

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal Canadian Legion (Shalom Branch No. 178) v. Maple Crest Housing Society*,
2024 BCSC 215

Date: 20240209
Docket: S225975
Registry: Vancouver

Between:

The Royal Canadian Legion – Shalom Branch #178

Petitioner

And

Maple Crest Housing Society

Respondent

- and -

Docket: S234300
Registry: Vancouver

Between:

Maple Crest Housing Society

Petitioner

And

Shalom Branch #178 Royal Canadian Legion

Respondent

Before: The Honourable Madam Justice Duncan

Reasons for Judgment

Counsel for The Royal Canadian Legion –
Shalom Branch #178:

G. Cameron

Counsel for Maple Crest Housing Society:

C.N. Mangan

Place and Date of Trial/Hearing:

Vancouver, B.C.
October 30 and 31, 2023

Place and Date of Judgment:

Vancouver, B.C.
February 9, 2024

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Introduction

[1] There are two petitions before the Court. In Vancouver Action No. S225975, the petitioner is the Royal Canadian Legion, Shalom Branch #178 (the “Shalom Branch”) and the respondent is the Maple Crest Housing Society (the “Society”), formerly the Shalom Branch #178 Building Society. In Vancouver Action No. S234300, the Society is the petitioner and the Shalom Branch is the respondent.

[2] The subject matter of both petitions is whether, and on what basis, the Shalom Branch can continue to use a meeting hall attached to an apartment building that is operated by the Society.

[3] In the early 1970s, the Shalom Branch saw a need for housing in Vancouver for low-income senior citizens. It purchased a suitable property near West 6th Avenue and Maple Street and took steps to acquire an adjacent parcel of land. It applied to the City of Vancouver for a development permit to construct a 110-unit apartment building for low-income seniors, in particular Jewish war veterans. It then oversaw the creation of the Society as a non-profit organization to be the legal entity to obtain financing, oversee construction and run the apartment building.

[4] When the apartment building was opened at 2229 Maple Street in 1976, the Shalom Branch used a social room for its meetings. Subsequently, the Society added a meeting hall, adjacent to the apartment building, with a common wall between the two structures. The street address for the meeting hall was 2020 West 6th Avenue. The Shalom Branch used it for its meetings and activities.

[5] The Society seeks a declaration that the Shalom Branch was a licensee or tenant of the meeting hall pursuant to a licence or right of occupancy that has been terminated or revoked, and a Writ of Possession under the *Commercial Tenancy Act*, R.S.B.C. 1996, c. 57.

[6] The Shalom Branch seeks a declaration that the meeting hall is held in trust by the Society for the Shalom Branch, and the Shalom Branch owns the beneficial interest in the meeting hall and is entitled to the use and quiet enjoyment of it.

[7] The parties tendered affidavit evidence concerning their understanding of the relationship between the parties, but there is nothing in writing to clearly define the relationship—no trust document or lease.

[8] Documentary evidence was appended to many of the affidavits. The documents were obtained from the BC/Yukon Command of the Royal Canadian Legion, the City of Vancouver Archives and the Jewish Museum and Archives of British Columbia. Compendiously, they are documents created and kept in the ordinary course of business and I am satisfied they are admissible to prove the truth of their contents.

The Background to the Dispute

[9] The Shalom Branch was originally chartered as the Fairview Branch (#178) of the Royal Canadian Legion on June 20, 1945. It came into existence through the efforts of a group of Jewish ex-servicemen. It is a legal entity and a branch of the Royal Canadian Legion (the “Legion”) pursuant to *An Act to Incorporate the Royal Canadian Legion*, S.C. 1948, c. 84. It became known as the Shalom Branch on August 28, 1972.

[10] Like other branches of the Legion, the Shalom Branch raises money for the Remembrance Day poppy fund and has engaged in other endeavours to support veterans and others. Unlike many other branches of the Legion, the Shalom Branch is dry, meaning it does not derive income from the sale of alcohol.

[11] The Shalom Branch has donated money to a wide variety of organizations and causes over the course of its existence. A booklet prepared for the Shalom Branch’s 50th anniversary in 1995 catalogues a breathtaking array of charitable donations, ranging from medical supplies to university bursaries.

[12] The Society was originally incorporated because the leadership of the Shalom Branch saw the need for low-cost rental housing for senior citizens in Vancouver. Mr. A.A. Deyong was the President of the Shalom Branch in 1973. He became President of the Society when it was incorporated on May 10, 1973 under the name

“Shalom Branch #178 Building Society”. Its name was changed on August 31, 2021 to the “Maple Crest Housing Society”.

[13] Mr. Deyong signed an application to the Central Mortgage and Housing Corporation for a Start-up Grant on December 31, 1973 in his capacity as President of the Society. In the grant proposal, Mr. Deyong noted that the Society was affiliated with the Legion and that the Society’s members must be members in good standing with the Shalom Branch. This latter requirement is reflected in the Society’s by-laws.

[14] Herbert Loomer, a solicitor at Freeman and Company, provided legal assistance to the Shalom Branch and the Society in the lead up to the construction of the apartment building. He dealt with the land assembly required for the project and applied for favourable tax status for the Society. Mr. Loomer also wrote a submission to the City of Vancouver concerning zoning issues. The submission was obtained from the City of Vancouver’s archives.

[15] Mr. Loomer outlined the positions of the opponents and proponents of the projects, then said:

There are other facts pertaining to this matter which are also not in dispute:

(a) That on January 23, 1973, City Council approved the sale to the Royal Canadian Legion of a portion of the land in question for use in conjunction with other property which the Legion was attempting to acquire for a Senior Citizens’ Housing Development;

(b) That one of the terms of the sale approved by Council was that the development would be financed under the Provincial Elderly Citizens’ Housing Aid Act;

(c) That on the strength of the resolution of City Council approving the sale of the land to the Legion the Legion acquired options on the property adjacent to the land owned by the City; [this is the land owned by John Gordon Ltd.]

(d) That on May 8th 1973, the Legion applied for a development permit to construct a Senior Citizens’ apartment building on the land in question to consist of 110 units;

(e) That the Legion has just recently completed the [purchase] of the property in question at a basic cost of \$227,500.00;

(f) That on the instructions of the Property and Insurance Office plans have been prepared by the City Engineering Department with respect to the

acquisition from the City of the City property and consolidation of same with the property acquired on behalf of the Legion;

(g) That the proposed project is permissible [sic] under the present zoning by-law;

(h) That Shalom Branch #178 of the Royal Canadian Legion has caused a Society to be incorporated under the Provincial Societies Act to operate the proposed development as a non-profit venture;

(i) That approval has been received by the Society (known as Shalom Branch #178 Building Society) from Central Mortgage and Housing Corporation for a loan of \$1,177,677.00 at 7 and 5/8th % interest per annum;

(j) That application has also been made on behalf of the Society with respect to this project for a grant under the Provincial Elderly Citizens' Housing Aid Act which has been favourably received;

(k) That any delay in permitting the project to go forward will increase the costs of the development with the resulting increase in rent to the tenants.

All of the above points are not in dispute. The fact is that as a result of the resolution of City Council in January of this year approving the sale of a portion of this site to the Legion, the Legion began the assembly of the land in question. A considerable amount of effort and the expenditure of a considerable sum of money in acquiring the land has been involved. The Legion is not asking for any special consideration in this matter but merely to do what the present zoning by-law permits it to do in the use of the land in question. The Technical Planning Board has been assured [sic] that the Legion will be most flexible in making any reasonable changes to the plans as submitted to the Board within the framework of the approval of Central Mortgage and Housing Corporation. Being a non-profit venture the City can expect complete co-operation from the Legion in this regard.

What is being proposed is a most needed facility. Any further delay can only result in additional costs. We would, therefore, ask that Council take whatever action is necessary at this time to permit this project to proceed at the earlier possible date.

[16] Mr. Loomer's submission is undated, but it must have been written some time after May 1973, when the Shalom Branch incorporated the Society, which went on to secure financing for the project.

[17] On January 20, 1974 the Society met with John Gordon, whose company owned a parcel of land adjacent to the site the Shalom Branch had originally identified for the project and on which the Society intended to build. Mr. Loomer was also present at the meeting. Members present discussed transferring Mr. Gordon's property to the Society in exchange for a promissory note. The Society resolved to take steps to secure Mr. Gordon's property for the project. The Society appointed

Alec Becker as its solicitor for its dealings with the Gordon property and Mr. Loomer was to act for Mr. Gordon.

[18] Mr. Loomer notified the Granville Street branch of the Royal Bank of Canada on April 24, 1974 that the Gordon property had been acquired, contingent on the Society completing the project.

[19] The apartment building was completed at some point in 1976. A booklet prepared in 1995 for the 50th anniversary of the Shalom Branch states that it was officially opened on December 13, 1976 by Simma Holt, MP. The booklet also contains a picture of a commemorative plaque from the front of the building which reads, "Maple Crest Apartments – A Project of Shalom Branch #178 Royal Canadian Legion".

Minutes of Shalom Branch Meetings

[20] The Shalom Branch met on May 12, 1976 at Louis Brier Home at West 41st Avenue and Oak Street. The minutes contain the following report on the progress of the building:

Asked to comment on the progress being made on the building, Comrade Al Deyong, President of the Building Society, stated that our meeting room in this building would be ready by 31st May and that the rest of the building be ready by 15th of June or end of June. Comrade Al Deyong spoke of a donation being made to Shalom Branch Building Society by Coinmatic.

[Emphasis added.]

[21] The next meeting of the Shalom Branch was held on June 9, 1976. The meeting minutes note that it was held at 2229 Maple Street, "the HQ of the Shalom Branch". Special refreshments of wine and cake were provided by a Legion member to celebrate "our first meeting in our new building". Members in attendance expressed a "hearty vote of thanks" to Mr. Deyong for a job well done in relation to the near completion of the building.

[22] Under the title "Building" in these minutes is a note that "a sum of money of \$20,000. more or less would be received by the branch from the Engineer".

[23] The November 17, 1976 minutes deferred a discussion about the Society due to the absence of Mr. Deyong. In another part of the minutes, a committee was appointed to investigate a complaint from a building tenant. The December 8, 1976 minutes refer to a building committee which reported that two tenant complaints had been rectified and rental arrears for another would be paid by the Society.

[24] It is a reasonable inference that the reference to a building committee was actually the Society, because in the January 12, 1977 minutes Mr. Deyong reported on behalf of the building committee that a mortgage payment had been made. The Society was the only borrower on the mortgage documents. He also moved that a \$1,000 loan by Shalom Branch to the Society be written off. The motion was carried.

Individual Recollections Concerning the Relationship Between the Shalom Branch and the Society

Veronica Brown

[25] Veronica Brown is the Executive Director of the BC/Yukon Command of the Legion. She reviewed electronic records provided by the Shalom Branch to the Legion which are stored on the BC/Yukon Command's hard drive. The records show that between 1987 and 2017, rent was sporadically paid by the Shalom Branch to the Society:

- 1987: \$600;
- 1993: \$600;
- 1994: \$600;
- 2002: \$840;
- 2003: \$0, but \$2 was paid for each of the 171 housing members;
- 2004: \$1,200;
- 2005: \$1,200;
- 2006: \$1,200;
- 2007–2009: \$0;
- 2010: \$1,200;
- 2011: \$0;

- 2012: no information;
- 2013: \$1,200;
- 2014: no information;
- 2015: \$1,000;
- 2016: \$1,000; and
- 2017: \$1,000.

Phil Weinstein

[26] Phil Weinstein was President of the Shalom Branch from 2005 to about 2009 and President of the Society in that same timeframe. He does not recall any discussions about payment of rent by the Shalom Branch to the Society. He understood, without citing the source, that there was a handshake deal between the two entities that allowed the Shalom Branch to use the meeting room in the Society's building as its Legion hall. Mr. Weinstein does not believe that he directed anyone to write rent cheques from the Shalom Branch to the Society.

Bonnie McCauley

[27] Bonnie McCauley joined the Shalom Branch in 2002 and became a member of the executive around 2004. She also refers to a handshake deal that the Shalom Branch would not have to pay rent to use the meeting hall. She learned of this from Sam Segal, who is now deceased. The 50th anniversary commemorative booklet shows that Mr. Segal was President of the Shalom Branch in 1994 and 1995.

[28] Ms. McCauley says that Mr. Segal told her that "the Legion bought the property on which the Building is located and had built the Building as housing for Jewish war veterans and their families. As that population died out, the eligible tenants were extended to anyone in the military and their families, and/or people with disabilities".

[29] Ms. McCauley recalls that Mr. Weinstein asked her to write out 12 post-dated cheques, each for \$100, payable to the Society. She says he told her the Society

needed an injection of funds to pay its bills and instructed her to mark it in the records as rent.

[30] Ms. McCauley also recalls that the Shalom Branch paid for repairs to the meeting hall while she was on the executive, including repairs to the brickwork at the front of the building and new windows for the meeting hall. A roof leak originating in another part of the building affected the meeting hall, and was paid for by the Society.

Brad Abrahamson

[31] Brad Abrahamson was the building manager of the rental housing part of the complex. He was employed by, and reported to, the Society. Mr. Abrahamson did some routine maintenance work on the meeting hall, such as changing lightbulbs. He had a key to the hall. He purchased some items for the meeting hall under the name of the Shalom Branch and some under the name of the Society. He did not distinguish between them and had no knowledge about the Shalom Branch paying rent to the Society.

David Herman

[32] David Herman was involved with the Shalom Branch in the 1970s, when meetings were held at the Jewish Community Centre. He served as President and First Vice President. Mr. Herman says that the Shalom Branch was not the only entity involved with fundraising for the apartment complex. B’Nai B’rith also fundraised for the project.

[33] Mr. Herman attended a few meetings that were held in the tenant social room of the apartment complex, but it was small. He was present for discussions about the Shalom Branch wanting its own space. Ultimately, the Shalom Branch asked the Society to construct its own space for which the Shalom Branch would pay “a low recurring rent...and additional funds as needed as additional ‘rent’”.

[34] Mr. Herman recalls that the Society borrowed funds to construct the meeting hall and the Shalom Branch started to pay rent around this time and would sometimes pay “additional” rent.

[35] The 50th anniversary commemorative booklet states that an activity and meeting room was added to the apartment building in 1978, “used primarily by the Branch for its functions”.

[36] Mr. Herman does not know if there was ever a written lease. He acknowledges there was a great deal of overlap in the memberships of the Shalom Branch and the Society so the agreement may not have been in writing. Mr. Herman has no knowledge of a handshake agreement concerning the Shalom Branch’s use of the meeting hall.

Alan Tapper

[37] Alan Tapper became a member of the Shalom Branch and served as both President and Vice President. He was present at a Society annual general meeting in 2008 when Mr. Weinstein, his wife and a person he believes was Ms. McCauley, were expelled from the Society. He recalls the expulsion of Mr. Weinstein was due to a conflict of interest in managing the apartment complex and paying his wife, without disclosure, to perform work for the Society. Mr. Abrahamson was expelled at the same meeting.

[38] Mr. Tapper swore a second affidavit in which he states that the Society had been receiving \$1,000 per year as rent from the Shalom Branch prior to 2004. On April 30, 2004, Mr. Tapper wrote to the Shalom Branch seeking an increase to \$1,200 per year. In that letter he stated, “[d]ue to increase of utilities and taxes your rent for 2004 will be \$100 a month. Please forward to the Building Society your check for \$1200.00 for this period”.

[39] Mr. Tapper deposited cheques received from the Shalom Branch as rent. He believes the Shalom Branch purchased liability insurance as a tenant at the

property. He points out that the Society holds the mortgage on title to the property and the Shalom Branch has no obligations under the mortgage.

Ralph Jackson

[40] Ralph Jackson is a member of the Shalom Branch. He has served as President and First Vice President. He maintains that the Shalom Branch paid rent to the Society for the use of its meeting room. The Shalom Branch also paid for a commercial insurance policy, as evidenced by a receipt from 2010. He is not aware of any verbal or handshake agreement that the Shalom Branch had the right to use the meeting hall at no charge.

[41] In 2013, Mr. Jackson co-signed a cheque to the Society from the Shalom Branch for \$25,000. He recalls other similar payments made over time, as well as donations to organizations like BC Children’s Hospital and others.

[42] Mr. Jackson co-signed rent cheques from the Shalom Branch to the Society in 2017, some for rent arrears relating to 2015 and 2016.

Danny Redden

[43] Danny Redden is the President of the Shalom Branch. He produced receipts proving the Shalom Branch paid for things like painting materials (\$458.23 in 2017), new windows in the meeting hall (\$5,769.75 in 2018), and contributions to a comfort fund for residents of the apartment building (\$800 in 2005 and other amounts in other years).

The Shalom Branch’s Time in Trusteeship

[44] The Shalom Branch was placed into trusteeship on May 9, 2018 by the BC /Yukon Command of the Legion. The decision to place the Shalom Branch into trusteeship resulted from issues with branch operations and finances.

[45] Robert Underhill, Vice President of the BC/Yukon Command of the Legion, said it took a significant amount of effort and time to bring the Shalom Branch’s finances back into compliance. He connected the financial issues with the leadership

of Mr. Jackson and Jeff Simons, the President and Treasurer respectively. Mr. Underhill said that the two had not been following prescribed practices concerning finances, including spreading accounts between various financial institutions. Mr. Simons and Mr. Jackson were both expelled from the Legion, although Mr. Jackson's expulsion was later overturned.

[46] Mr. Simons was a Director of the Society as of November 2021.

Notice to Vacate

[47] Terra Property Management has been managing the apartment complex and the meeting hall since 2008. Kateryna Filyus was the property manager between 2014 and January 26, 2023.

[48] Ms. Filyus says that Terra received rent from the Shalom Branch until 2018. She wrote to the Shalom Branch on March 8, 2018 on behalf of the Society seeking to adjust the rent for the meeting hall in response to rising costs for the Society. In the letter, Ms. Filyus referred to a lease that had expired in 2006, but acknowledges in her affidavit that she has never seen a written lease.

[49] Ms. Filyus followed up with another letter on March 16, 2018 advising the Shalom Branch of a rent increase effective May 2018 and requesting post-dated cheques for May through December 2018 as well as proof of insurance. The rent was set at \$3,800 per month plus a share of property taxes and electricity, to be determined at the end of the year. As well, Ms. Filyus said that the rental situation would be reviewed at the end of the year.

[50] Ms. Filyus did not receive a response to the letter concerning the rent increase, but did receive a letter from the BC/Yukon Command advising that the Shalom Branch had been placed under trusteeship as of May 9, 2018.

[51] In February 2021, the Society needed to access the meeting hall to complete a fire safety upgrade. Ms. Filyus wrote to the Shalom Branch seeking access to the meeting hall, but did not receive either a key or access on request. She wrote again

on July 21, 2021 requesting payment of rent as well as proof of insurance, with no response.

[52] Ms. Filyus says that all expenses for the entire property are paid with funds from the Society. The expenses include property taxes, insurance, landscaping, snow removal and fire safety. She estimates the expenses for 2022 were between \$250,000 and \$300,000.

[53] The Society sent two Notices of Termination to the Shalom Branch: one on November 16, 2021 and the other on January 31, 2022.

The Positions of the Parties

[54] Ms. Mangan, counsel for the Society, maintains that the Shalom Branch and the Society are two different legal entities. Under the enabling legislation for the Legion, the Shalom Branch could have constructed the apartment building and held legal title to it. Instead, it created the Society, which was responsible for the mortgage, management and upkeep of the apartment building.

[55] The Society maintains that there was a lease between the parties on the following terms:

- a) the Shalom Branch would pay rent to the Society;
- b) the Shalom Branch's non-exclusive occupancy would be only for conducting meetings/business;
- c) the Shalom Branch would purchase insurance; and
- d) the Lease could be terminated by either party.

[56] Ms. Mangan acknowledges there is no written lease, and that an alternative type of tenancy might better suit these circumstances, for example a licence or a tenancy at will.

[57] The key elements of a licence are articulated in Richard Olson, *A Commercial Tenancy Handbook* (Toronto: Thomson Reuters, 2004) (2020 loose-leaf update) at 11-1–11-2:

1. a right to use or be on land or a part of a parcel of land;
2. for a specific purpose or purposes;
3. sometimes for a payment or other consideration;
4. for a specific or determinable period;
5. but which does not grant exclusive possession; and
6. which, as a consequence, creates no interest in land.

[References omitted.]

[58] Olson says at 11-1 that “[t]he fundamental difference between a licence and a lease is that a licence does not include a right of exclusive possession”. Further, “[a] licence may be created by the casual grant of permission or by a written agreement”, and “[a] casual agreement to permit another person to use property will likely not have the requisite elements to create an interest in land”: Olson at 11-3.

[59] A tenancy at will is another form of possession of property without a lease. Olson says at 12-2 that “[a] tenancy at will arises when possession of property is given without a fixed term and the occupation is determinable at the will of either party”. The circumstances involve “a tenant in possession with no agreement. If there is an agreement for the payment of a monthly rent the tenancy will usually be deemed to be a tenancy from month to month. Neither party is required to give notice of termination of a tenancy at will”.

[60] A tenancy at will could arise at the end of a lease term, where “the tenant remains in possession with the consent of the landlord after the lease has expired”: *Dhami v. Redekop*, 2020 BCSC 630 at para. 179, quoting *Dourada Investment Inc. v. V. Melfi Holding Ltd.*, 2017 ONSC 4901 at para. 41, aff’d 2018 ONCA 290.

[61] Ms. Mangan submits that the rent payments made over the years by the Shalom Branch to the Society prove an intention of the parties to have some sort of

rental arrangement. The Society, as landlord, seeks to terminate the arrangement, as is its right.

[62] Mr. Cameron, counsel for the Shalom Branch, relies on the fact that the Shalom Branch created the Society to carry out its vision of low-cost housing for seniors, and that their memberships were intertwined. Further, he argues that the payments made by the Shalom Branch are not evidence that the parties had a lease or rental agreement. Instead, he says that over the years, the Shalom Branch has donated money to the Society and paid for repairs to the meeting hall.

[63] Mr. Cameron maintains that the Society cannot point to any kind of certainty about the terms of a lease, in particular how the rent was to be calculated. Of some significance is the comment in one of the letters about the increase in rent to reflect the increase in the cost of utilities, suggesting that the modest payments made by the Shalom Branch were simply contributions to operating expenses.

[64] Overall, Mr. Cameron submits that the Society has not proven on a balance of probabilities that there was a lease agreement or any analogous tenancy mechanism in place at any time since the Shalom Branch began using the meeting space. Rather, equity requires that the Shalom Branch be permitted to continue using the meeting hall as it has since it was built.

Inferences to be Drawn from the Affidavit Evidence

[65] None of the affidavits tendered in this case, viewed in isolation, provide any clear answer to whether the Shalom Branch was a tenant of the Society or the beneficiary of a handshake agreement between the two entities that granted the Shalom Branch use of the meeting hall for a pittance (or without cost) in perpetuity. The agreements asserted by each side must be viewed in the contextual history of the Shalom Branch and the Society.

[66] Mr. Herman disavows any knowledge of a handshake deal, but his evidence about the Shalom Branch paying a low recurring rent dovetails with some of the documentary evidence as well as the course of conduct between the parties since

the 1980s. The Shalom Branch did pay a low recurring rent or fee for use of the meeting hall.

[67] Mr. Weinstein says there was a handshake deal that the Shalom Branch could use the meeting hall. He deposes that before he was President of the Shalom Branch (which he calls the Legion) and the Society between 2005 to 2009, he spoke with Mr. Segal, who was then the President of the Legion, about the Legion's activities. But Mr. Weinstein does not specifically refer to Mr. Segal as the source of the handshake deal comment.

[68] To further complicate matters, Mr. Weinstein does not think rent was ever paid. This latter assertion is contradicted by the evidence of Ms. McCauley, who says that he directed her to remit rent payments to the Society, as well as others.

[69] While the evidence of Mr. Weinstein about the Shalom Branch's handshake deal with the Society to use the meeting hall is vague, Ms. McCauley's evidence is slightly more detailed. Mr. Segal told her the rationale behind the Shalom Branch's free use of the meeting hall: that the Shalom Branch had purchased the land and built the apartment building on it.

[70] That statement is only partly correct. I accept that the Shalom Branch purchased or acquired some of the land, but it did not actually build the building. It set up the Society to do so.

[71] Viewing Ms. McCauley's evidence through the necessity and reliability lens of the hearsay analysis, it is clearly necessary, as Mr. Segal is deceased. The question is whether it is sufficiently reliable to be admitted for the truth of its contents. That question is complicated by the fact that the parties chose not to cross-examine any of the affiants on their affidavits, so the analysis must be confined to the contents of the application record.

[72] Ms. McCauley does not say when Mr. Segal told her about the handshake deal, but I infer it must have been in the early 2000s because of the start date of her involvement with the Shalom Branch. This roughly accords with Mr. Weinstein's

reference to a timeframe of discussing things about the Shalom Branch with Mr. Segal, before Mr. Weinstein became President of both the Shalom Branch and the Society in 2005.

[73] The probity of the handshake deal assertion gains traction when examined in the context of the evidence as a whole.

[74] The Shalom Branch and the Society were very closely tied at the inception of the Society. Mr. Deyong, the first President of the Society, was an active member of the Shalom Branch. The minutes of a Shalom Branch meeting on May 12, 1976 reflect a comment by Mr. Deyong that “our meeting room” would be ready by May 31. The June 9, 1976 minutes refer to “our first meeting in our new building”. And when the apartment building was officially opened, a bronze plaque was affixed to it, declaring “Maple Crest Apartments, a project of Shalom Branch 178, Royal Canadian Legion”.

[75] Within a couple of years, the Society agreed to build the meeting hall at the request of the Shalom Branch for its activities. I infer the Society must have obtained financing to do so, though the record is bereft of detail in this regard. And there is no evidence that any entity other than the Shalom Branch used the meeting hall.

[76] The Shalom Branch paid a modest fee for the use of the meeting hall. The payments were called rent but I find they are payments towards the cost of utilities rather than occupational rent underlying some form of tenancy. This is borne out in the correspondence from Mr. Tapper to the Shalom Branch on April 30, 2004 in which he referred to the increase of utilities and taxes.

[77] The modest fees, or rent, paid by the Shalom Branch increased slowly over the years from \$600 in 1987 to between \$1,000 and \$1,200 since 2004. It donated money to the Society from time to time, by way of the forgiveness of a \$1,000 loan, a donation of \$25,000 and periodic donations to a comfort fund for residents of the apartment building. This is evidenced in the minutes of the Shalom Branch as well as the 50th anniversary commemorative booklet.

[78] The Shalom Branch maintained insurance on the meeting hall and paid for some repairs and upkeep, including new windows, repairs to brickwork and miscellaneous other things such as painting.

[79] What is significant by its absence in the application record is that the Society has provided no evidence that it relied on the low recurring rent paid by the Shalom Branch for its operating expenses. Mr. Tapper's letter refers to an increase of utilities and taxes, but Ms. Filyus' evidence of the cost to maintain the apartment building in recent years demonstrate that the amounts paid by the Shalom Branch are a small pittance by comparison.

[80] I take judicial notice of the fact that the cost of living has steadily increased over the decades since the apartment building was constructed, yet the Society can produce no evidence that it ever asked the Shalom Branch for a rent increase, after 2004, until very recently. The demand letter with the rent increase coincides with some of the internal strife and ejections referred to in the affidavit evidence. And the Society cannot point to any indication that there was a time limit on the Shalom Branch's alleged tenancy.

[81] Compendiously, I am satisfied on a balance of probabilities that the Shalom Branch was granted use of space in the apartment building for its meetings by the Society. The two entities were, at that time, nearly inextricably intertwined from a membership perspective, although legally distinct. When the space was not sufficient, the Society agreed to add on the meeting hall for the Shalom Branch for a low recurring rent, with no contemplated time limit.

[82] While I accept the fact that Mr. Segal told Ms. McCauley that there was a handshake deal for no rent, I cannot admit the statement for the truth of its contents, as aspects of it are inconsistent with other evidence in the application record. Nevertheless, the expression of a handshake deal by Mr. Segal is consistent with inferences I have drawn from the evidence as a whole as well as uncontested facts.

[83] I find that the Society and the Shalom Branch proceeded on the basis that the latter would be given meeting space in the former's completed apartment building in recognition of their close relationship and the work and money the Shalom Branch had dedicated to the project. Subsequently, the Society added the meeting hall at the Shalom Branch's request to provide more space.

[84] There is no evidence that any user other than the Shalom Branch had access to the meeting hall. Brad Abrahamson, the former building manager, had a key, but the property manager, Ms. Filyus, did not. The Shalom Branch bought insurance, paid small amounts of rent that roughly corresponded to utilities and perhaps a small share of property tax and spent money on the upkeep of the meeting hall.

[85] The close association between the Shalom Branch and the Society appears to have ended in early 2018 when the Shalom Branch was placed into trusteeship by the BC/Yukon Command of the Legion. In addition, several members were expelled. It was at that point that the management company notified the Shalom Branch of an astronomical rise in rent. I infer that relations between the Society and the Shalom Branch had soured by this point, although I need not determine the cause.

[86] I find on a balance of probabilities that there was a handshake deal or assurance or promise that the Shalom Branch could use the meeting hall for a low recurring rent, with no temporal restrictions contemplated. The Society has failed to prove on a balance of probabilities that it had a landlord-tenant relationship with the Shalom Branch.

[87] I turn to the principles of equity to fashion a remedy.

Relief in Equity

[88] Mr. Cameron relies on a range of equitable principles—a purchase money resulting trust, a constructive trust, an express trust and proprietary estoppel—to provide the Shalom Branch with a remedy against eviction.

Resulting Trust

[89] Resulting trusts may arise in several ways. In this case, the Shalom Branch asserts a “purchase money resulting trust”.

[90] A resulting trust is presumed where one party contributes money towards the purchase of property held in the name of another, but is not added to title: *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33 at para. 21. The presumption arises “because equity presumes bargains, not gifts”: *Pecore v. Pecore*, 2007 SCC 17 at para. 24.

[91] At the same time, a legal gift may arise where a party contributes “to the purchase price without any intention to impose conditions or requirements”: *Nishi* at para. 31. Accordingly, the presumption of resulting trust may be rebutted where it is evinced that the advancement of funds was intended to be a gift: *Nishi* at para. 2. The onus is on the transferee to rebut the presumption: *Pecore* at para. 24.

[92] Ms. Mangan takes the position, correctly in my view, that any contributions from the Shalom Branch to the Society were gifts and do not support the existence of a purchase money resulting trust.

Constructive Trust

[93] Constructive trusts, “under the broad umbrella of good conscience...are recognized both for wrongful acts like fraud and breach of duty of loyalty, as well as to remedy unjust enrichment and corresponding deprivation”: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at para. 43, 1997 CanLII 346.

[94] To establish a constructive trust based on unjust enrichment, there must be: 1. an enrichment; 2. a corresponding deprivation; and 3. the absence of any juristic reason for the enrichment: *Pettkus v. Becker*, [1980] 2 S.C.R. 834, 1980 CanLII 22.

[95] The circumstances of this matter do not fit within the matrix of a constructive trust. It cannot be said that the Society was enriched and there was a corresponding deprivation to the Shalom Branch. The latter made the decision to create the former and give it land which it had paid for in order to carry out a specific project.

Express Trust

[96] An express trust requires three things: 1. certainty of intention; 2. certainty of objects; and 3. certainty of subject matter: *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 83.

[97] The evidence supports the inference that the Society intended the Shalom Branch to have meeting space, initially in the apartment complex then subsequently in the meeting hall, in exchange for a low recurring rent. In a technical sense then, the three certainties have been made out. But the more flexible equitable remedies available under the doctrine of proprietary estoppel are better suited to the resolution of this case because I cannot find the remedy of a registrable interest in the property is the proper outcome.

Proprietary Estoppel

[98] In *Cowper-Smith v. Morgan*, 2017 SCC 61, the Court examined the doctrine of proprietary estoppel. Chief Justice McLachlin, as she then was, summarized the three-part test that a claimant must satisfy to obtain an equitable remedy:

[15] An equity arises when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word.... The representation or assurance may be express or implied. An inchoate equity arises at the time of detrimental reliance on a representation or assurance.... When the party responsible for the representation or assurance possesses an interest in the property sufficient to fulfill the claimant's expectation, proprietary estoppel may give effect to the equity by making the representation or assurance binding.

[16] Proprietary estoppel protects the equity, which in turn protects the claimant's reasonable reliance: see S. Bright and B. McFarlane, "Proprietary Estoppel and Property Rights" (2005), 64 *Cambridge L.J.* 449, at p. 452. Like other estoppels, proprietary estoppel avoids the unfairness or injustice that would result to one party if the other were permitted to break her word and insist on her strict legal rights: see *Taylor's Fashions Ltd. v. Liverpool Victoria Trustees Co.*, [1981] 1 All E.R. 897 (Ch.), at pp. 909, 915-16 and 918. As Lord Denning M.R. put it in *Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd.*, [1982] 1 Q.B. 84 (C.A.), at p. 122:

When the parties to a transaction proceed on the basis of an underlying assumption — either of fact or of law — whether due to misrepresentation or mistake makes no difference — on which they have conducted the dealings between them — neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[Citations omitted, emphasis added.]

[99] Later in *Cowper-Smith*, the Court delineated the principles to be applied when crafting a remedy in proprietary estoppel:

[47] Still, “the court must take a principled approach, and cannot exercise a completely unfettered discretion according to the individual judge’s notion of what is fair in any particular case”: *Jennings v. Rice*, [2002] EWCA Civ. 159, [2003] 1 P. & C.R. 100, at para. 43, per Walker L.J. A claimant who establishes the need for proprietary estoppel is entitled only to the minimum relief necessary to satisfy the equity in his favour: see *Clarke*, at para. 81; *Sabey*, at para. 78; *Idle-O Apartments*, at para. 73; *Sykes*, at paras. 57-58; *MacDougall*, at p. 498; R. Megarry and W. Wade, *The Law of Real Property* (8th ed. 2012), by C. Harpum, S. Bridge and M. Dixon, at p. 731. Since the equity aims to address the unfair or unjust detriment the claimant would suffer if the owner were permitted to resile from her inducement, encouragement, or acquiescence, “there must be a proportionality between the remedy and the detriment which is its purpose to avoid”: *Commonwealth of Australia v. Verwayen* (1990), 170 C.L.R. 394 (H.C.A.), at p. 413, per Mason C.J.; see also *Sabey*, at paras. 73-75; *Idle-O Apartments*, at para. 76; *Jennings*, at para. 36, per Aldous L.J.; *Sledmore v. Dalby* (1996), 72 P. & C.R. 196 (C.A.), at pp. 208-9, per Hobhouse L.J.; S. Gardner, “The Remedial Discretion in Proprietary Estoppel — Again” (2006), 122 *L.Q.R.* 492, at pp. 499-503; Bright and McFarlane, at pp. 453-54.

[Emphasis added.]

[100] Applying the three-step test from *Cowper-Smith* to the facts in this case, I am satisfied that the Society assured or promised the Shalom Branch that it would have the right to use the meeting hall adjacent to the apartment building for a low recurring rent. There is no evidence either party contemplated a temporal limit on the arrangement.

[101] As to the second step, I am satisfied that the Shalom Branch relied on this assurance by paying low amounts of rent to the Society. The rent paid, according to

the BC/Yukon Command records, started at \$600/year in 1987, went up to \$1,200/year in 2004, then went back to \$1,000/year from 2015 through 2017.

[102] I acknowledge that there were instances of arrears, but there is no evidence the Society took any steps to evict the Shalom Branch for non-payment of rent until 2018, when the notice of a rent increase from about \$1,000/year to \$3,800/month plus a share of property taxes and electricity was generated.

[103] As to the third step, detriment, it may take many forms and is not a narrow or technical concept, per *Idle-O Apartments Inc. v. Charlyn Investments Ltd.*, 2014 BCCA 451 at para. 57. The detriment flows from the fact that the Shalom Branch periodically paid for repairs and upkeep to the meeting hall in the belief that it had the right to use the space and the responsibility for its upkeep. In addition, it made periodic donations to the Society.

[104] While the Shalom Branch is devoted to charitable endeavours, the fact that it paid very little in rent to the Society likely permitted it to make more frequent and generous donations to the Society than might otherwise be the case.

[105] I am satisfied that the Shalom Branch has established, on a balance of probabilities, that it is entitled to obtain an equitable remedy in proprietary estoppel.

[106] Mindful that the remedy must be proportionate to the circumstances, a declaration that the Shalom Branch has the right to legal title to the meeting hall would be out of proportion to the circumstances. The following declaration will govern the relations between the parties:

- a) the Shalom Branch has the right to continue to use the meeting hall for a low recurring annual rent of \$1,200;
- b) the Society may adjust the rent annually by reference to the inflation rate in the Consumer Price Index;

- c) if the Shalom Branch is required to join with another branch of the Legion due to declining numbers, the Shalom Branch's right to use the meeting hall will cease; and
- d) if the Society is dissolved, or the Society sells the building in an arms' length transaction, the Shalom Branch's right to use the meeting hall will cease.

Conclusion

[107] These petitions represent an unfortunate dispute between two entities who have done a great deal of good for many people over the years of their existences. They were once very closely aligned, their memberships intertwined. It is regrettable that they could not have come to some kind of accommodation without the intervention of this Court.

[108] The Shalom Branch's petition for equitable relief is allowed. The Society's petition seeking vacant possession of the meeting hall is dismissed.

[109] As the successful party, the Shalom Branch is entitled to its costs at Scale B. If there is a dispute over costs, counsel must contact Scheduling within 30 days of the release of these reasons to arrange a date for a costs hearing. If the parties require further clarity on the terms pronounced at para. 106, they may contact Scheduling within 30 days of the release of these reasons to arrange a date for further submissions.

“Duncan J.”