, 2019, Ms. Xu advanced \$50,000 to Ms. Yang. These funds had been borrowed by Ms. Xu from Ms. Pan.

[38] On November 20, 2019, Ms. Xu advanced another \$30,000 to Ms. Yang via bank transfer.

[39] On November 21, 2019, Ms. Xu advanced ¥500,000 to Ms. Yang in three separate transfers.

[40] On November 25, 2019, Ms. Xu advanced \$6,900 to Ms. Yang via bank transfer.

[41] On November 27, 2019, Ms. Xu advanced \$93,100 to Ms. Yang via bank transfer.

[42] On December 21, 2019, Ms. Xu advanced \$10,000 to Ms. Yang via bank transfer. In her testimony, Ms. Xu tearfully recounted the circumstances of Christmas

2019, when she did not have enough money for any kind of Christmas celebration because she had given all her money to Ms. Yang.

Further Advances in March and April 2020

[43] In early March 2020, Ms. Xu borrowed ¥200,000 from her cousin, Wei Gao, and advanced those funds to Ms. Yang. Ms. Xu testified that at this point, Ms. Yang assured her that she only needed funds for 10 days and then she would repay the amount. It is not at all clear from Ms. Xu's testimony how this apparent 10-day loan fit with her understanding that Ms. Yang was using all the money from Ms. Xu to assist her with purchasing the Property, which she intended to sell in six months and share the profits with Ms. Xu. By March 2020, more than eight months had passed since the first advance of \$10,000, which according to Ms. Xu was the first time Ms. Yang had promised to sell the Property in six months and share the profits with her.

[44] According to Ms. Xu, Ms. Yang did not repay the ¥200,000 advanced from Wei Gao within 10 days, or ever. Eventually, on April 18, 2020, Ms. Xu obtained a second mortgage on her property in China and repaid Mr. Gao.

[45] In addition to borrowing funds from Mr. Gao in early March 2020, Ms. Xu approached Ms. Pan at this time about making a further loan to her to advance funds to Ms. Yang. As with Mr. Gao, Ms. Xu told Ms. Pan that she only needed the money for 10 days at which point Ms. Yang would be able to repay her, and Ms. Xu could repay Ms. Pan. On this basis, Ms. Pan advanced ¥360,000 to Ms. Xu. These funds were not repaid within 10 days, or ever.

[46] Ms. Xu also advanced an additional ¥55,000 of her own funds to Ms. Yang on March 9, 2020. On March 10, 2020, she advanced an additional ¥60,000, which she had borrowed from Ms. Pan.

[47] Ms. Yang denies that she ever asked Ms. Xu to obtain loans from Mr. Gao or Ms. Pan.

[48] On March 29, 2020, at 10:08 am, Ms. Yang sent a WeChat message to Ms. Xu that, translated into English, said, “When you come over in the evening, bring the accounts of us two. Let’s take the opportunity to do the math.” That evening, Ms. Xu and Mike Xu went to Ms. Yang’s house to discuss the balance owing by Ms. Yang to Ms. Xu. Ms. Xu testified that the purpose of this meeting was to “add the numbers together to repay me”.

[49] Ms. Xu testified that when the parties met on March 29, 2020, they each did their own calculations and agreed that Ms. Yang owed Ms. Xu \$680,100.

[50] On April 4, 2020, the parties exchanged text messages that suggest that the parties had reached an agreement about the amount owing and repayment. Ms. Yang sent a message to Ms. Xu that said, “The math you did with big Yang. I still owe you 2000 Canadian dollars. Did you forget to include that? I’ll add it for you.” “Big Yang” was the parties’ nickname for Mike Xu. Unfortunately, neither party has tendered in evidence any documents made by Ms. Xu, Mike Xu, or Ms. Yang at the time of these negotiations that would assist the court in determining how much the parties agreed that Ms. Yang owed Ms. Xu at that time.

[51] Ms. Yang testified that prior to April 2020, Ms. Yang was unaware that Ms. Xu was borrowing from others to invest with her. She learned about Ms. Pan in April 2020, when Ms. Xu was under increasing pressure from Ms. Pan to repay the various loans she had taken out to invest with Ms. Yang. Ms. Yang became concerned because she understood that Ms. Pan was some kind of loan shark and was concerned that Ms. Xu and Mike Xu may be at personal risk as a result of the loans being outstanding. During this time, Ms. Xu and her son Mike came to Ms. Yang’s house on an almost daily basis, seeking repayment of the Advances. Unfortunately, Ms. Yang was unable to repay the money.

The IOU and the Cheque

[52] By late April 2020, based on WeChat messages in evidence, it appears that Ms. Pan was becoming increasingly aggressive in seeking repayment of her loan.

On April 29, 2020, Ms. Pan sent a WeChat message to Ms. Xu, the English translation of which reads:

I'm telling you old Xu: If you let me down, I'll make (you) family-bankrupt and people-dead. Mind you, my morality will be lost in the face of your unkindness.

[53] Ms. Yang first reached out to directly communicate with Ms. Pan via WeChat on May 2, 2020. She assured Ms. Pan that she and Ms. Xu were “working hard to resolve” the outstanding indebtedness to Ms. Pan. She referred to “unexpected difficulties” that she was “working hard to overcome.” In response, Ms. Pan accused Ms. Yang of being a liar and said, “Keep screwing me over like this, and I’ll make it impossible for you to live in Vancouver. I walk my talk.”

[54] At around this time, in early May 2020, Ms. Yang prepared a handwritten “IOU” in which she acknowledged that she owed \$680,000 to Ms. Xu (the “IOU”). The IOU, translated to English, reads as follow:

I am Huiqing YANG, PR card number: [redacted], in June of 2019, borrowed C\$680,0000 from Yuhua XU. The loan will be paid off by May 9, 2020.

Borrower: Huiqing YANG

June, 2019

[55] An electronic copy of the IOU was forwarded to Ms. Pan by Ms. Xu on May 3, 2020, presumably to satisfy her that the funds would be repaid by Ms. Yang to Ms. Xu, so that Ms. Xu could then repay Ms. Pan. Ms. Pan was not satisfied with the signed IOU and required that Ms. Yang affix her fingerprint to it. She also insisted that Ms. Xu drive to Ms. Yang’s house and obtain the original IOU from Ms. Yang, as an electronic copy was not sufficient.

[56] Ms. Xu and Mike Xu drove that night to Ms. Yang’s house to obtain the original IOU. Mike Xu testified that at the time, he did not to know why he was asked to drive to Ms. Yang’s house. He testified that when he saw the IOU from Ms. Yang to his mother in the amount of \$680,000, he didn’t pay too much attention, or have any particular reaction to his mother apparently having advanced \$680,000 to her

employer, because he was in university at the time and needed to focus on his studies.

[57] Ms. Pan also sent her son to Ms. Xu's house to take the original IOU, although she later texted Ms. Xu, informed her that she was "in a good mood", and sent her son away from Ms. Xu's house without requiring that he pick up the original IOU.

[58] It is clear from the WeChat exchanges between Ms. Yang, Ms. Xu, and Ms. Pan that the IOU was executed to satisfy Ms. Pan and insulate Ms. Xu and Ms. Yang from further threats by her. I do not find that the IOU reflects the amount that Ms. Yang actually owed Ms. Xu at the time it was executed as it was very obviously a document created under pressure from someone who was threatening physical violence against Ms. Xu.

[59] The next day, May 4, 2020, Ms. Yang wrote a cheque to Ms. Xu for \$701,054.00. According to Ms. Xu, Ms. Yang appeared at her house that evening with a chequebook in hand, and she volunteered to pay Ms. Xu back all the money she was owed. She suggested the amount of \$701,054, because she wanted to give extra money to Ms. Xu for her troubles, and also was concerned about too much attention from the Canada Revenue Agency if she used a round number on the cheque. The cheque was completed by Mike Xu, at Ms. Yang's instruction.

[60] Ms. Yang tells a very different story about the cheque that she wrote on May 4, 2020. She testified that Ms. Xu asked her for a "fake cheque" in the amount of \$701,054. Ms. Xu told her that the purpose of the cheque was just to take a photo, so it could be sent to Ms. Pan to satisfy her further that her debt was secure. Ms. Yang did not want to sign the cheque, but she was concerned about the safety of Ms. Xu and her son, and so she agreed. She testified that Ms. Xu assured her that she would not cash the cheque.

[61] Mike Xu testified that, although he filled out the cheque for Ms. Yang to sign on May 4, 2020, he only did so at Ms. Yang's insistence, because he was not and

had never been involved in the financial dealings between Ms. Xu and Ms. Yang. Mr. Xu's professed lack of knowledge about his family's financial circumstances and the events at issue in this lawsuit more generally is not credible. He was at the centre of most, if not all, of the significant transactions in dispute between the parties. He attended the Nanaimo trip where Ms. Yu allegedly advanced \$30,000 to Ms. Yang. He travelled to China with his mother in July 2019, for the sole purpose of Ms. Xu mortgaging her property to advance sums to Ms. Yang. The WeChat messages frequently mention Mike Xu as one of the people calculating the outstanding balance owing from Ms. Yang to Ms. Xu. In my view, it is probable that Mike Xu not only wrote the cheque, but determined the amount of money that was to be payable on it. In any case, I do not find that the amount of money on the cheque bears any relationship to the amount of money owed by Ms. Yang to Ms. Xu at the time it was written.

[62] Immediately upon signing the cheque, Ms. Yang took a photograph and sent it to Ms. Pan.

[63] Ms. Xu testified that she attempted to cash the cheque a couple of times in May 2020 but was unable to.

[64] One of the many disturbing events that took place around this time is that Ms. Pan came to Ms. Xu's home in early May 2020, went through the WeChat messages on Ms. Xu's phone, and deleted those that Ms. Pan thought would "disadvantage" her.

[65] On May 19, 2020, Ms. Yang transferred \$50,000 to Ms. Xu as partial repayment of the various loans. It appears that, of this amount, Ms. Xu transferred \$5,000 back to Ms. Yang the following day, and then the following day, Ms. Xu forwarded \$45,000 to Ms. Yang. Thus, in the space of two days, \$50,000 was paid by Ms. Yang to Ms. Xu, and then paid back to Ms. Yang again. The circumstances of these transactions were not at all clear from Ms. Xu's evidence.

[66] At some point between May 21, 2020, when Ms. Xu transferred \$45,000 to Ms. Yang, and May 25, 2020, when an altercation ensued between them, the relationship between Ms. Xu and Ms. Yang appears to have significantly changed.

Events of May 25, 2020

[67] According to Ms. Xu, on May 25, 2020, Ms. Xu attended the Property very early in the morning. She entered Ms. Yang's home through the open back door and used the washroom. She then received two texts from Ms. Yang that she says were of a threatening nature. Ms. Xu emerged from the washroom, the two women argued, and Ms. Xu called Ms. Pan on her cellphone. A conversation ensued between the three women about how Ms. Yang was going to pay the Advances back to Ms. Xu. In the midst of this conversation, Ms. Yang's boyfriend, Jian Fu, appeared at the home. According to Ms. Xu, Mr. Fu grabbed her phone from her so forcefully that he injured her thumb. Then, according to Ms. Xu, Mr. Fu and Ms. Yang forcibly confined her in their home for a period of time before they let her go. Ms. Xu called the police, who attended the Property.

[68] According to Ms. Yang, she had anticipated that a meeting would take place amongst Ms. Pan, Ms. Xu, and Ms. Yang on May 25, 2020, for the purpose of settling the amount that Ms. Yang still owed Ms. Xu. In advance of this meeting, due to threats from Ms. Pan, Ms. Yang began to fear for her physical safety. She went so far as to ask her partner, Mr. Fu, to find an AirBnB where she and her children could stay, as she was concerned about her security if she stayed in the Property.

[69] According to Ms. Yang, when Ms. Xu came to the house on May 25, 2020, a conversation took place between Ms. Xu, Ms. Yang, and Ms. Pan, with Ms. Pan on the phone. Ms. Xu and Ms. Pan wanted Ms. Xu to cash the \$701,054 cheque and then pay back Ms. Yang for any difference between \$701,054 and the amount Mr. Yang still owed Ms. Xu. This was not agreeable to Ms. Yang.

[70] During the telephone conversation with Ms. Pan, Mr. Fu entered the house. He spoke to Ms. Pan over the phone and they argued about the indebtedness. Ms. Yang denies that Mr. Fu was ever violent with Ms. Xu.

[71] On May 29, 2020, Ms. Xu was fired from another caregiving job that she had. She believed that Ms. Yang was behind her firing. She made a sign and a cloth headband, both of which said, in English and Chinese, “Yang, repay me my money of blood and sweat”. She put the headband on, carried the sign, and went to the Property, where she stood across the street from the Property shouting until the police were called and attended.

Factual Findings on Contested Evidence

Did Ms. Yang Promise Ms. Xu an Interest in the Property?

[72] Ms. Xu’s claim for an equitable interest in the Property is grounded in the Promise, which as I have noted had three components: that Ms. Yang would give Ms. Xu a legal interest in title to the Property; that she would share half the increase in value of the Property with Ms. Xu; and that she would pay her back in six months’ time.

[73] There are a number of obvious questions that flow from the Promise, including the following.

- a) Why would Ms. Yang need Ms. Xu to contribute to the purchase of a property she had already purchased, without a mortgage?
- b) The first time Ms. Yang asked for money, and made the Promise, it was when she asked for \$10,000 in June 2019. Is it plausible that Ms. Yang offered to give Ms. Xu an interest in title and half the growth in value as a result of a \$10,000 investment in the Property?
- c) Ms. Xu first gave money to Ms. Yang in June 2019, and her last advance was in May 2020. When did the six-month period begin and end?
- d) What did “half the increase in value” mean, and from and to what points in time was the increase to be measured? What if the Property didn’t increase in value but declined in value? Was the increase in value to be

measured at the time of the sale of the Property, or in six months' time when the loan was to be repaid?

- e) How did the advances that Ms. Xu made to Ms. Yang in March and April 2020, which were payable in 10 days, fit in with the promise of a six-month loan in exchange for an interest in title and a share of the increased value of the Property?

[74] Counsel for Ms. Xu says that these are fair questions, but Ms. Xu was an unsophisticated person, who didn't know to ask these questions. All she knew was that Ms. Yang kept making the Promise and asking her for more money. Because she trusted Ms. Yang, she kept supplying it, even when it meant borrowing from other people.

[75] However, what is most fatal to the credibility of Ms. Xu's testimony with respect to the Promise is the fact that the IOU, the cheque, the WeChat messages, and even Ms. Xu's own evidence are completely inconsistent with the Promise. The text message interactions between the parties consistently discuss the amount of the debt that Ms. Yang owes to Ms. Xu and the timing of repayment. They never mention Ms. Xu being promised an interest in the Property, and the repayment demands made by Ms. Xu and Ms. Pan in May 2020 were never contingent on the sale of the Property.

[76] Indeed, all the interactions between Ms. Xu and Ms. Yang, from the March 29, 2020 message setting up a meeting to "do the math" on the sum owing by Ms. Yang, to the IOU that refers to the Advances as a loan to be paid off by May 9, 2020, to the \$701,054 cheque that Ms. Xu repeatedly tried to cash, can lead to only one conclusion: Ms. Xu advanced money to Ms. Yang, much of it borrowed from Ms. Pan, and by April 2020 she wanted her money back. In the final conflict that immediately preceded the lawsuit, Ms. Xu picketed outside Ms. Yang's property with a homemade sign demanding that her money be returned.

[77] In May 2020, Ms. Xu repeatedly demanded of Ms. Yang that she repay her loan. She never demanded that the Property be sold so she could recover her equity. If Ms. Xu understood that she had purchased some kind of equity interest in the Property, she would not have consistently demanded a repayment of a debt; she would have demanded that her property be conveyed to her or sold so she could enjoy the proceeds.

[78] Additionally, I find Ms. Xu's rendition of the Promise to be lacking in credibility for other reasons, most particularly Ms. Xu's severe shortcomings as a witness. Ms. Xu's evidence was rote when it came to describing the Promise, which on her evidence consisted of exactly the same words in the same order, said to her many times by Ms. Yang. She seemed to recall with precision evidence that which might be helpful to her case, but on most other topics, she claimed to have no memory at all. In answer to one attempt to jog her memory, she stated, "I don't remember specifics, I am just a caregiver. I am very simple minded. All these things of yours I don't remember." Nevertheless, she was able to recite with precision the exact words Ms. Yang used every time she made the promise of an interest in the Property to her.

[79] I also have doubts about Ms. Xu's credibility arising from the manner in which she testified about her relationship with Ms. Pan. Ms. Xu refused to admit that Ms. Pan had threatened her or that the IOU and cheque were written because of the pressure and threats that Ms. Xu was receiving from Ms. Pan. Instead, she testified that Ms. Pan was a friend who wanted to help her. This evidence is wholly incredible in light of the text messages Ms. Pan sent to Ms. Xu, which included at least one death threat.

[80] I am equally skeptical of the evidence of Mike Xu and Ms. Yu with respect to the Promise. Their evidence, like the evidence of Ms. Xu, had a repetitive and rehearsed quality. They described the Promise using the same words in the same order each time. Their evidence about a trip to Nanaimo, in which Ms. Yu, Ms. Xu, Mike Xu, Ms. Yang, and Ms. Yang's children inexplicably travelled to Nanaimo from

the Lower Mainland in separate vehicles for the purposes of Ms. Xu handing over \$30,000 in cash to Ms. Yang in a hotel parking lot, was bizarre.

[81] Ms. Yang's version of events, that Ms. Xu invested money with her as part of an investment scheme, is somewhat more plausible. Ms. Yang described that, in the first month, she earned a large return on Ms. Xu's investment and was able to pay her a handsome return. This would explain why Ms. Xu wanted to continue to advance money to Ms. Yang, and to borrow aggressively to generate more capital for investment purposes. It would also explain why she would be prepared to deal with loan sharks, travel to China to borrow against property there, and forego Christmas in 2019 because she had given all her available cash to Ms. Yang. The most reasonable explanation of Ms. Xu's behaviour is that she anticipated continuing to receive a handsome return on her investment, and therefore she drained all available resources, and borrowed heavily, in order to maximize the amount of funds she put in Ms. Yang's hands.

[82] However, Ms. Yang's version of events also suffers from some obvious flaws, including the following.

- a) There is no written record of any kind of the alleged investments made by Ms. Yang on behalf of Ms. Xu. With the exception of a single handwritten scrap of paper, no statements, spreadsheets, or documents of any kind were produced that would show the purchase or sale of investments on Ms. Xu's behalf. Ms. Yang testified that she did most of her work on a computer. Electronic records of the transactions she undertook for Ms. Xu would have been available to her and were not produced.
- b) Ms. Yang offered only the vaguest evidence about her vocation as an investment dealer. She does not appear to hold any kind of license or certification, and she does not appear to be affiliated with any company or organization, either in Canada or in China.

- c) When questioned by the court about the precise nature of the investments she was allegedly making on Ms. Xu's behalf, Ms. Yang testified that most of the money that Ms. Xu gave her was used to invest in a Chinese grain shipping business. No documentary evidence whatsoever was provided by Ms. Yang with respect to this business, its operation, or Ms. Yang and Ms. Xu's alleged investment in it.

[83] Overall, Ms. Yang was a somewhat more credible witness than Ms. Xu. Her evidence did not have the rehearsed quality that was apparent in the evidence of Ms. Xu and her son. She readily conceded a number of facts that were unhelpful to her case, including that she verbally guaranteed Ms. Xu's investment with her and held herself responsible for repaying Ms. Xu. Nevertheless, her central explanation as to the reason why Ms. Xu gave her over \$600,000 over the course of less than a year is, without any documents to support it, implausible.

[84] The deemed admissions circumscribe the facts that can be found in this case. As noted in *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 6th ed. by Sidney N. Lederman, Michelle K. Fuerst & Hamish C. Stewart (LexisNexis Canada, 2022) at §19.01:

Formal admissions made for the purpose of dispensing with proof at trial are conclusive as to the matters admitted. As to these matters, other evidence is precluded as being irrelevant but, if such evidence is adduced, the court is bound to act on the admission even if the evidence contradicts it.

[Footnotes omitted.]

[85] In this regard, I am bound by the deemed admission that Ms. Xu's money went into the Property.

[86] On the question of whether the Promise was ever made, for reasons discussed above, I find the evidence of Ms. Xu about the Promise to be wholly unbelievable. I find that Ms. Xu has failed to satisfy the burden of proving that Ms. Yang made the Promise to her.

[87] As such, the only factual findings I can make with respect to the Advances are as follows: Ms. Xu advanced funds to Ms. Yang, those funds were put into the

Property in some way, and the funds constitute a loan that is payable by Ms. Yang to Ms. Xu.

Did Mr. Fu Assault Ms. Xu on the Instruction of Ms. Yang?

[88] Ms. Xu has brought a parallel claim for damages for the assault she says she suffered at the hands of Mr. Fu on May 25, 2020. Mr. Fu is not a defendant in this proceeding, but Ms. Xu submits that Ms. Yang should be liable for damages for her injuries because Ms. Yang instructed Mr. Fu to assault Ms. Xu.

[89] I find Ms. Xu’s evidence about the events of May 25, 2020 to lack credibility, however, even if her evidence were to be believed, and Mr. Fu had violently grabbed her telephone from her hand in a manner that injured her thumb, this alone would not impose liability on Ms. Yang. Ms. Xu testified that Mr. Fu grabbed her phone from her hand when he entered the Property on May 25, 2020, while Ms. Xu and Ms. Yang were speaking on the phone with Ms. Pan. There is no evidence that Ms. Yang instructed Mr. Fu to do this, or that Ms. Yang had any involvement at all in the alleged physical assault that caused Ms. Xu’s thumb to be injured. Therefore, there is no basis on which Ms. Yang could be found liable for this event, even if it were true that Ms. Xu was injured by Mr. Fu when he allegedly grabbed her phone from her hand.

How Much Money Does Ms. Yang Owe Ms. Xu?

[90] Ms. Xu submits that the total amount she advanced to Ms. Yang was \$680,100. With interest, she says this amount is \$720,915.20. Ms. Xu concedes that some of the indebtedness owing by Ms. Yang has been paid back. She submits that the total outstanding indebtedness is \$489,115.20. Counsel for Ms. Xu provided a table that records the Advances, and the repayments by Ms. Yang, most of which are substantiated by bank statements.

[91] Ms. Yang, when asked by the court, said that she thought the amount she owed was closer to \$200,000. She did not have any documents or calculations to assist in this regard.

[92] Given the concerns I have about the credibility of both Ms. Yang and Ms. Xu, and the lack of reliable documentary evidence to substantiate the amounts each say is owing, I am unable to accept either party's quantification of the amount payable by Ms. Yang to Ms. Xu.

[93] The question of how much money remains owing is one on which the evidence is so unsatisfactory, it is difficult to make any findings of fact at all. It appears to me that, with the exception of Advances and repayments for which documentary evidence has been provided, I cannot accept the evidence of either party. As such, I have found that only those Advances that are either admitted by the other party, or substantiated by bank statements, were in fact made by Ms. Xu to Ms. Yang. I also find that only those repayments that are either admitted by the other party, or substantiated by bank statements or other reliable documentary evidence, were made by Ms. Yang to Ms. Xu.

[94] The calculation of the outstanding amount of the Advances has also been made more complicated by fluctuating exchange rates in circumstances where many of the funds were advanced in Chinese currency. Counsel for Ms. Xu used a uniform exchange rate in the calculations listed in the tables below. Ms. Yang did not object to the exchange rate utilized by the plaintiff and as such, I have employed the same one in the calculations below.

[95] This leads me to conclude that the following Advances were made:

Advances from the plaintiff to the defendant		
01-Jun-19	First cash advance	\$10,000.00
20-Jun-19	TD Line of Credit	\$5,000.00
15-Aug-19	400,00 RMB from Chinese Mortgage	\$80,000.00
16-Oct-19	ICBC compensation	\$15,000.00
19-Nov-19	\$ from Ms. Pan, TD transfer	\$50,000.00
20-Nov-19	\$ from Ms. Pan, BMO transfer	\$30,000.00

21-Nov-19	\$ from Ms. Pan, BOC transfer (RMB 500,000)	\$100,000.00
25-Nov-19	\$ from Ms. Pan, TD transfer	\$6,900.00
26-Nov-19	TD transfer	\$6,100.00
27-Nov-19	\$ from Ms. Pan, TD transfer	\$93,100.00
21-Dec-19	BMO transfer	\$10,000.00
09-Mar-[20]	RMB 200,000 from Mr. Gao	\$135,000.00
	RMB 300,000 from Ms. Pan (140,000+160,000)	
	RMB 55,000 from plaintiff's saving	
10-Mar-20	RMB 60,000 from plaintiff's saving	
13-Mar-20	RMB 60,000 from Ms. Pan's line of credit	
	interest payment for Mr. Gao (RMB 40,000)	
28-Apr-20	E-transfer for handling fees for refinance	\$1,000.00
21-May-20	CIBC transfer	\$45,000.00
	Interest and handling fees for 1st mortgage in China	\$27,640.00
	Interest and handling fees for 2nd mortgage in China 1	\$5,175.20
	TOTAL	\$627,915.20

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[96] The following repayments were made:

Repayments from the defendant to the plaintiff		
12-Oct-19	RMB 18,000 Bank Transfer	-\$3,600.00
13-Nov-19	RMB 18,000 Bank Transfer	-\$3,600.00
10-Dec-19	RMB 40,000 Bank Transfer	-\$8,000.00

11-Jan-20	RMB 18,000 Bank Transfer	-\$3,600.00
12-Feb-20	RMB 18,000 Bank Transfer	-\$3,600.00
13-Mar-20	RMB 18,000 Bank Transfer	-\$3,600.00
15-Mar-20	RMB 30,000 Bank Transfer	-\$6,000.00
15-Mar-20	RMB 33,000 Bank Transfer	-\$6,600.00
14-May-20	RMB 21,000 Bank Transfer	-\$4,200.00
16-May-20	RMB 160,000 to the plaintiff's Father	-\$32,000.00
19-May-20	CIBC transfer	-\$50,000.00
May-20	Cash paid back to Ms. Pan	-\$10,000.00
May-20	Cash paid back to Ms. Pan	-\$7,000.00
21-Mar-20	Transfer to Ms. Pan	-\$90,000.00
Total from the Defendant to the Plaintiff		-\$231,800.00

[97] The outstanding amount payable by Ms. Yang to Ms. Xu is \$396,115.20. I deal with the question of interest owing on this outstanding amount below.

Interest in the Property

[98] Ms. Xu's claim in debt against Ms. Yang is not controversial—Ms. Yang admits that she owes Ms. Xu money and disagrees with her only on quantum. The controversial issue in this case is whether Ms. Xu is also entitled to equitable remedies that would give rise to an interest in the Property. Ms. Xu has pleaded a number of different doctrines that she submits support such an outcome.

Partnership

[99] The plaintiff submits that “if the plaintiff and defendant formed a partnership, then the law of partnership provides that the plaintiff has an equitable interest in the Cornwall Property on dissolution”.

[100] There is no evidence in this case that would support the conclusion that the parties were carrying on “a business in common with a view to profit” and I find that

the principles of partnership law simply have no application in this case: *Backman v. Canada*, 2001 SCC 10 at para. 25.

Equitable Mortgage

[101] Ms. Xu seeks an equitable mortgage over the Property. Her counsel relies on the decision of Justice Fitzpatrick in *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2020 BCSC 637. In that case, Fitzpatrick J. considered the requirements of an equitable mortgage:

[178] The essence of an equitable mortgage is the intention of the parties to charge certain property as security for a debt due or a present advance. In *Vancouver v. Smith*, 1985 CanLII 461 (BC CA), [1985] 63 B.C.L.R. 180 (B.C.C.A.) at 183, Justice Hutcheon for the court adopted the following statement of the law by Justice Boland in *Re Sikorski and Sikorski* (1978), 1978 CanLII 1448 (ON SC), 21 O.R. (2d) 65 at 415:

. . . the important feature of an equitable mortgage is the common intention of the parties to the mortgage contract to make the property in question security for the debt due. If this intention is lacking an equitable mortgage cannot be said to have been created.

[179] In *Vancouver*, the Court found that the letter of undertaking signed by the debtor upon which the appellant bank (CIBC) relied to establish an equitable mortgage was not sufficiently certain. Further, the court found that the undertaking was only a promise to give security in the future on request by the lender over unspecified real and personal property. This lack of certainty as to which property was to be the subject of the equitable charge resulted in the undertaking being unenforceable.

[102] In this case, I do not find that there was a common intention between Ms. Xu and Ms. Yang to charge the Property as security for the repayment of the Advances. Indeed, there is no reliable evidence upon which I could find such an intention. As such, I decline to find an equitable mortgage in favour of Ms. Xu.

Other Equitable Doctrines

[103] In addition to an equitable mortgage over the Property, Ms. Xu has pleaded a number of equitable doctrines that she says are invoked by the Promise, including proprietary estoppel and constructive trust. Because I have rejected Ms. Xu's evidence and found that the Promise was never made, I cannot find that she can succeed on any of these claims.

[104] There is however one doctrine invoked by Ms. Xu that is not dependent on the Promise. Ms. Xu submits that the court should declare a purchase money resulting trust that would give her a beneficial interest in the Property proportional to her contribution. She further submits that this entitles her to a 50 percent interest in the Property.

[105] 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. Where the person advancing the funds is unrelated to the person taking title, the law presumes that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in proportion to that person's contribution. This is called the presumption of resulting trust: *Nishi v. Rasca Trucking Ltd*, 2013 SCC 33 at para. 1 [*Nishi* SCC].

[106] Purchase money resulting trust is not an obscure doctrine. As Cromwell J. noted in *Kerr v. Baranow*, 2011 SCC 10 at para. 12, it has been “settled law since at least 1788 in England (and likely long before) that the trust of a legal estate, whether in the names of the purchaser or others, ‘results’ to the person who advances the purchase money”.

[107] A purchase money resulting trust is therefore no different from an ordinary resulting trust. It stems from the concept that the law presumes bargains, not gifts: *Nishi* SCC at para. 29. The presumption of resulting trust arises in a wide variety of circumstances to impose an evidentiary burden on a party who has received a gratuitous transfer and who asserts that the gratuitous transfer was a gift, to prove that the transferor intended to make a gift to them. In terms of what “gift” means in this context, in *Nishi* SCC at para. 37, Justice Rothstein commented:

In other words, in the case of a gratuitous transfer, there is a gift at law when the evidence demonstrates that, at the time of the transfer, the transferor intended the transferee to hold the beneficial interest in the property being purchased.

[108] It is well accepted that in order to take advantage of a purchase money resulting trust, a plaintiff must show that they in fact advanced the purchase money

(or a portion of the purchase money), and that they acted throughout as a purchaser and not as a lender or creditor for the alleged trustee who holds legal title to the property: *Rascal Trucking Ltd. v. Nishi*, 2011 BCCA 348 at para. 42, rev'd, but not on this point, in *Nishi* SCC.

[109] The requirement for a plaintiff asserting a purchase money resulting trust to establish that they acted as purchaser is explained by the authors of *Waters' Law of Trusts in Canada*, 5th ed. by Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith (Thomson Reuters Canada Limited, 2020) at 10.II.A.3:

Though the claimant can establish that he or she owned and paid over the purchase money, he or she must also prove that he or she acted throughout as a purchaser. It is not only the intention to make a gift that will prevent the finding of a resulting trust. If the claimant who advanced the money was doing so simply in order to lend the money to the transferee who acquired title to the property, then the claimant's relationship with the transferee is that of a creditor with a debtor, and no trust arises.

[110] In written and oral submission at the close of trial, Ms. Xu sought judgment in debt against Ms. Yang. Ms. Xu's own evidence was that Ms. Yang asked to borrow the Advances from her to enable her to purchase the Property. The IOU, upon which Ms. Xu relies, refers to the Advances as a loan. It is clear that Ms. Xu was a lender, not a purchaser, with respect to the Property.

[111] Ms. Xu's counsel relies on *Warraich v. Choudry et. al.*, 2019 ONSC 2656 for the proposition that a purchase money resulting trust may be found in circumstances where contributions are made after the purchase of a property. That case is clearly distinguishable from the one before me, because in that case the parties had a valid and binding oral agreement that Mr. Warraich would receive an interest in Mr. Choudry's property. In this case, no such agreement existed.

[112] Consequently, I am satisfied that the Advances were loans and no purchase money resulting trust arises on these facts.

[113] Having found that none of the equitable doctrines advanced by Ms. Xu apply in this case, I reject her claim to an equitable interest in the Property.

Conclusion on Amount Payable

[114] The amount payable by Ms. Yang to Ms. Xu—being the amount of the Advances that I have found were made by Ms. Xu (\$627,915.20), less the repayments to date (\$231,800)—is \$396,115.20.

[115] Ms. Xu submits that she should be entitled to prejudgment interest from May 25, 2020, because this was the day the parties agreed the loan would be repaid. I am not satisfied that any agreement was reached that the loan would be repaid on May 25, 2020. Indeed, this submission is inconsistent with the plaintiff’s evidence that she was to receive return of the Advances, plus half the increase in the value of the Property upon its sale. I therefore decline to award the plaintiff prejudgment interest on the sum payable by Ms. Yang.

[116] In conclusion, Ms. Yang is liable to pay Ms. Xu \$396,115.20 in debt. The remaining claims of Ms. Xu against Ms. Yang are dismissed.

[117] In order to assist the parties in avoiding further litigation with respect to costs, I offer my preliminary view that, given the mixed success of the parties at trial, I am inclined to exercise my discretion to order that each party bear their own costs. However, if there are matters relating to costs about which I am unaware, or if either party wishes to make costs submissions, they may make arrangements through Supreme Court Scheduling to schedule a one-hour costs hearing before me.

“Francis J.”