IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Shulman v. Perepolkin,* 2024 BCSC 270

Date: 20240216
Docket: 21430
Registry: Nelson

Between:

Stephen Alexander Shulman and James Wilson

Plaintiffs

And

Ernie Perepolkin

Defendant

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for the Plaintiffs:	L. Lysenko
Counsel for Defendant:	T. Pearkes
Place and Dates of Trial:	Nelson, B.C. November 28 – 30, December 1, 2022, May 16 and 19, 2023
Written submissions received:	June 9 and 30, and July 7, 2023
Place and Date of Judgment:	Nelson, B.C. February 16, 2024

Introduction

[1] Ernie Perepolkin is the registered owner in fee simple of a 20-acre property on Cox Road, located north of Nelson, British Columbia (the "Property"). Stephen Shulman and James Wilson assert that Mr. Perepolkin holds title on an express trust for the equal benefit of himself, Mr. Shulman and Mr. Wilson. Mr. Shulman resides on the Property.

[2] Mr. Perepolkin denies that a trust exists.

[3] Mr. Shulman and Mr. Wilson both testified in support of their case. So too did Mr. Wilson's partner, Wanda Parker, and two professionals who assisted the parties at various times, a solicitor named Ronald Bogusz, and an accountant by the name of Brent Irving. Mr. Perepolkin chose not to call any evidence, resting on his position that the plaintiffs failed to discharge their onus of proving the trust.

[4] The plaintiffs' case rests on Mr. Wilson's and Mr. Shulman's evidence about the trust they allege to exist. That trust is alleged to have been agreed to in a verbal discussion between the three parties in 2003. I found both Mr. Wilson and Mr. Shulman to be unreliable witnesses. Mr. Shulman's evidence, in particular, also lacked credibility.

[5] For the following reasons, I have concluded that the plaintiffs failed to prove that Mr. Perepolkin holds title to the Property in trust for the plaintiffs or either of them.

History of the Property and the Parties

[6] In this section, I give a brief overview of the history of the Property and the parties' relationships.

[7] The Property is a 20-acre piece of property just north of Nelson, British Columbia. It features two creeks, and has a house that was built by the original owners, Mr. and Mrs. Cox. Mr. Shulman came to know the Coxes through his job delivering food to them, and decided he wanted to acquire the Property. In 1999, the Coxes agreed to sell it to Mr. Shulman and his friend, Nick Cifarelli, at a reduced price. Mr. Cifarelli was frequently referred to as "the barber" in these proceedings.

[8] Mr. Shulman did not pay any part of the purchase price and did not have the credit to obtain a mortgage on his own. In September 1999, Mr. Cifarelli made a down payment of $50,000.00 and co-signed a mortgage for the balance of the

$164,000.00 purchase price. Mr. Shulman and Mr. Cifarelli became the registered owners of the Property as tenants in common.

[9] Mr. Shulman moved onto the Property in 1999. He has lived there ever since.

[10] By 2003, Mr. Cifarelli wanted to sell his interest in the Property. Mr. Shulman wanted to keep the Property. Mr. Shulman still did not have the credit history necessary to obtain a mortgage to buy Mr. Cifarelli out.

[11] At the time, Mr. Shulman worked with Mr. Wilson. They were, at that time, acquaintances who socialized at work. Mr. Shulman approached Mr. Wilson to see if he could assist in purchasing Mr. Cifarelli's interest. Mr. Wilson was also unable to obtain a mortgage to buy Mr. Cifarelli's interest. Mr. Wilson was close friends with Mr. Perepolkin and introduced him to Mr. Shulman.

[12] In disputed circumstances which are at the centre of this action, Mr. Perepolkin purchased the Property from Mr. Cifarelli and Mr. Shulman. Mr. Perepolkin paid $161,131.70 for the Property, and obtained a mortgage from the Canadian Imperial Bank of Commerce ("CIBC") in the amount of $150,966.70 to finance the purchase. He paid out Mr. Cifarelli. Mr. Perepolkin became the sole registered owner of the Property.

[13] Mr. Shulman continued to live on the Property after Mr. Perepolkin purchased it.

[14] On December 6, 2007, Mr. Wilson, Mr. Perepolkin and Mr. Shulman incorporated a numbered company, 0810449 B.C. Ltd. (the "Company"). Mr. Perepolkin obtained a line of credit ("LOC"), secured against the Property, with which he paid off the mortgage. The Company also opened up a chequing account. This account was sometimes referred to by the parties as a "joint account".

[15] The three men hoped to use the Company to develop the Property. There was a vague plan for Mr. Perepolkin to transfer the Property to the Company, but that did not occur.

[16] Mr. Wilson declared bankruptcy sometime in or around May 2011.

[17] On or about March 22, 2017, the Company was dissolved.

[18] Whatever plans the three men may have had to develop the Property did not come to fruition. By 2020, Mr. Perepolkin wanted to sell the Property. In circumstances that are in dispute, relations between the three men broke down. Attempts to resolve the growing dispute, and for Mr. Shulman to buy the Property from Mr. Perepolkin, were unsuccessful.

[19] Mr. Shulman filed the original notice of civil claim against Mr. Perepolkin on July 13, 2020, pleading that Mr. Perepolkin held 50% of the Property in trust for him. On that same date, he caused a certificate of pending litigation ("CPL") to be registered against the Property. At that time, Mr. Shulman sought a declaration that he is the 50% legal and beneficial owner of the Property and that Mr. Perepolkin holds 50% of his legal interest in trust for Mr. Shulman. Mr. Shulman filed an amended notice of civil claim on October 22, 2020. On September 13, 2021, Mr. Shulman and Mr. Wilson together filed a further amended notice of civil claim, adding Mr. Wilson as a plaintiff, and alleging that Mr. Perepolkin holds a third of the Property in trust for each of Mr. Shulman and Mr. Wilson.

The Law Relating to the Presumption of Indefeasible Title and Express Trusts

[20] The substantive law that applies to this action is well-settled and not in dispute.

[21] Section 23(2) of the *Land Title Act*, R.S.B.C. 1996, c. 250 creates the presumption that indefeasible title is conclusive evidence at law and in equity that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the title.

[22] The presumption of indefeasible title can be rebutted in certain circumstances, including by operation of an express trust: *Suen v. Suen*, 2013

BCCA 313 at paras. 34 and 45. See also *Townsend v. Donohue*, 2023 BCSC 684 at para. 4.

[23] As articulated by Madam Justice Ballance in *Langley, Bevans and Julson v. Brownjohn*, 2007 BCSC 156 [*Langley*] at para. 42 the "three certainties" must be present to establish an express trust:

> [42] It is fundamental that three essential features, typically referred to as the "three certainties", must be present in order to establish an express trust. They are:
>
> - certainty of the settlor's intention to create a trust;
> - certainty of the property subject to the trust; and,
> - certainty of the objects or beneficiaries of the trust.
>
> There is no requirement that the word "trust" or "trustee" or that other special or technical language be used in order to create a valid trust. What is critical is the substance of the arrangement, not the form. As expressed by the pre-eminent trust scholar, Professor Donovan Waters, Q.C. in his text, ***Waters' Law of Trusts in Canada,*** 3rd ed. (Toronto: Thomson Canada Ltd.) at page 132:
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> > Equity is concerned with discovering the intention to create a trust; provided it can be established that the transferor had such an intention, a trust is set up.
> >
> > [footnote omitted]

[24] The onus is on the party seeking to rebut the presumption of indefeasible title to adduce evidence capable of displacing the presumption: *Bajwa v. Pannu*, 2007 BCCA 260 at paras. 9 and 12–14.

Analysis

[25] The onus is on Mr. Shulman and Mr. Wilson, as the plaintiffs seeking to rebut the presumption of indefeasible title, to establish that an express trust was created. They failed to discharge that onus.

Adverse Inference

[26] The plaintiffs submit that an adverse inference should be drawn against Mr. Perepolkin due to him choosing not to testify. Whether to draw an adverse inference is discretionary, and depends on the specific circumstances: *Singh v. Reddy*, 2019

BCCA 79 at para. 9. In *Thomasson v. Moeller*, 2016 BCCA 14, at para. 35, the Court of Appeal held that an adverse inference is not to be drawn unless a *prima facie* case is established.

[27] The plaintiffs failed to establish a *prima facie* case. There was no obligation on Mr. Perepolkin to step into the witness stand, as there was no case to meet. There is no basis for drawing an adverse inference, and I decline to draw one.

Credibility and Reliability

[28] This case turns on the credibility and reliability of the evidence of the two plaintiffs, and to a lesser extent of the other witnesses called by the plaintiffs.

[29] *Bradshaw v. Stenner,* 2010 BCSC 1398 provides helpful guidance in assessing credibility:

> [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.); *Faryna 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).
>
> [187 It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[30] In what follows, I consider the credibility and reliability of the evidence of each of the witnesses. In the case of Mr. Wilson, Mr. Parker and Mr. Irving, I have found it convenient to deal with the entirety of their evidence in this section. In the case of Mr. Shulman and Mr. Bogusz, I provide my analysis and conclusions with respect to the credibility and reliability of their evidence here, but deal with the majority of their evidence in making my findings of fact.

Stephen Shulman's credibility and reliability

[31] I found Mr. Shulman's evidence to lack both reliability and credibility. His evidence was vague and often grandiose. On a number of occasions, he was impeached by his evidence on examination for discovery.

[32] The difference between Mr. Shulman's demeanour in direct and cross-examination was stark. In direct examination he was affable and responsive, if sometimes vague and self-contradictory. In cross-examination he was argumentative, evasive, impatient and even angry. On a number of occasions, he accused counsel for Mr. Perepolkin of twisting his words or trying to pin him down to make him out to be a liar.

[33] Mr. Shulman described himself as a deal-maker, whose forte is the art of the deal, but that paperwork is not his forte, so he would always hire someone who knew what they were doing. He does not trust financial institutions, and has never established a credit history that would allow him to borrow money. He testified that he makes deals on a handshake, and that he could tell if a man was trustworthy by the feel of his handshake.

[34] Mr. Shulman testified that he had made thousands of handshake deals, including one with Mr. Jimmy Pattison for millions of dollars. Mr. Shulman has worked at jobs such as a labourer, a health trainer, a dish washer, and a food delivery person. He says he is currently retired and generates income buying and selling cars and recreational vehicles that he repairs. The assertion that he made a handshake deal with Mr. Pattison for millions of dollars lacks any credibility.

[35] Mr. Shulman testified that he cannot say he made one handshake deal that he failed to live up to. He is described in plaintiffs' counsel written submissions as priding "himself on being an honest and trustworthy person; a man of his word". He is also described in plaintiffs' counsel submissions as "a man for whom reputation is everything".

[36] This self-professed reputation for honesty and integrity does not square with Mr. Shulman's own evidence about failing to pay child support, being in arrears and having his wages garnished by Family Maintenance Enforcement, which gave rise to Mr. Cifarelli's concerns about losing the Property to Family Maintenance Enforcement, and his desire to be bought out

[37] In cross-examination, he was asked how long he was in arrears with Family Maintenance Enforcement. Mr. Shulman said he could not specifically recall, and that he had no idea of the start or end date. It was put to him that he was in arrears from 2003 to about 2016, and that his arrears were a significant problem in terms of his credit worthiness. He testified at trial he did not know how much of a problem that was. At his examination for discovery he had said that Melanie Ward, a mortgage broker he worked with in 2020 when he was trying to buy the Property, had told him his arrears were a significant problem for his credit until he was released from Family Maintenance Enforcement in about 2016.

[38] In the same vein, the fact that Mr. Shulman declared bankruptcy, and was, according to his own evidence, convicted and sentenced for conspiracy to import cocaine, suggests that he is not as honest and trustworthy as he would have the court believe. I note that plaintiffs' counsel submitted that the record before the Court showed only that he was charged with importing cocaine, but Mr. Shulman's evidence in cross-examination was that he was convicted and sentenced.

[39] Mr. Shulman testified that he has savings, but does not keep them in a bank. He has a safe at home in which he keeps gold, silver and precious stones. He does not believe in paper investments or stock markets. Gold and silver, he testified, are the only real money. He referred to them as "God's money".

[40] Mr. Shulman was asked in cross-examination about his average taxable income between 2011 and 2020, with counsel for Mr. Perepolkin suggesting it was between $50,000 and $60,000. Mr. Shulman answered that he would have to look back and see documents. He was then asked why he was able to answer that question at his examination for discovery, but could not do so at trial. He said that his memory had not changed, but his cautiousness in answering counsel's questions had. He was then asked about his evidence on this point at his examination for discovery, and said that it was his fairest estimate and understanding, as honest as he could give at the time, and that he would not give false information. He further testified that he always tells the truth. Mr. Shulman was then asked about whether he had undeclared income from 2003 to the present. He said he did, including from buying and selling vehicles and collecting rent. With those sources of income he had bought gold, silver and gems, which he kept in a safe together with cash. He then agreed that every year when he filed his income tax returns he certified the information to be true, and testified it was what he was declaring and reportable. When it was put to him that he had not declared the income just discussed, Mr. Shulman testified that where he could make money without paying taxes he did.

[41] Clearly, Mr. Shulman's self-professed honesty only goes as far as his financial self-interest allows.

[42] Mr. Shulman testified that he had a brain injury in 2009, which affected some of his memories. His memory was demonstrably unreliable, for example in his confusion between the two different contracts for purchase and sale drafted in May 2020.

[43] When some of the inconsistencies in his evidence were pointed out to him in cross-examination, Mr. Shulman said that his memory is more priority-oriented, that for things that are important to him his memory is a lot better, that he prioritizes things for himself. He said that counsel's cross-examination imposed stress on him, and he did the best he could. Another way of describing Mr. Shulman's memory would be to say it is selective. He remembers the things he wants to remember,

because they are in his own interest, and does not remember those that are against his interest.

[44] For these, and for other reasons which I will refer to in the course of my decisions, I have concluded that I cannot rely on Mr. Shulman's evidence.

James Wilson's evidence

[45] James Wilson is 71 years of age. He testified remotely from the recreational vehicle he lives in with his spouse, Ms. Parker. When he testified, he was just coming off night shift from his work as a road paver, and complained of being tired. There were some connectivity issues with Teams while Mr. Wilson was testifying, but the court was eventually able to receive his evidence.

[46] Mr. Wilson and Ms. Parker live on Vancouver Island. They have moved around a lot for Mr. Wilson's work. They have not generally lived in the West Kootenays, except on a temporary basis for Mr. Wilson's work, when they would stay in their trailer at various locations.

[47] Mr. Wilson testified that he met Mr. Shulman some 48 years ago when they were both working for a paving company in the West Kootenays. Forty eight years cannot be accurate, as the evidence more generally indicates that they met sometime in the years before 2003. It is likely a reference to how long he has worked in the paving industry. Mr. Wilson and Mr. Shulman would chat a little bit at work, but did not see each other very often, and never spent time together outside of work.

[48] Mr. Wilson described Mr. Perepolkin as having been one of the best friends in his life. He has known him for probably 40 years, since when Mr. Wilson first started working for the paving company. Mr. Perepolkin owned his own bobcat company and was doing work for the paving company. Mr. Wilson and Mr. Perepolkin spent lots of time together outside of work, including at Mr. Perepolkin's home in Thrums. They knew each other's families.

[49] Mr. Wilson was asked when the first time the idea of Mr. Perepolkin purchasing the Property came up in conversation. He said that Mr. Shulman had a problem borrowing money and asked him to buy the Property for him. He said that Mr. Shulman somehow became his friend and trusted him and asked him to do so. Mr. Wilson could not do it, but he had a friend, Mr. Perepolkin, that could, and he told Mr. Shulman about Mr. Perepolkin. He explained that Mr. Shulman actually knew Mr. Perepolkin at this point, but they were not friends. He suggested Mr. Perepolkin because he thought he could borrow the money and that it was a good investment.

[50] According to Mr. Wilson, Mr. Shulman asked him if he trusted Mr. Perepolkin, which he said he did, so Mr. Shulman proposed a three-way deal, one-third each. Nobody would have to pay any money, except for things like paying the mortgage and LOC and taking care of the Property. Mr. Wilson described himself as the intermediate balancer in this deal so one guy would not have a problem with the other guy. Each of them would own one-third of the Property.

[51] Mr. Wilson was not sure who owned the Property at this time. He was not sure if Mr. Shulman was a part owner, but he thought someone he referred to as “barbershop guy” by the name of Nick owned it or owned it with Mr. Shulman.

[52] Mr. Wilson said that the three men discussed this deal in his trailer. He said Ms. Parker was also there, and no one else was. It was not a very long conversation. Mr. Shulman was happy to agree so he could get the money and the Property would not be sold to someone else. Mr. Perepolkin was to borrow enough money so he got his deposit back. No one was investing any money, just a loan that Mr. Perepolkin would get. Mr. Shulman was going to live on the Property, and pay the loan, utilities and taxes. Neither Mr. Wilson nor Mr. Perepolkin were to contribute a dime. They all shook hands, and they all understood what the deal was.

[53] When asked what he was supposed to do for his one-third interest, Mr. Wilson said that he was the balance between a friend, Mr. Perepolkin, and someone he did not know that well, Mr. Shulman.

[54] Mr. Wilson testified that Mr. Perepolkin got the loan from the Royal Bank of Canada (“RBC”). In fact, it was from the CIBC.

[55] Mr. Shulman lived on the Property, and he and Mr. Perepolkin both did so for a while too.

[56] Mr. Wilson was asked when the first time was that he recalled one of the three men indicating that they no longer understood they each owned one-third of the Property. He said that after some time Mr. Perepolkin thought he owned the Property and could sell it out from under him and Mr. Shulman. He learned this when Mr. Perepolkin and his wife came out to visit him and his wife, and Mr. Perepolkin’s wife told Ms. Parker. The first time Mr. Wilson heard it directly from Mr. Perepolkin was when he called him a couple of times. Mr. Perepolkin told him he wanted to sell and told him about a real estate agent and asked him what he thought about the idea. Mr. Wilson told Mr. Perepolkin that he did not think Mr. Shulman would appreciate it.

[57] When asked when these conversations occurred, Mr. Wilson said that he did not know years, he just knew things. He said it was sometime shortly before Mr. Shulman filed a CPL against the Property. He said he had a couple of conversations with Mr. Shulman around the same time. He testified Mr. Shulman said he called him because he wanted to get an extension on an agreement to purchase the Property from Mr. Perepolkin. In this connection, Mr. Wilson said he did not know at that time that Mr. Shulman had lied to Mr. Perepolkin about Mr. Wilson giving Mr. Shulman’s son a 17% share in the Property. This remark is an apparent reference to the terms of a contract of purchase and sale for the Property drafted on behalf of Mr. Shulman in 2020, which I will return to in due course.

[58] Mr. Wilson was asked if he recalled any conversations before these that led him to believe they were not one-third partners any more. He said that he kind of always felt like Mr. Shulman thought he owned it, Mr. Perepolkin thought he owned it, and they did not want to give him his share.

[59] In my view, Mr. Wilson's evidence on this point reflects the ongoing lack of clarity between the three men about just what agreement, if any, they had with regard to the Property.

[60] Mr. Wilson recalled being involved in the Company with the other two men. He said they got a LOC at the RBC. The purpose of the Company, according to Mr. Wilson, was to pay the LOC. He said that the LOC was in Mr. Perepolkin's name and secured against the Property, and that all three of their names were on the LOC to pay bills or whatever. There needed to be two signatures on any cheques written. He only ever signed one or two cheques.

[61] Mr. Wilson was not involved in meeting with any lawyers or accountants about the incorporation of the Company, as he was too busy paving highways. He said that neither he nor Mr. Perepolkin had any involvement with the Company, and that only Mr. Shulman did. He was asked if he recalled being a director of the Company, and said he signed the papers, just as he did when the papers were brought to him to dissolve the Company. He did not know anything or care anything about it. He was too far away and had too much to do. He was asked if he was a shareholder, to which he said as far as he knew he was. He was asked what he understood that to mean, to which he replied that personally he thought it was insurance, that he was part of and owned the Property. He thought it was probably Mr. Shulman's idea to incorporate the Company to protect himself. He thought he had probably seen, but never read, a business plan that was drafted for the Company. He thought that Mr. Perepolkin and Mr. Shulman were trying to develop the Property to put in a mobile home park, but that never happened.

[62] Mr. Wilson was asked in direct examination about an email Mr. Shulman sent to him dated December 13, 2007. This was around the time the Company was incorporated. Mr. Shulman wrote, in part, "I hope you realize my dream and promise to you is coming true much sooner than I thought…" Mr. Wilson testified that the "dream" referred to the Property. The "promise" was that they were going to develop the Property and make money. It appears from an email Mr. Wilson sent Mr.

Perepolkin on December 13, 2007 that he had in fact read the business plan Mr. Shulman had sent to the other two men on December 13, 2007. He did not recall having read it earlier in his evidence.

[63] It is clear from Mr. Wilson's evidence that he had almost no involvement with the Company. His evidence about his understanding of the Company, its finances and its relationship to the Property cannot be relied upon.

[64] Mr. Wilson was asked about some text messages between him and Mr. Perepolkin in April and May 2020. In one of them, Mr. Perepolkin said "I told stevie to pay me out". "Stevie" is Mr. Shulman. Mr. Wilson understood that Mr. Perepolkin was sick and tired of Mr. Shulman, whom he described as "very aggressive". In another, Mr. Perepolkin texted "U want 60 g. Call the fucker". Mr. Wilson said that Mr. Perepolkin was telling him to call Mr. Shulman and that Mr. Perepolkin had proposed that Mr. Wilson would get $60,000. According to Mr. Wilson, Mr. Perepolkin wanted to get away from Mr. Shulman by selling him the Property. He was not exactly sure what the $60,000 referred to, except that it was probably what they were offering him to buy him out.

[65] In a subsequent text, Mr. Perepolkin said "Are u out of the deal. Thats what I heard". Mr. Wilson testified that this is when Mr. Shulman was offering to purchase the Property and told Mr. Perepolkin that Mr. Wilson had given Mr. Shulman's son a 17% share. He said this was a lie on Mr. Shulman's part. Mr. Wilson did not know about this at the time, which is why he texted back "Not that I know of he said we are sharing last I heard".

[66] In evidence that was quite unclear, Mr. Wilson said that Mr. Shulman needed an extension. Mr. Shulman wrote Mr. Wilson what he called a "nasty note" and Mr. Wilson did not speak to him after that. He said that Mr. Shulman was trying to purchase the Property behind his back and he was sick and tired of him because he is an "ogre". It was around this time that Mr. Perepolkin asked Mr. Wilson if he thought he could sell the Property by himself, and that Mr. Wilson said that Mr. Shulman would not accept that. He said that Mr. Shulman could become "violent".

[67] The text exchange continued between Mr. Wilson and Mr. Perepolkin. It is not easy to interpret. On June 12, 2020, Mr. Wilson wrote “I don’t know nothing except Steve said u cutting me out about 2 months ago and I didn’t believe so I don’t know nothing”. Mr. Wilson testified that he meant that Mr. Shulman told him Mr. Perepolkin was trying to cut him out of the deal, but he did not believe Mr. Shulman. He testified that Mr. Perepolkin was his friend and he did not believe that he would cut him out of the land deal. On September 23, 2020, Mr. Perepolkin told Mr. Wilson to talk to the lawyer and that it was still a three-way deal. On November 25, 2020, Mr. Perepolkin asked Mr. Wilson when he gave his 17% to Josh, who is Mr. Shulman’s son. Mr. Wilson testified this is when he learned that Mr. Shulman had lied to Mr. Perepolkin that Mr. Wilson had given or sold Mr. Shulman’s son part of his interest.

[68] It was clear from Mr. Wilson’s evidence that he harbours some resentment against both Mr. Perepolkin and Mr. Shulman. He blames them both for the three men’s dreams for the Property not coming to fruition. According to Mr. Wilson, had Mr. Perepolkin and Mr. Shulman been able to get along, “they’d all be millionaires by now”.

[69] In cross-examination, Mr. Wilson was questioned about his recall of the meeting he says happened in his trailer when the three men struck the alleged deal. He testified that Mr. Shulman had to explain to Mr. Perepolkin his problem with the barber, Nick, how much they needed to get Nick’s share, and what the deal was going to be. Mr. Shulman proposed a three-way deal, including Mr. Wilson to protect himself because he did not know Mr. Perepolkin that well and did not trust him, and Mr. Perepolkin agreed. Mr. Perepolkin did not trust or like Mr. Shulman from the beginning. When asked if he remembered anything else that was discussed that day, Mr. Wilson said he did not know, he just paves roads, and when he is not doing that he has fun and does not have serious conversations with anyone about anything.

[70] Mr. Wilson was asked what Mr. Shulman said he needed to do to take care of “the barber”. Mr. Wilson testified that the barber wanted out. Mr. Shulman did not

really give a reason. Mr. Wilson knew nothing about Mr. Shulman's ex-wife or that he owed her money. He just explained that he needed $60,000 to buy the barber out. He never explained why he was not going to stay on title.

[71] Mr. Wilson was asked in cross-examination if Brad Hannah was there during this conversation. Mr. Wilson testified that he did not think he was, but he came the next day and explained to Mr. Perepolkin what he was getting into and that Mr. Shulman could become "violent" if he failed to fulfil his commitment. Mr. Wilson explained that he has never known Mr. Shulman to be in a fight, but he would not trust what would happen if you "screwed him over" the Property. He said that Mr. Shulman really believed the Property was his and was going to stay his and he would die before anyone took it.

[72] Mr. Wilson did not see any documents related to the potential purchase of the Property in 2020. He was aware that both Mr. Perepolkin and Mr. Shulman were represented by lawyers. Mr. Wilson added that they did it when he was not even there, and that they went to the bank and got papers, which he had to sign.

[73] Mr. Wilson did not have to sign any papers related to the purchase of the Property. He is clearly confused about what papers he was asked to sign. The papers he is referring to can only relate to the incorporation of the Company or subsequent paperwork related to the Company the three men formed in December 2007.

[74] Mr. Wilson was asked when the discussion about forming the Company occurred. He said it was discussed in the trailer, so they could protect each other, they would form a company with Mr. Perepolkin as president, Mr. Shulman as secretary-treasurer, and himself as vice president. The Company was going to develop the Property, and make money for all three of them. The Company was going to own the Property, but Mr. Perepolkin never put the Property into the Company's name because, he said, "our names were on it". After all of that was discussed, the three men stood up and shook hands. He confirmed that this

discussion occurred in the trailer with Ms. Parker present. I will return to this discussion in considering Ms. Parker's evidence.

[75] In cross-examination, Mr. Wilson was asked about certain paragraphs of the further amended notice of civil claim, filed September 13, 2021. Of note, he was asked about paragraph 15 of the statement of facts, in which it is pleaded that he was the one to propose the purchase of the Property by the three men so that Mr. Shulman could retain his Property. He said that was true. When he was then asked if there was no discussion of developing the Property and splitting the money, and that it was to protect Mr. Shulman, Mr. Wilson said it was to buy the Property and help all three of them in the future. He agreed it was for economic gain.

[76] Mr. Wilson was taken to paragraph 24, where the facts related to the alleged verbal agreement were pleaded. In subparagraph 24(b), it is pleaded that the men verbally agreed that Mr. Perepolkin would make a deposit of $16,500 and obtain financing for the remainder of the purchase price. Mr. Wilson testified that was true. When challenged on that answer, and whether he actually remembered the amount of the down payment being discussed, he said "yes". He then said that he had said about three times that it was $50,000. He was asked what the interim purchase price was, and said that all he knew was that Mr. Shulman needed $50,000 to pay the barber, and that was what they discussed, and enough money to pay Mr. Perepolkin back.

[77] When asked whether there was any chance he was confusing the original financing for the purchase of the Property with the LOC that occurred later, Mr. Wilson replied "obviously", as he did not know the difference between the two. He agreed that he could not distinguish between the two rounds of financing. He also agreed that there was only one occasion where the deal he described occurred, in the trailer, with the three men and Ms. Parker present.

[78] When asked about subparagraph 24(g), which pleads that the parties would record the value of the Property at the assessed value rather than the price paid when the Property was transferred to the Company, Mr. Wilson said that he did not

really understand. When asked whether subparagraph 24(h) was discussed in the trailer, which pleads that concurrently with the transfer of the Property to the Company, the Company would obtain a LOC to payout the mortgage and some of the Property expenses, Mr. Wilson replied by asking how could it have been? Overall, it was clear that Mr. Wilson had little understanding or recollection of the relevant discussions.

[79] Mr. Wilson was asked if he declared his shares in the Company to his trustee in bankruptcy. He said that two weeks before he had his transplant, or two weeks before he got sick, Mr. Shulman came to him with a blue envelope and “cancelled” the Company because he thought Mr. Wilson was going to die. Mr. Wilson was quite confused about when these events happened, indicating that the first time he got sick was in 2004 and he had his transplant in April 2011 and that he declared bankruptcy the day after he got out of hospital. He testified that Mr. Shulman brought him the papers to dissolve the Company before all that occurred. That is not accurate, as the Company was not dissolved until 2017.

[80] Mr. Wilson was asked why, if he had a one-third interest in the Property, he did not declare that interest to his trustee in bankruptcy. He testified that he did not because it was not in his name, and he did not know if he would ever get it. He testified about his discussions with his trustee in bankruptcy, indicating that the trustee told him that if he was successful in this lawsuit, he could make an offer and they could make a deal. He said he did not declare his interest to his trustee because he did not really believe that the other two men would ever pay him.

[81] Mr. Wilson was asked about subparagraph 24(l), which pleads that the legal and beneficial ownership of the Property would be held in trust by Mr. Wilson and Mr. Perepolkin for Mr. Shulman. He said that was true, so that Mr. Shulman eventually had the opportunity to purchase the Property if he had the money. This is, of course, inconsistent with the central thrust of the plaintiffs’ case, which is that the three men had a three-way deal whereby each of them had an equal share in the

Property, with Mr. Perepolkin holding one-third of the Property in trust foreach of Mr. Wilson and Mr. Shulman.

[82] Mr. Wilson was cross-examined on his examination for discovery. In his examination for discovery, he testified that he had reviewed the facts portion of the amended notice of civil claim, and confirmed that the facts set out therein are true. At trial, he said he had not actually read the amended notice of civil claim. This reflects the lack of care taken by Mr. Wilson with his testimony, both at his examination for discovery and at trial.

[83] In his examination for discovery, Mr. Wilson testified that he really had no idea how long had passed between the “handshake” deal and the formation of the Company and the Company getting a bank account, but it was not very long. He said it might have been a week. At trial, he initially said he had no idea when the Company was formed. He also said that what he said at the examination for discovery was true. He said he had no idea about any of the facts related to the formation of the Company.

[84] The fact is the Company was not incorporated until December 2007, a little over three years after Mr. Perepolkin purchased the Property. It is clear that Mr. Wilson’s memory of what occurred with respect to the Property and the Company cannot be relied upon.

[85] In his examination for discovery, Mr. Wilson testified that he did not really know what was said in the meeting where the deal was allegedly struck. Mr. Shulman explained the deal and Mr. Perepolkin said okay, he would go to the bank and get the money. When asked what he understood he was witnessing at the meeting, Mr. Wilson testified that Mr. Perepolkin was going to go to the bank and get a loan, Mr. Shulman was going to pay the bills, and in the end the three of them were going to profit from it. At trial, he testified that that was true. He was then asked about his evidence at his examination for discovery that Mr. Shulman wanted to live on the Property, wanted to buy it and own it so that he could leave it to his sons. He said at his examination for discovery that that was the major deal at the time, at the

beginning of the deal. Mr. Shulman was going to buy out Mr. Perepolkin. Mr. Wilson also said at his examination for discovery that Mr. Perepolkin would borrow the money to protect the land of Mr. Shulman, and for him, and that was really all the deal was. At trial, he said all of that was true. At his examination for discovery, Mr. Wilson also testified that the barber wanted out, and he would sell the Property to Mr. Shulman, Mr. Perepolkin would borrow the money to pay out the barber, so the three of them could be partners in a "deal on the mountain". At trial he said all that was true. Those things are inconsistent, and cannot all be true.

[86] Mr. Wilson was an unreliable witness. He has a very poor memory, for example initially saying that he first got sick in 2011, he later said it was in 2004 or 2005, after Ms. Parker intervened in the midst of his cross-examination. 2005 is the year Ms. Parker gave in her evidence for when he first got sick, and I accept it is accurate. He also said that Mr. Shulman gave him the papers to sign to dissolve the Company right after his transplant and declaring bankruptcy. Mr. Wilson had his transplant and declared bankruptcy in 2011. The Company was not dissolved until 2017. Given these sorts of inaccuracies and inconsistencies, which pervaded Mr. Wilson's testimony, I am not able to rely on his evidence.

Wanda Parker's evidence

[87] Ms. Parker is Mr. Wilson's common-law spouse. She testified remotely from the recreational vehicle they live in together.

[88] Ms. Parker is 77 years of age. She has had health problems in the last few years, including a recent heart attack. She testified that her health problems have affected her brain. She also acknowledged in cross-examination that she had a long history of pain and pain management issues. She could not remember what medications she is currently taking, although she said she was taking prescription medications and named three of them.

[89] Her evidence made clear that she and Mr. Wilson were close friends with Mr. Perepolkin.

[90] In direct examination, Ms. Parker testified that Mr. Perepolkin is the owner of the Property. When asked what she knew about his ownership, she said that the guy whose name it was in, meaning Mr. Cifarelli, wanted it out of his name, Mr. Shulman could not get it into his name, and Mr. Wilson found Mr. Perepolkin, who agreed to help Mr. Shulman get a mortgage on the Property. She said that was all she knew about it actually. She then said that the three men became partners in the Property, on a “handshake”. She said it was a three-way deal, with each man owning a third of the Property.

[91] In cross-examination, it became clear that Ms. Parker witnessed one substantive conversation about the matters in issue between the three men. She put this conversation in 2005, which is about two years after the Property was purchased by Mr. Perepolkin. She was certain about the year, because it was the year that her husband had a hemorrhage while on the Property.

[92] Ms. Parker was asked if, in the one substantive conversation she witnessed, it was agreed that Mr. Perepolkin would go to the bank, acquire the money, and each of the three men would have a one-third interest in the Property. She said that was how they “wrote it up”. She was then asked if she had seen that document, and said she had, and that she thought the court would see it on Friday, which was when Mr. Wilson was scheduled to testify. No such writing was introduced into evidence then or at any time.

[93] Ms. Parker was asked about whether, in the one substantive conversation she witnessed, there was any discussion about each of the men having a one-third interest. She appeared to say there was not at that point, just that Mr. Perepolkin would go to the bank and obtain the money to obtain the Property. She said that she never witnessed the previous conversation about each of the men owning one-third of the Property. She said that she only heard about that one from her husband.

[94] Ms. Parker’s evidence was confused and internally inconsistent. She has memory problems due to her health conditions, which she readily acknowledged. For the most part, I am unable to rely on Ms. Parker’s evidence. The one material

thing that she was clear about is that the one substantive conversation she witnessed between the three men occurred in 2005. The year was clear to her because it was the same year her husband hemorrhaged. I accept her evidence on that point. She witnessed a conversation between the three men in 2005, long after the Property was purchased and the trust asserted by the plaintiffs was allegedly created. Her evidence cannot be relied upon to establish that a trust was created in 2003, and much less what the terms of that trust would be.

Ronald Bogusz

[95] Mr. Bogusz is an experienced local solicitor in Nelson, British Columbia. He has a busy conveyancing practice and also performs other solicitor work such as incorporating companies and wills and estates.

[96] As I will explain in further detail in making my findings of fact, Mr. Bogusz acted at times for Mr. Shulman and at times for the Company the three men incorporated. Mr. Bogusz' evidence is very useful because he was able to walk the court through the various legal processes on which he advised and represented either the three men or just Mr. Shulman. Mr. Bogusz was a careful witness, who confined himself to what he knew. Given the unreliability of Mr. Shulman and Mr. Wilson's evidence, I place significant weight on what Mr. Bogusz had to say, and equally on what he did not say.

Brent Irving

[97] Mr. Irving is a retired chartered professional accountant. Prior to his retirement in 2019, he had practiced for some 15 or 20 years.

[98] Understandably, Mr. Irving had little independent recollection of his dealings with the parties and their Company, and mostly testified by reference to documents that he was referred to. The firm he was with when he did work for the Company has since been dissolved, and he did not have access to its records, if they even still existed. Without meaning any disrespect, much of his evidence amounted to educated guesswork based on his review of the documentation.

[99] Mr. Irving was not involved in the incorporation of the Company. He initially thought he probably first met Mr. Shulman and Mr. Perepolkin in 2008 or 2009. He has never met Mr. Wilson. After reviewing his firm's file opening sheet, he thought that he started doing work for the Company in 2010. His understanding was the Company would be involved in land development. His understanding was that Mr. Perepolkin owned a piece of property that was going to be moved into the Company and subdivided.

[100] Mr. Irving was originally retained in or about 2010 to prepare financial statements and income tax returns for the Company, including for the previous years. Later, he ceased preparing financial statements and only prepared corporate income tax returns. He also prepared personal income tax returns for Mr. Perepolkin.

[101] There was a gap in his firm providing services to the Company due to the Company failing to pay their invoices. There were difficulties in the way the Company's bookkeeper was dealing with Company expenses which Mr. Irving's firm had to correct and reverse. She was recording income and expenses relating to the Property as being Company income and expenses, when they were in fact Mr. Perepolkin's, as he was the owner.

[102] Mr. Irving testified that the shares in the Company were non-participating, which meant that the shareholders could not earn dividends, and they had no beneficial interest in the Company. He found this odd. I note that the plaintiffs submit this is wrong in law, and that the three parties were all beneficial owners of the Company. Nothing turns on this, and I need not consider the issue further.

[103] Mr. Irving testified about having conversations with Mr. Perepolkin and Mr. Shulman about potential capital gains taxes that would be payable by Mr. Perepolkin if he were to transfer the Property to the Company, and how they might be minimized, or Mr. Perepolkin compensated for them by the Company. For example, participating or preferred shares could have been issued to Mr. Perepolkin, or he could have been given a promissory note evidencing a shareholder loan to the

Company. They never got to the point of discussing details about these issues. He could have been retained to provide a tax plan, but he was never asked to do so.

[104] Mr. Perepolkin had shareholder loans to the Company in the amount of approximately $32,500, which were outstanding at the time the Company was wound up.

[105] Mr. Irving had no note that he was ever told by Mr. Perepolkin or Mr. Shulman that there was a trust agreement related to the Property. That would be a material fact he would want to know. I accept that evidence from Mr. Irving.

Read Ins

[106] The plaintiffs read in some passages from Mr. Perepolkin's examination for discovery. I summarize the material portions in this section.

[107] According to Mr. Perepolkin's read in evidence, Mr. Shulman asked him to buy the Property and said that in the future they could subdivide it. He said they did not discuss the purchase price. Mr. Perepolkin was very unclear as to how the purchase price was decided, saying he did not have a clue, but suggested it related to whatever was owing on the existing mortgage.

[108] Mr. Perepolkin was asked if he ever gave Mr. Shulman any reason to believe he would not be kicked off the Property. Mr. Perepolkin testified that "Not if we subdivided, then we'd all come out ahead, right?". He was also asked if Mr. Shulman was allowed to do work on the Property, to which he answered, yes, because they were supposed to subdivide.

[109] Mr. Perepolkin was asked about a sum of money he withdrew from the Company's LOC. He said it was to pay him back for the down payment he made on the Property, and was done with Mr. Shulman's agreement. In an apparent reference to the business plan, Mr. Perepolkin agreed that he and Mr. Shulman drafted it and agreed that it said the Company was set up for the purpose of taking its sole asset, the Property, and subdividing it.

[110] Mr. Perepolkin was asked about a text he sent to Mr. Wilson on May 21, 2020, in which he asked whether he was "out of the deal". Mr. Perepolkin said the deal referred to was with Joshua Shulman, Mr. Shulman's son, and that Joshua Shulman was "taking over Jim's", *i.e.* Mr. Wilson's, part of the deal. He also said the "contract was not right". He said that Mr. Shulman replaced Mr. Wilson's name with Josh's name on the contract. He did not agree that Mr. Wilson had an interest in the Property, but rather the contract was written to say that he had an interest in the Property.

[111] Mr. Perepolkin was asked about an email Mr. Shulman sent to him and Mr. Wilson on December 22, 2010. That email reads:

Subject	**company business**
From	Stephen Shulman
To	[Email address omitted}
Sent	Wednesday, December 22, 2010 6:31 PM

> Well Partners it is down to the crunch to get our company in good standing with the Registry office.I do have to take blame for some of the delay but the accountant does acknowledge his part as well. One issue we have overlooked is to have a written agreement form the day we made our verbal committment to each other and now for tax purposes so we dont have to come up with money to pay the capital gains Ernie will be liable for as our asset has apprecated by almost 250K we dont want to have to do that.I suggest one of 2 ways. We hand right a simple agreement date it back to shorty before we transfered it from Nick and my name to Ernie's. Or, we each make a affidavitt that the paper work has been missed placed and we swear that our verbal agreement is in effect and we all considerate it binding giving simple details as to what we agreed on. The accountant wants something to back up our claim. Call me or email me back your thought as we need this by the weekend.
>
> [Reproduced as written]

[112] Mr. Perepolkin was asked if he ever responded to this email, and said not the next day or anything. I do not find the lack of evidence of any response by Mr. Perepolkin to this specific email persuasive evidence that he agreed with its contents. Further, and in any event, the email itself does not set out the terms of the alleged "verbal commitment". I also note that the email itself gives evidence of Mr.

Shulman being prepared to lie under oath, and encourage the other men to do the same, by making a false affidavit that paperwork, that never existed, had been misplaced.

[113] The answers read in from Mr. Perepolkin's examination for discovery do not further the plaintiffs' case. What they tend to establish is that Mr. Perepolkin bought the Property, that Mr. Shulman was permitted to remain on the Property and work on it, and the ultimate plan was to subdivide it for their mutual benefit. They also tend to establish that the parties' Company was incorporated to develop the Property. They do not tend to establish that Mr. Perepolkin held any part of the Property in trust for Mr. Shulman, or Mr. Wilson.

Further Findings of Fact

Purchase of Property from the Coxes

[114] Mr. Bogusz did not act for anyone in relation to Mr. Shulman's and Mr. Cifarelli's purchase of the Property from the Coxes in 1999. This is contrary to Mr. Shulman's evidence, who testified that he believed Mr. Bogusz acted for them when they purchased the Property from the Coxes. This is an example of Mr. Shulman's unreliable narrative.

[115] Mr. Shulman's evidence about what he and Mr. Cifarelli paid the Coxes for the Property in 1999 varied. He testified he was "pretty sure" it was $165,000. The Coxes had it listed at $239,000, and they brought the price down so he could purchase it. At his examination for discovery, Mr. Shulman had testified that they paid $215,000 or $235,000 for it. When cross-examined about this, he said he was incorrect or mistaken. When shown the Form A transfer, which indicates the purchase price was $164,000, he said that was "pretty close" to what he had testified to. According to a Form B executed September 15, 1999, Mr. Shulman and Mr. Cifarelli obtained a mortgage from CIBC with a principal amount of $123,000. Mr. Cifarelli paid $50,000. Mr. Shulman did not know what happened to the remaining $9,000. He did not contribute anything towards the purchase.

Transfer to Mr. Perepolkin and Alleged Trust Agreement

[116] I turn to the time period during which the trust is alleged to have been created. Mr. Shulman testified that he trusted everything Mr. Wilson ever said to him, and that he and his partner, Ms. Parker, were "solid, old-school people". According to Mr. Shulman, Mr. Wilson was not a big believer in systems or regulations, and they were very close to the same type of mindset as him.

[117] Mr. Wilson introduced Mr. Shulman and Mr. Perepolkin. According to Mr. Shulman, Mr. Wilson had known Mr. Perepolkin for years, and said he was a solid, good guy that you could trust.

[118] Mr. Shulman testified that he and Mr. Wilson went to Mr. Perepolkin's property in Thrums after work. He had talked to Mr. Wilson about the situation on the Property, and how he wanted to maintain the Property, but needed someone to help him pull it off financially.

[119] According to Mr. Shulman, he was paying child support to his ex-spouse, and Mr. Cifarelli was concerned that she would move in or take over and create a problem, and Mr. Cifarelli did not want to be tied up with Family Maintenance Enforcement by Mr. Shulman's involvement in the Property. Mr. Shulman testified that he was "loaded up" with family maintenance payments and did not have a credit history, so he could not qualify for a mortgage. According to Mr. Shulman, he thought if he got three people involved then it would not end up in a "head to head shotgun clause" because there would be a two to one balance.

[120] According to Mr. Shulman, he, Mr. Wilson and Mr. Perepolkin had multiple conversations over a number of days. Mr. Perepolkin walked the Property. Mr. Shulman presented the deal as no risk on their part. He told Mr. Perepolkin that he was never leaving the Property, this was his place, and he was calling the shots. He testified that he said this to Mr. Perepolkin before he agreed to transfer the Property to him, and that this was the way it was going to happen until they could form a company and get it sorted out. When asked in direct examination what the deal was, Mr. Shulman said that Mr. Perepolkin would get a mortgage and put the Property in

his name, and Mr. Shulman would pay all the bills including the cost of the transfer and any taxes, or the rent coming in from tenants would cover it. He said that his understanding of the purpose of the Company was to protect them all from capital gains tax going forward. He also said it was to provide opportunities for subdividing.

[121] In some of his evidence in direct examination, Mr. Shulman suggested that part of the deal was that he had a right to stay on the Property for the rest of his life. In cross-examination, he was asked whether this was a term of the agreement. He accused counsel of twisting things around and trying to pin him down to look like a liar. Ultimately, he testified it was not a term of the agreement, but the other two men knew it was his intention to stay until he died. This is a good example of the inconsistency and lack of clarity in Mr. Shulman's evidence about the alleged terms of the "handshake deal".

[122] Mr. Shulman said the discussions went on for a few days with Mr. Wilson, Mr. Perepolkin and Ms. Parker. Some discussions were at the Property and some at Mr. Perepolkin's property.

[123] Mr. Shulman's evidence about the purchase price, and how it was arrived at, varied. Initially, in direct examination, he said the price was $165,000. When shown the Form A land transfer, which showed a market value of $161,131.70, he said he believed that was the purchase price. He said the purchase price was determined by the amount owing on the CIBC mortgage, plus $50,000 to repay Mr. Cifarelli. He said that he and Mr. Perepolkin arrived at the purchase price by him simply telling Mr. Perepolkin these facts. When asked if there was any equity in the Property at that time, he said he believed so. He said he did not receive any money on the sale, and he paid the legal fees, making sure that it did not cost either Mr. Cifarelli or Mr. Perepolkin any money.

[124] When shown an Assessment Roll Report dated January 15, 2021, that gave the 2003 assessed value as $166,600, Mr. Shulman changed his evidence. He said he thought it was higher, and his recollection was not as good as he thought it was. He maintained it still showed there was equity in the Property. He was then asked, if

the equity was the difference between the assessed value and what was listed on the Form A, then who did it belong to. His response that it was his and Mr. Cifarelli's. He was asked how it was split, to which he said "down the middle". He then said that he "got into a bit of a situation" with Mr. Cifarelli as he was only getting out what he put in.

[125] In cross-examination, Mr. Shulman testified that he did not have the conveyancing documents related to this purchase, which had been requested at his examination for discovery.

[126] During cross-examination, Mr. Shulman was questioned about the lack of a single piece of paper during the period that Mr. Perepolkin purchased the Property that is consistent with or corroborates the deal he describes. Mr. Shulman testified that there was nothing in writing, and that was the purpose of a "handshake" deal. He went on to say that he would find it "pretty far-fetched" if he was making it up. This is an interesting turn of phrase, as the deal Mr. Shulman says was made is, in my view, "pretty far-fetched".

[127] Mr. Shulman added that he is a deal maker, who creates a "win-win-win". He was asked what benefit Mr. Perepolkin got. He testified that he was going to make more than $70,000 with no investment of his own money, as well as a solid credit report with a history of regular payments being made. Mr. Shulman added that Mr. Perepolkin benefitted immediately, as did he and Mr. Wilson, in the equity. Mr. Shulman appears to fail to appreciate that Mr. Perepolkin paid the down payment on the Property, and was solely liable on the mortgage he took out to finance the purchase.

[128] Mr. Shulman was asked in cross-examination whether it was a term of the agreement that he had a right to stay on the Property for life. He talked around the question rather than answer it directly. He said that the other two men knew that it was his intention to stay until he dies. He said that there was a lot in the "handshake" deal that was in a general scope of understanding, and that eventually the Property

would be for his children. He said he was giving the best and straightest answer he could give to get past counsel's twisting and try to pin him down.

[129] Mr. Shulman agreed in cross-examination that he could not say what words were spoken in making the deal. He could not remember a 17-year-old conversation *verbatim*, as opposed to his prioritizing of the serious aspects and the intention of the other two men.

[130] Mr. Shulman, when asked if he continued to live on the Property after the transfer to Mr. Perepolkin, said that he did, that it was part of the deal that he would stay on the Property until the day he died unless he chose to do otherwise. He said this was clearly discussed and they (I assume Mr. Perepolkin and Mr. Wilson) knew his feelings about staying there for the duration of his life. He testified he was very attached to the Property because of the way it came to him, and the water from the two creeks that feed the Property. He would never have an opportunity to acquire a property like that again.

[131] After a break in his direct examination, Mr. Shulman was asked to think back to when he and Mr. Perepolkin and Mr. Wilson were discussing the terms under which the Property would be transferred. He said that in their discussions he was very clear and disclosed everything. He told them the situation with Mr. Cifarelli and the mother of his two younger children, and that his desire was to live out the rest of his life on the Property, and create an inheritance for his children. Basically, Mr. Perepolkin was to be the financier. Mr. Wilson was to be the third party to maintain balance and trust between him and Mr. Perepolkin, knowing the risk he was taking with both of them of the chance of somebody trying to negate the "handshake" deal. When asked why he took that risk, Mr. Shulman said that he did not have a lot of choice unless he was to lose the Property. It was better to have one-third than nothing, and that is why he took the risk.

[132] Mr. Shulman also testified that the deal was that each of the three men would have one-third of the equity in the Property. If any of them wanted to no longer have an interest in the Property, they could be bought out by receiving one-third of the

equity. He said that Mr. Perepolkin's obligation under the deal was to maintain the financing ability for the Property until they formed the Company, at which time the Company would assume that obligation. No money was to go to Mr. Perepolkin on the transfer of the Property to the Company. Mr. Wilson's sole obligation was to keep Mr. Shulman and Mr. Perepolkin solid and loyal to their "handshake" agreement.

[133] With respect, it is not believable that Mr. Wilson would have been granted a one-third interest in this Property, without any financial stake or obligation in it, solely to keep the other two men solid and loyal to their "handshake" agreement. Mr. Wilson's alleged role in this arrangement is not in accordance with the preponderance of the probabilities. I do not accept that Mr. Wilson was party to any three-way deal at the time the Property was transferred to Mr. Perepolkin. He likely introduced the other two men, and was part of their discussions. Later, he was part of the Company when it was incorporated, albeit he played no significant role in it or anything to do with the Property.

[134] I find that the closest Mr. Shulman came to telling the truth about the alleged "handshake" deal was when he testified that there were no bullet points of conditions discussed. They discussed the overall opportunity, all three of them were involved, but they recognized things could change in the future.

[135] In my view, this evidence epitomizes why the plaintiffs cannot discharge their burden of establishing the trust exists. There is no certainty in the plaintiffs' evidence as to what the terms of the alleged "handshake" deal was.

[136] Mr. Bogusz acted for Mr. Shulman and Mr. Cifarelli with respect to the sale of the Property to Mr. Perepolkin in 2003. He did not represent Mr. Perepolkin. In cross-examination, Mr. Shulman initially said that he did not know why Mr. Bogusz would be representing Mr. Perepolkin, but that if he did it must have been part of the "handshake" deal that Mr. Shulman was going to cover Mr. Perepolkin's costs of putting the Property into his name. At his examination for discovery, Mr. Shulman testified that Mr. Bogusz handled both sides of this transaction. Mr. Shulman testified

that he gave Mr. Perepolkin the money to pay for his legal fees. He did not remember how much.

[137] Mr. Bogusz had, in accordance with his usual practice, destroyed his files related to the 2003 purchase and sale. He had no recollection of how the parties arrived at a purchase price or how the proceeds were distributed. He identified the Form A transfer form indicating that Mr. Cifarelli and Mr. Shulman transferred the Property to Mr. Perepolkin for consideration of $161,131.70 on October 29, 2003. He witnessed Mr. Cifarelli and Mr. Shulman's signatures. He said they both came in to sign, but he had absolutely no recollection of the meeting, or whether they attended together or separately. He had no recollection of Mr. Shulman telling him he was retaining any sort of interest in the Property, and said that if a client did so, he would want to document it somehow, for example by a promissory note, bare trust or mortgage.

[138] Mr. Shulman testified that when he "did the deal with Ernie" he told Mr. Bogusz, while he was in the office with Mr. Cifarelli doing the paperwork, that he was retaining an interest in the Property, and that down the road it would be in the Company's name. He also testified that he told Mr. Bogusz that there was a trust agreement, but not the details. He said he got cautioned about "handshake" deals and risk taking. Mr. Bogusz did not offer to "paper" this interest, and he did not ask him to do so. He testified that it was "his deal", and if he was going to make it happen he needed to create a "win win" or follow through so it does not cost anyone anything.

[139] I do not believe this evidence from Mr. Shulman. I find that if Mr. Shulman had told Mr. Bogusz that he was retaining an interest in the Property on its transfer to Mr. Perepolkin, or that there was a trust agreement in place, Mr. Bogusz would have documented that information somehow, in accordance with his usual practice. I infer from the fact that Mr. Bogusz did not do so that Mr. Shulman did not tell him he was retaining any interest in the Property.

[140] Mr. Bogusz identified the state of title certificate, showing Mr. Perepolkin as the registered owner in fee simple of the Property. He also identified Mr. Perepolkin's statement of adjustments. It shows the same purchase price, and indicated that there was a CIBC mortgage in the amount of $150,966.70, leaving a balance required to complete of $13,338.36, or a total of $164,306.06. Similarly, he identified the order for payment from Mr. Perepolkin, indicating a loan in the total amount of $156,043.48, with $150,966.70 of that amount to be applied to the purchase of the Property from Mr. Cifarelli and Mr. Shulman.

Incorporation of the Company

[141] Sometime in or about late 2007, the three men decided to incorporate the Company. Mr. Shulman testified about a business plan for the Company he said he drafted with the help of his bookkeeper and following discussions with the other two men. He said the primary goal of the plan was to subdivide the Property. A neighbouring property was being subdivided, and they thought there might be an opportunity to tie into the water disposal system being put in for that property. He said he initiated the idea and was in control. His idea was to keep ten acres at the top of the Property for his residence. The plan referred to securing a $250,000 LOC to pay off the existing mortgage on the Property of $108,000 and finance the development project. Mr. Shulman did not know where the amount payable on the mortgage came from as he knew it would have been more than that.

[142] Mr. Shulman emailed the business plan to the other two men on December 13, 2007, asking them what they thought. Mr. Wilson provided a brief response. Mr. Shulman was asked about any discussions he had with Mr. Perepolkin about the plan, but he did not provide a clear response.

[143] Mr. Bogusz was retained to incorporate the Company for the three men in or about 2007. He recalled meeting Mr. Shulman and Mr. Perepolkin together in January 2008. He was not sure when he first met either man, although he had a record of witnessing a signature for Mr. Shulman in 2002. He was not sure if he has ever met Mr. Wilson.

[144] Mr. Bogusz identified the Company Information document for the Company as of January 27, 2011. His email was the Company email address. Mr. Bogusz, not surprisingly, had very little independent recollection of incorporating the Company, or the work his office did for the Company in the years following its incorporation. His understanding of the purpose of the Company was that it was to receive the Property, and to develop it.

[145] Mr. Shulman signed the application to incorporate the Company. The Property was the Registered and Records office. The three men were the directors. Mr. Bogusz' office prepared the Incorporation Agreement. His office was taking instructions from Mr. Shulman, who instructed them in November 2007 that he would take 40 Class A Voting Non-participating shares, and that each of the other two men would take 30 shares. Mr. Bogusz subsequently met with Mr. Shulman and Mr. Perepolkin on or about January 24, 2008. The upshot of that meeting was that each of the three men would have 40 shares, making them equal shareholders, and Mr. Bogusz amended the corporate records accordingly.

[146] Mr. Shulman's evidence on this point was that he initially instructed Mr. Bogusz to give him 40 shares, and each of Mr. Wilson and Mr. Perepolkin 30 shares. He said he did so to establish his control over the Property. He testified that Mr. Wilson was concerned about that, and they changed it to make them all equal.

[147] In my view, this is a telling example of Mr. Shulman purporting to have more control or authority than he in fact had, to the detriment of the other two men. It is also inconsistent with the equal one-third beneficial interests in the Property which the plaintiffs assert in this lawsuit.

[148] Mr. Bogusz identified his file notes from his November 19, 2007 meeting with Mr. Shulman. They reflect the 40/30/30 share structure Mr. Shulman instructed him to include in the Incorporation Agreement. They also indicate that the plan was to transfer the Property to the Company. They refer to a subdivision occurring in due course. There is no reference to Mr. Perepolkin holding the Property in trust.

[149] On September 23, 2008, Mr. Bogusz sent Mr. Irving a fax. On the cover page, he noted that the Property was still registered to Mr. Perepolkin. Mr. Bogusz had no recollection why he provided this information. Mr. Bogusz also did not know why the Property was never transferred to the Company, although he did note that it could not be transferred while it still had a mortgage on it, and that the existing mortgage would need to be assigned or paid out to transfer the Property.

Mr. Perepolkin Refinances the Property

[150] At about the same time the three men incorporated the Company, Mr. Perepolkin refinanced the Property. He did so by obtaining a LOC, with which he paid out the existing mortgage.

[151] Mr. Shulman was examined about a number of emails he sent during this period. Mr. Shulman was asked about his December 19, 2007 email to the other two men. It was written at the time they were looking for a LOC. The phrase “you have a very valuable and beautiful piece of land” came from a Mr. Teague, who was an agent Mr. Shulman was dealing with for financing. Mr. Shulman testified that the “you” referred to was him, and that Mr. Perepolkin never denied that he had an interest in the Property. It is far from clear that the “you” referred to Mr. Shulman singularly. In any event, this is his hearsay quote of what someone else allegedly said.

[152] Mr. Shulman testified about a number of emails he sent solely to Mr. Wilson in this period, beginning with one dated December 28, 2007. He told Mr. Wilson about going to the bank with Mr. Perepolkin to “see to” the LOC. He wrote that:

> …you and I wouldn’t show up on anything and we will need to make sure our corporation identifies the facts. Now Ernie has all the cards and he can do as he pleases so we must trust him to be fair… Until we can clear the credit line we will not be able to transfer the land into the companies name.

[153] He also testified about his January 10, 2008 email to Mr. Wilson, providing an update on their efforts to obtain a LOC. He ended this email by saying:

> One thing I would like to hear from you is how you and I protect our interest Ernie can take all we put in place and we could end up with $250,000 owed

> and nothing to show for it as well as what we would be left to do, we now need our partnership agreement to reflect our deal as we set out when we started Jimmy we did not think things would go up so fast and now capital gains is going to be an issue, we are sitting on a lot of money now and we have to be realistic, this is our retirement.

[154] He was asked what deal he was referring to, and referred to the "handshake", "three-way" deal, and said that they should "trust Allah and tie up their camels", which he explained meant do their paperwork and get themselves covered. Mr. Wilson responded on January 11, 2008. The gist of his email was that Mr. Perepolkin had shown good faith. He also expressed significant concerns about the state of Mr. Shulman's finances, referring to him owing lots of money and not making any payments.

[155] Mr. Shulman was also asked about his January 24, 2008 email to Mr. Wilson, in which he wrote that "Ernie is now holding in trust the land for the company until such time bank is satisfied the company is profitable…" He also wrote "Ernie and I also discussed the money he laid out when we paid Nick out which was $13000 and we agreed we will decide my end when we are all together and have a sit down…" He testified in direct examination that he was confirming everything they had basically agreed when they got started. He also testified that he never got anything for his equity in the Property, only for his labour doing the renovations.

[156] Mr. Bogusz did not believe he had seen a Form B indicating that a mortgage was taken out by Mr. Perepolkin with RBC on the Property on or about January 11, 2008. He believed it paid out the existing CIBC mortgage, but did not have any involvement with it.

[157] According to Mr. Shulman, after four years of him paying the mortgage, he made an appointment at the RBC. He and Mr. Perepolkin saw a banker by the name of Samuel. They arranged to pay off the first mortgage with a LOC secured against the Property. The assessed value of the Property was high enough that they could get a $200,000 LOC in Mr. Perepolkin's name. The LOC was to be serviced by a "joint account" the three men opened up in which Mr. Shulman testified he deposited

money. This account was actually in the name of the Company. According to Mr. Shulman, he was the moving force behind all this. According to Mr. Shulman, Mr. Perepolkin was not “in tune” with financing, banks and money. Mr. Shulman had more experience with “the cost of money”.

[158] Mr. Shulman testified about the LOC obtained by Mr. Perepolkin and secured against the Property. He said it would have been opened really close to the date of a January 2008 statement, which showed a credit limit of $250,000, and an outstanding balance of $164,170.60. This was at the same time they opened up a joint account for the Company. Mr. Shulman testified that the purpose of the LOC was to make funds available to the Company to take on projects, and to reduce the costs of maintaining the Property at half the interest rate of the mortgage.

[159] Mr. Shulman testified they negotiated the best interest rate you could get. He testified that the interest rate was .75 below prime. The statement indicates that the interest rate on the LOC was at prime. This is a small but telling example of Mr. Shulman’s tendency to exaggerate his business acumen. When questioned about this issue in cross-examination he said that his memory was not so good.

[160] Mr. Shulman testified that the LOC was only supposed to be used for Company opportunities and projects. In addition, he agreed to pay back Mr. Perepolkin for the down payment he made; he was not sure if that was $13,000 or $16,000. They also agreed to pay for renovations. They also invested $20,000 into another operation.

[161] Two amounts were withdrawn from the LOC on January 22, 2008. One was in the amount of $144,170.60, which would have been to pay off the mortgage. The other was in the amount of $20,000. Mr. Shulman thought this sum went into the joint account or back to Mr. Perepolkin for the down payment when they did the sale. He did not know which.

[162] Mr. Shulman testified that he paid 99.99% of the interest payments on the LOC. He said that he always over-estimated, and rounded up the amount to be paid

by reference to the previous month's statement, and paid in cash. Few, if any, of the interest payments shown on the LOC statements appear to be rounded up. They are for amounts like $796.89 or $668.76. Mr. Shulman also said there were occasions where the LOC itself paid for interest on it. He said this was because there were times when he did not make a payment on time.

[163] In testifying about the Company account, Mr. Shulman said that it was set up to have interest payments for the LOC automatically taken out. This is inconsistent with his evidence that he paid interest payments for the LOC in cash. It may be that he was referring to deposits to the Company account, which he said he made the only deposits to, from rent collected from tenants or from his own money. As with most of his evidence about the financial arrangements, it was not entirely clear.

The parties' ongoing conduct with respect to the Property and Company

[164] Mr. Shulman testified that he paid every single expense related to the Property. Mr. Perepolkin would give him the bills and ask where the money was, and he always got every dime he asked for. If Mr. Perepolkin paid a bill, for example for taxes, Mr. Shulman would reimburse him. The only exceptions were renovations to the Property, which were paid from the LOC. He testified that he and Mr. Perepolkin never entered into an agreement where he paid rent.

[165] According to Mr. Shulman, "for the first 17 years things were pretty good". He and Mr. Perepolkin did things together. He said he was sometimes two to three months late and the bills piled up, but Mr. Perepolkin always got paid back.

[166] Mr. Shulman testified about how he paid the expenses on the Property, such as insurance and utility bills. Sometimes he paid them directly, and other times Mr. Perepolkin paid them and he reimbursed him. He was sometimes months late and the bills piled up, but Mr. Perepolkin always got paid. The bills, such as insurance and Terasen Gas bills, all appear to have been in Mr. Perepolkin's name. They came to the Property and Mr. Shulman testified that he would open the bills.

[167] After the Company was incorporated, Mr. Shulman would give Mr. Irving receipts, such as a 2013 property insurance bill, with the marking “S/H”. He testified this was to indicate “Shareholder”.

[168] There were tenants at the Property over the years. They rented various portions of the residence, a park model trailer and a fifth wheel trailer. Mr. Shulman received the rents and acted as landlord. For example, his name appears as the landlord on a Residential Tenancy Agreement dated November 1, 2010. Mr. Shulman testified this was part of his control of the Property. He said that it was discussed at the outset that the house would cover its own expenses by rent received, and he would cover the expenses of the house.

[169] Mr. Shulman was referred to a cheque on February 18, 2008 in the amount of $6,000. He did not know what it was for, but said that only Mr. Perepolkin could sign a cheque. Similarly, he did not know what an online transfer in the amount of $4,000 on March 28, 2008 was for, but said that only Mr. Perepolkin could transfer money out of the LOC. While he was examined about a number of entries in the LOC and Company account statements, it was clear that Mr. Shulman had no real recollection of payments made to or withdrawals from the LOC or the Company account, and was, at best, guessing. He frequently said that he needed to go back and look at the deposit books, but no such deposit books were entered into evidence. On cross-examination, it was established that Mr. Shulman had been asked for these and other documents at his examination for discovery, but he failed to produce them.

[170] Mr. Shulman testified that there was one time that Mr. Perepolkin withdrew money from an ATM and deposited it in their Company account. Other than that, he had no recollection of anyone other than himself depositing funds to pay interest.

[171] Mr. Shulman testified that a fair bit was taken from the LOC off the bat to pay for renovations on the Property.

[172] Mr. Shulman was asked about statements for the Company account, starting in February 2008. He testified that access required the signature of two of the three

men, although there were times when he had to pay small bills and he would write a cheque with one signature, and the bank could call one of the other two men if it thought it was not right. Mr. Perepolkin would also sign a number of blank cheques and leave them with Mr. Shulman when he was going out of town for work. Mr. Perepolkin had the only client card and ATM access. In addition to Company expenses, Mr. Shulman testified that he issued the odd cheque for things like Shaw payments that needed to get paid right away. He said he did so with the knowledge of the other two men. He also said that they agreed he would get some wages for working on the Property, a minimum amount to feed himself and pay Family Maintenance Enforcement.

[173] In 2011, Mr. Bogusz received instructions that Mr. Wilson was going bankrupt and asking to remove him as director. On May 25, 2011, Mr. Bogusz' office sent Mr. Wilson correspondence for him to sign resigning as director and officer. The correspondence was sent to Oak Way Manor, and Mr. Bogusz had a note about Mr. Wilson having a liver transplant and being in some sort of facility, all of which indicates this occurred while Mr. Wilson was experiencing some of the serious health problems he testified about.

[174] Also in early 2011, Mr. Bogusz received instructions from Mr. Shulman to issue additional participating shares in the Company to the three men. His office corresponded with Mr. Irving's office about this, but it was never done as Mr. Wilson did not sign the paperwork.

[175] The 2016 Annual Report shows Mr. Perepolkin as president and Mr. Wilson as vice president. Mr. Bogusz explained that the paperwork he sent to Mr. Wilson never got signed or processed, which is why Mr. Wilson was still listed as an officer at this time.

Mr. Shulman's Will

[176] Mr. Bogusz testified that he drew up Mr. Shulman's will in 2016, and there was a vague reference to the Property in his notes. He later identified his June 14, 2016 notes. They include, under the heading "plan", a reference to a trust for his

four children and “I wish that my interest in Cox Rd. Property goes to my kids to enjoy”. There is no mention of the nature of that interest. When asked in cross-examination about that, Mr. Bogusz said that it was always a vague and nebulous concept to him, Mr. Shulman expressed some interest, and he was not arguing with it. There was no reference to either Mr. Perepolkin or Mr. Wilson having any interest in the Property.

[177] Mr. Bogusz testified that if Mr. Shulman had said he had an interest in trust in the Property, he would absolutely have made a note of that. He made no such note. He would have had to delve into it a lot more, but Mr. Shulman never used the word “trust”. In the will Mr. Bogusz drafted, the following was stated “It is my wish that my interest in my Cox Road property be retained if possible, for the use of Brigid Barner as a home, also for my children to share and enjoy between them.” There is no evidence as to whether Mr. Shulman executed this will, as the copy in evidence is unsigned.

The Company is Dissolved

[178] The Property was never transferred into the Company’s name. Mr. Shulman testified that he did not know why the Property was never transferred to the Company. He said he paid to have Mr. Perepolkin’s taxes done with Mr. Irving so that Mr. Perepolkin would not incur capital gains taxes on the transfer. According to Mr. Shulman, Mr. Perepolkin was three years in arrears with his taxes at this point, and the bank wanted him to get caught up before they could move forward. Mr. Shulman testified very unclearly that he paid Mr. Irving, although he also said that the Company had its LOC in place by this point, and they might have “maxed out” the LOC.

[179] Mr. Shulman testified that after Mr. Perepolkin’s taxes were done he approached Mr. Perepolkin a couple of times to discuss transferring the Property to the Company, but he was evasive. He was pressing the issue, and saying he wanted to get his name on title. Mr. Perepolkin said he wanted to shut down the

Company. Mr. Shulman testified that this was his first red flag about Mr. Perepolkin's honesty and integrity.

[180] Mr. Shulman testified that he looked after the corporate affairs of the Company, making sure it was caught up with its filings. This is plainly untrue, as the evidence of Mr. Irving demonstrated. The Company never became truly operational, was frequently behind in filing tax returns and corporate filings, and was ultimately dissolved.

[181] Mr. Bogusz confirmed with the three men that the Company was dissolved effective March 22, 2017. Mr. Shulman had contacted Mr. Bogusz' office and instructed him it needed to be dissolved by March 6, 2017, or it would be dissolved by the government for failure to file records. All three men were required to sign the necessary paperwork to dissolve the Company and did so. Mr. Shulman swore the necessary affidavit, stating that the Company had no assets or liabilities or that its liabilities had been dealt with. Mr. Bogusz did not know why they wanted to dissolve the Company.

The Relationship Breaks Down

[182] Mr. Shulman testified that in 2018, instead of going into the LOC, money was going into Mr. Perepolkin's personal account from the Company account. Mr. Shulman did not know how Mr. Perepolkin paid bills after that. He said it was a red flag to him, how quickly the LOC increased.

[183] Mr. Shulman testified about an email he sent Mr. Perepolkin on December 2, or February 12, 2018. He was writing about transferring him money for the LOC. He also said "I also want you to find what we have to do with your bank situation regarding putting my name on the property. I want this done ASAP." In context, I think the email was likely dated December 2, 2018.

[184] Mr. Shulman also testified about an email he sent Mr. Perepolkin on December 18, 2018 about the plan to subdivide the Property. He was asking for money to pay an appraiser. He ended his email saying "If there is some reason why

you feel I shouldn't be intitled to get some money out of my 10 year investment speak up". He testified he was referring to being on the Property since 1999, and asking for a little bit of money. He did not believe Mr. Perepolkin replied.

[185] Mr. Shulman was asked about a text exchange with Mr. Perepolkin in September 2019. Mr. Perepolkin needed to dump some gravel on the Property and was asking if it was clear to do so. Mr. Shulman asked "how short we are to get up to date please", an apparent reference to being behind on paying the LOC. He also said "Also I need my name put on the deed and see what is needed to do it." He did not believe he received any response. In a similar vein, Mr. Shulman texted Mr. Perepolkin on December 14, 2019, expressing concern about why he was not moving forward with getting his name on the Property.

Mr. Shulman Attempts to Purchase the Property from Mr. Perepolkin

[186] In March of 2020, Mr. Shulman testified that he was very stressed. He was concerned about the risk of COVID for him and his then spouse. He was concerned if something happened to him or to Mr. Perepolkin that there would be nothing in place for his children. He wanted his name on the Property. He was frequently texting Mr. Perepolkin about these issues. On April 8, 2020, Mr. Shulman texted, asking if Mr. Perepolkin was in agreement that they needed to get this done. Mr. Perepolkin responded "Well I guess im gonna back track then and start with 10 years of paying on 5000 ? With interest." Mr. Shulman testified that this was a reference to $5,000 Mr. Perepolkin had put on his credit card and lent to a third party that Mr. Shulman had talked him into lending money to. Mr. Shulman offered to pay that money back. Mr. Perepolkin told him it would be $8,075, cash or registered cheque. Mr. Shulman testified that he paid that amount. He said it took a little bit of time, and so he brought him 400 ounces of silver and told him to hold on to it until he brought him the money.

[187] Mr. Bogusz testified about his notes that had to do with Mr. Shulman's attempts to purchase the Property from Mr. Perepolkin in 2020. He struggled to explain the notes, which referred to various sums of money. They had something to

do with providing an explanation why Mr. Shulman was not required to come up with the balance between the mortgage Mr. Shulman was seeking and the purchase price of $436,000. There was some kind of reference to each of the three men having a one-third interest in the Property. Mr. Bogusz testified that he never knew what the agreement was between the parties, and he thought this was the first time he was told about a one-third interest. He testified that he did not really understand it, that it was something they could use to draw up the contract, and let the bank "chew it over". He did not investigate it, he just trusted what Mr. Shulman told him, and felt that the bank could look into it if it wanted to.

[188] Mr. Bogusz drew up a contract of purchase and sale for Mr. Shulman, dated May 21, 2020, with Mr. Perepolkin as the seller and Mr. Shulman and his son, Joshua, as the purchasers. It referred to a purchase price of $463,000, payable by a $5,000 deposit, "CREDIT for an unregistered 2/3 interest in the adjusted net equity of the property held by the vendor in trust for and on behalf of the purchaser, $138,333", and the balance of $319,667 being payable on completion. Mr. Bogusz testified this is the contract he drew up for Mr. Shulman to show to a mortgage broker. The contract was signed by the two Shulmans and Mr. Perepolkin.

[189] In cross-examination, Mr. Bogusz was asked about the title clause in the May 21, 2020 contract, by which the vendor agreed to transfer title to the purchaser, free and clear from all encumbrances. He agreed the intention of this clause was to ensure that the vendor was transferring clear title, free from any unregistered interests. He said that Mr. Shulman never told him that his son had any interest in trust in the Property. He had no understanding of who settled any trust interest, when it was settled, the object of the trust, or what the terms of the trust may have been. Mr. Bogusz testified that the word "trust" came in as his choice of words to try to represent to the bank.

[190] When Mr. Shulman was initially asked to identify this contract in direct examination, he said that he drafted it after Mr. Perepolkin asked to pay him out. Mr. Shulman was clearly confused, as this contract was drafted by Mr. Bogusz, not him.

He was taken back to this contract later in his direct examination, after he had reviewed a number of texts between himself and Mr. Perepolkin in the preceding months. He was asked why he and Joshua were listed as purchasers. He said it was for two reasons, one having to do with inheritance and the second having to do with Joshua having a credit rating. He testified that if this deal had gone through Mr. Wilson would still have had one-third, by his "handshake" deal with him.

[191] It was clear that Mr. Shulman was still confused about what contract he was talking about, as he referred to having taken this contract off the internet. This is clearly a reference to the May 6, 2020 contract he drafted, not the May 21, 2020 contract he was testifying about. He ultimately realized he was mixed up. In discussing the May 21, 2020 contract, he said that this was Mr. Bogusz spelling it out, with the two-thirds interest held by Mr. Perepolkin for him and Mr. Wilson. Of course, this contract does not refer to Mr. Wilson, and says that the two-thirds interest was held for the two Shulmans. Mr. Shulman's evidence does not satisfactorily account for this crucial difference.

[192] Mr. Shulman testified that he took the contract out to Mr. Perepolkin's home. He said that at the signing of this contract Mr. Perepolkin demanded payment of the $8,000 he had lent to the third party. According to Mr. Shulman, Mr. Perepolkin wanted $8,000 and an additional 30 ounces of silver for material he had dumped at the Property. According to Mr. Shulman, he gave him the 30 ounces of silver, which left him feeling happy that they were now "square".

[193] On May 20, 2020, Mr. Bogusz had emailed a draft copy of the contract to Mr. Shulman. He provided Mr. Shulman the breakdown he had given to Ms. Ward, the mortgage broker Mr. Shulman was working with, as follows:

> PP is 436 k (from BC Assessment value)
>
> RBC LOC is 250k.
>
> 463-250 = 213 equity.
>
> LESS: $13,000 – this is some old amount that is owed to Steve ($5,000) and Ernie ($8,000) from a former corporate venture intended for this land

> LEAVES: $200,000 net equity. Divided 1/3 Ernie ($66,667) and 2/3 Steve 133,333
>
> Long and short, Steve is paying $463,000 less offsetting credits of $138,333.

[194] In his May 12, 2020 email to Ms. Ward, Mr. Bogusz described the foregoing as "the real deal (all according to Steve just now)". He ended his email to Ms. Ward by saying "Basically Ernie was the trustee of Steve's share of this property, as Steve did not want his name on any title for a while there." Mr. Bogusz was asked in direct examination whether he believed what he told Ms. Ward to be true. He said he had a hard time with that, did not know the inner workings of the deal, trusted Mr. Shulman, and had to give some numbers because Mr. Shulman had a gap to fill. He said this was not his representation, it was the borrower's representation to Ms. Ward. When asked if he believed Mr. Perepolkin was a trustee, he said that he believed that Mr. Shulman believed that. This was a very careful answer. Mr. Bogusz was asked whether he agreed that the explanation he provided to Ms. Ward appeared to refer to the same deal his November 19, 2007 notes addressed. He did not agree. Nor do they appear to refer to the same deal to me. Again notably missing from the breakdown Mr. Bogusz gave to Ms. Ward on Mr. Shulman's instructions is any reference to Mr. Wilson having a share. On this version, Mr. Shulman alone had a two-thirds beneficial interest in the net equity in the Property.

[195] Ms. Ward replied to Mr. Bogusz that same day. She said she would need to show the lender;

> …some kind of legal confirmation of Steve's interest/equity. I can't wrap my head around how the lender is going to be able to use his equity to purchase. Unless we use some kind of contract that shows the down payment funds (provided by Ernies share) for the purchase??

[196] Mr. Bogusz responded that he could not:

> …read the lenders' minds, but, well, first off, he gotta need a new contract that says most or all of this stuff. I can do that. I think we need to call it his 'unregistered 2/3 interest held in trust'. Then see what the lenders say. See if the call B.S.

[197] Ms. Ward replied, saying she thought this was a great way to proceed.

[198] Mr. Bogusz testified that Mr. Shulman never used words like “trust” or “unregistered 2/3 interest”. These were his words, after talking to Mr. Shulman, to fill the missing link. He said it was the best he could come up with to present to the lender, and let them “chew it over”.

[199] It is notable that the contract Mr. Bogusz was instructed to draft by Mr. Shulman indicated that Mr. Perepolkin held two-thirds of the Property in trust for the purchaser, being Mr. Shulman and his son. There is no reference in the contract, or in the explanation provided to the mortgage broker, to any part of the Property being held in trust for Mr. Wilson, as alleged in this lawsuit. It is reasonable to infer that the breakdown Mr. Bogusz provided to Ms. Ward is consistent with what Mr. Shulman was telling him about the Property. It is entirely inconsistent with the position taken by the plaintiffs in this lawsuit.

[200] Mr. Bogusz identified in cross-examination a contract of purchase and sale, dated May 6, 2020, which Mr. Shulman had provided him. It was an off the shelf “do it yourself” contract, apparently signed by both Shulmans and Mr. Perepolkin. Mr. Bogusz described it as a “straight purchase contract”, subject to financing, with no indication of any sort of trust. He understood that Mr. Shulman had attempted to use this contract to obtain financing, without success. He agreed that the May 21, 2020 contract he drafted for Mr. Shulman was a second “kick at the can” to try to get financing. The May 6, 2020 contract refers to the buyer depositing $5,000 as “earnest money” with Mr. Bogusz on or before May 23, 2020. Mr. Bogusz testified that Mr. Shulman’s partner delivered a deposit to him. He was not sure of the date he received it, but agreed he deposited it in the bank on May 26, 2020, the Tuesday after Victoria Day. He agreed this was consistent with him receiving the deposit late in the day on May 23, 2020.

[201] On June 2, 2020, Mr. Shulman emailed Mr. Bogusz, asking for his assistance in drafting two statutory declarations requested by the mortgage broker, stating he does not owe any money to his ex-wife or to the mother of two of his children. Mr. Bogusz asked Mr. Shulman to have Ms. Ward contact him directly.

[202] Mr. Bogusz' understanding is that Ms. Ward was not able to obtain financing for Mr. Shulman. He knew that Mr. Shulman switched to seeking financing from the RBC.

[203] A solicitor retained by Mr. Perepolkin, Alan Burch, emailed Mr. Bogusz on June 10, 2020, after the subject removal date of June 8, 2020, stating that Mr. Perepolkin would not agree to any extension, and as the condition precedent was not waived by that deadline, the contract was now null and void. Mr. Perepolkin was stated to still be interested in selling the Property to the Shulmans, but not on the terms set out in the May 21, 2020 contract. Mr. Perepolkin was to contact the Shulmans directly to negotiate.

[204] After Mr. Bogusz received this email from Mr. Burch, he received an addendum to the contract, apparently signed by both Shulmans and Mr. Perepolkin, changing the date by which the conditions had to be removed from June 8, 2020 to June 26, 2020. Mr. Bogusz could not find this document in his database, and he wondered if he or someone else drafted it. Mr. Burch took issue with it, because he had emailed Mr. Bogusz on June 10, and this document "showed up" after his email.

[205] Mr. Shulman testified about this addendum, saying he needed an extension to enable him to get the financing to close the deal. He said Mr. Bogusz drafted it at his request. I am doubtful that Mr. Bogusz did draft the addendum in light of his evidence about it.

[206] On June 10, 2020, Mr. Shulman texted Mr. Perepolkin about getting bank approval and said that Mr. Bogusz was making amendments to the contract. Mr. Perepolkin responded that Mr. Wilson said he wants his share. Mr. Shulman texted that "he is getting it" and "I talked to him". Mr. Shulman testified that Mr. Wilson was going to get his one-third. To state the obvious, this is completely inconsistent with the contract of purchase and sale Mr. Shulman had Mr. Bogusz draft, and on the basis of which he was seeking financing. It is difficult to escape the conclusion that Mr. Shulman was telling each of Mr. Wilson and Mr. Perepolkin, not to mention Mr.

Bogusz and the bank, what he thought they wanted to hear, with little or no regard for the truth.

[207] On June 23, 2020, Mr. Shulman sent an email to Mr. Bogusz and the loans officer at RBC, providing a copy of the receipt for the 2020 Property taxes.

[208] On June 30, 2020, Mr. Shulman wrote Mr. Bogusz. He said that the bank wanted a new co-signer. He said he was worried by Mr. Perepolkin's resistance to the delays. He said he needed to get his name on title for four years, "as you know". He said the new contract would be in his name and Kevin Nichols, with equal ownership. Mr. Bogusz testified that he did not really know what to make of this, that going back to 2007 there had been some plan for development. He could not recall any recent conversations with Mr. Shulman that would account for the "as you know".

[209] Mr. Shulman testified he was not approved for a mortgage on his own, and needed a co-signer. He testified that the first person he approached was a man he had met who lived in Salmo when Mr. Shulman had some stuff for sale. He described him as very well to do, working in Dubai, and earning $300,000 a month. According to Mr. Shulman, this person talked to the bank, and was on board to do it. He did not give the name of this individual in direct examination, nor did he explain why he did not ultimately co-sign a mortgage.

[210] Mr. Shulman was asked about this man in cross-examination. He initially could not give his name, saying it was on the tip of his tongue, and he would need to go on his Facebook page. He then thought it might be "Nichol". Mr. Shulman was later shown his email to Mr. Bogusz where he said that the contract would be in the name of him and Kevin Nichol. He then said that he was "ready to do the deal", that he would participate in the Property with Mr. Shulman and Mr. Wilson, and Joshua would not be involved. Mr. Nichol would get Mr. Perepolkin's share. He was then asked about his email to Mr. Bogusz where he said Mr. Nichol and himself would be equal partners. He had no real explanation for why he said they would be equal partners and yet Mr. Wilson would also be involved.

[211] I do not believe any of Mr. Shulman's evidence about the mysterious wealthy man in Salmo who was initially willing to co-sign a mortgage with him. This is an example of Mr. Shulman's evidence simply lacking any credibility.

[212] Mr. Shulman then spoke to his family and his sisters to seek their financial assistance, which was embarrassing, as they were not aware of his situation and knew nothing of any "handshake" deals or that the situation was not very solid for him.

[213] Mr. Shulman wrote Mr. Bogusz on July 6, 2020 stating that he had asked Mr. Perepolkin to call Mr. Bogusz and make an appointment. He indicated this would tell him whether Mr. Perepolkin was going to cooperate to get the deal done. He wrote that he checked the date of closing and saw it as the 10th , and he thought it was the 16th. He said that his relationship with Mr. Perepolkin was now over, and if he did not cooperate he would be moving forward with action. Mr. Bogusz did not believe he had a conversation with Mr. Perepolkin at this time.

[214] On July 15, 2020, Mr. Shulman texted Mr. Perepolkin that there was now a CPL on the Property, and whether they went to court was up to him. Mr. Shulman testified he filed the CPL because, in between all the emails with Mr. Perepolkin, he was talking to Mr. Wilson, who told him he needed to do something to protect himself.

[215] Mr. Shulman testified in cross-examination that he never took any money out of the Company account, and that he could not do so except with a cheque with two signatures. He then testified that, after Mr. Perepolkin asked him to buy him out, Mr. Perepolkin stopped taking money out of the Company account. Mr. Shulman continued to put money in for a period, and $5,000 accumulated. He had already filed the CPL against the Property. He was speaking to Mr. Wilson at the time, whom he had not spoken with in years. Mr. Wilson said that he was in a real "jackpot", which I take to mean a bad financial position. Mr. Shulman testified that he had no problem lending Mr. Wilson some money, so he sent Mr. Wilson a cheque signed by

him so he could sign and cash it. He said that Mr. Perepolkin then cleared out the rest of the funds in the account.

[216] This evidence, beyond being inconsistent with his evidence that he never took money out of the Company account, shows Mr. Shulman providing Mr. Wilson with a financial benefit out of Company funds, at a time when litigation was underway. I infer he was seeking Mr. Wilson's cooperation in this lawsuit.

[217] Mr. Shulman wrote Mr. Bogusz on July 20, 2020, asking for the deposit back. Mr. Bogusz returned it.

Discussion

[218] This case relies on the plaintiffs' evidence to establish the express trust they submit was created when Mr. Perepolkin purchased the Property in 2003. There is no independent evidence to corroborate their evidence about what was agreed to in the "handshake" deal.

[219] The plaintiffs' positions and evidence about the terms of the alleged trust were inconsistent, vague and ambiguous.

[220] The original notice of civil claim was filed solely by Mr. Shulman on July 13, 2020. In it, he pleaded that he, Mr. Perepolkin and Mr. Wilson (who was not a party to the action at this stage) agreed to purchase the Property as tenants in common, that legal and beneficial ownership of the Property would eventually be transferred into Mr. Shulman's name, for compensation, and that they would purchase the Property through a numbered B.C. company and each hold an interest in the Property through that company. Mr. Shulman pleaded that they agreed that Mr. Shulman would own a 50% legal and beneficial interest in the Property, Mr. Perepolkin would own a 33% legal and beneficial interest, and Mr. Wilson would own a 17% legal and beneficial interest. Mr. Shulman sought a declaration that he is a 50% legal and beneficial owner of the Property, and that Mr. Perepolkin holds 50% of his legal interest in trust for Mr. Shulman.

[221] Mr. Shulman filed an amended notice of civil claim on October 22, 2020. There were extensive amendments made to the notice of civil claim at that time. Perhaps most significantly, in the October 22, 2020 amended notice of civil claim, Mr. Shulman pleaded that each of the three men would hold a 33% legal and beneficial interest in the Property. He continued to seek a declaration that he is a 50% legal and beneficial owner of the Property.

[222] An unfiled further amended notice of civil claim was delivered to counsel for Mr. Perepolkin prior to Mr. Shulman's examination for discovery, in anticipation of it being filed shortly thereafter. The examination for discovery was conducted on January 18, 2021. Numerous amendments were made in the unfiled further amended notice of civil claim. These included that Mr. Cifarelli wanted to sell because he was afraid the Property may get caught in Mr. Shulman's family law proceedings. Mr. Shulman also wanted to put the Property out of reach of his children's mother. Mr. Shulman proposed to Mr. Wilson and Mr. Perepolkin that they buy Mr. Cifarelli's interest for the assessed value. The parties entered into a specific and detailed verbal trust agreement prior to the conveyance of the Property. This was alleged to have been done to protect the Property for Mr. Shulman rather than for economic gain. He pleaded that the ownership of the Property would be recorded as each of the three men holding a 33% legal and beneficial interest, and legal and beneficial ownership of the Property would be held in trust by Mr. Wilson and Mr. Perepolkin for Mr. Shulman. The declaration sought was amended to be that Mr. Perepolkin holds 33% of the Property in trust for each of Mr. Shulman and Mr. Wilson, although Mr. Wilson continued not to be a party.

[223] This amended notice of civil claim was never actually filed.

[224] On September 13, 2021, a further amended notice of civil claim, by which Mr. Wilson was added as a plaintiff, was filed. The two plaintiffs sought a declaration that Mr. Perepolkin holds 33% of the Property in trust for each of them.

[225] Counsel for the plaintiffs made a very detailed opening statement at the start of this trial. In it, she said the plaintiffs would prove a pre-conveyance verbal trust

agreement, the essential terms of which included that Mr. Perepolkin would become the sole registered owner and hold two-thirds of the Property in trust for Mr. Wilson and Mr. Shulman until a company could be incorporated and the Property transferred to the company which would be owned by the three of them equally. Mr. Shulman would live on the Property and be free to manage it, including receiving the rents. He would be responsible for making all payments related to the Property, including any capital gains when the Property was transferred to the Company. Each party had a right to sell his interest at one-third of the B.C. assessed value, less his share of the outstanding balance on the mortgage.

[226] In the plaintiffs' written closing submissions, counsel submitted:

> 9. Mr. Shulman, Mr. Perepolkin, Mr. Wilson and Ms. Parker all attended a meeting where Mr. Shulman pitched his "deal": he proposed that Mr. Perepolkin obtain the financing necessary to purchase Mr. Cifarelli's interest in the Property, Mr. Shulman would transfer his interest in the Property for free, and the three men would become equal owners of the Property. This, he argued, would put them all in a position of immediately having equity in the Property. Mr. Shulman proposed that he would continue to live on and manage the Property and would pay all the expenses associated with the Property. Mr. Perepolkin and Mr. Wilson wouldn't have to pay a dime, would each be entitled to 1/3 of the net equity of the Property, which everyone expected to increase, and Mr. Shulman would be able to keep his home.
>
> 10. They planned to eventually incorporate a company which they felt would provide a more tax advantageous way to own the Property. Although they did end up incorporating a company, 0810449 B.C. Ltd. (the "Company") with all three men as equal shareholders, the Property was never transferred to the Company and the Company was eventually dissolved.

[227] In cross-examination, Mr. Shulman was asked which of the five attempts to write down the deal, contained in the four versions of the notice of civil claim and the opening statement, was correct. He responded that counsel was trying to confuse him, and that circumstances changed as time went by, that in real life things are "not as cut and dried". He blamed his previous counsel for making mistakes in the earlier versions of the notice of civil claim. After several attempts to obtain an answer, Mr. Shulman finally said that "all of them" accurately described the agreement, that in a "general roundabout way" all of them were accurate.

[228] With respect, all five of the versions cannot be accurate. The terms of the alleged trust agreement in the five versions are different. Most notably, they differ with respect to the percentage interests alleged to be held by each of the three men, whether any part of the Property was held in trust for Mr. Wilson, and the percentage of the Property alleged to be held in trust by Mr. Perepolkin for Mr. Shulman and Mr. Wilson. Mr. Shulman's answers to these questions on cross-examination is illustrative of the inconsistencies, vagueness and ambiguities found throughout the plaintiffs' evidence about what the terms of the trust were.

[229] The plaintiffs submit that the three parties are not pretentious individuals, but are salt of the earth men who do not use technical terms to express their intentions. They submit, however, that it is clear from their conduct since the transfer of the Property to Mr. Perepolkin 17 years ago that Mr. Shulman's intent when he transferred the Property to Mr. Perepolkin was that Mr. Perepolkin would hold two-thirds of the Property in trust for Mr. Wilson and Mr. Shulman.

[230] I agree that the three men are not pretentious individuals, and that they do not use technical terms to express their intentions. There is no requirement that they have used technical terms to establish a trust. As Ballance J. said in *Langley:*

> There is no requirement that the word "trust" or "trustee" or that other special or technical language be used in order to create a valid trust. What is critical is the substance of the arrangement, not the form.

[231] The difficulty for the plaintiffs is not the lack of technical language. It is that the evidence does not establish that an express trust was created, on the terms asserted by the plaintiffs, at the time the Property was transferred to Mr. Perepolkin. As I have described, there is no clarity to be found in the evidence of the plaintiffs and Ms. Parker as to the creation and terms of the alleged trust. Nor has the parties' conduct since the trust was allegedly established made clear that the parties' original intention was, as submitted by the plaintiffs, that Mr. Perepolkin would hold two-thirds of the Property in trust for Mr. Shulman and Mr. Wilson.

[232] Mr. Wilson's evidence certainly does not establish the trust agreement asserted by the plaintiffs at trial. His evidence was internally inconsistent and inconsistent with external facts such as when the Company was actually incorporated. The most likely inference to be drawn from Mr. Wilson's evidence is that the initial deal was that Mr. Perepolkin would borrow the funds necessary to buy the Property from Mr. Cifarelli, and Mr. Shulman would have an opportunity to buy it back from him. When that did not occur, the three men agreed to incorporate a Company to transfer the Property to, in the hopes that they could develop it for a profit. That did not occur either. At no point did Mr. Perepolkin hold the Property in trust for Mr. Wilson and Mr. Shulman, in equal shares or at all. That is an after the fact creation of Mr. Shulman, which Mr. Wilson has chosen to support, perhaps in the hopes of obtaining some financial gain.

[233] The plaintiffs rely on the parties' conduct since the trust is alleged to have been created as being consistent with an intention to create the trust they assert exists. I will refer to a few of the many examples of the parties' conduct being inconsistent with such an express intention. Mr. Bogusz and Mr. Irving, the two professionals who assisted the parties at various points in their relationship, were not told about such a trust being in place. If they had been told that there was a trust, they would have made a note about it, as it would have been important to the work they were performing, and no such note exists.

[234] When the Company was formed, Mr. Shulman instructed Mr. Bogusz to create an unequal share distribution, in order to establish his control over the Property. Only when Mr. Wilson raised concerns was this corrected.

[235] When Mr. Shulman sought to buy the Property from Mr. Perepolkin in 2020, he represented to Mr. Bogusz and to the lenders from whom he was seeking the credit necessary to purchase the Property, that Mr. Perepolkin held the Property in trust, not for him and Mr. Wilson, but for him or for him and his son, Joshua. It is apparent that Mr. Shulman has been prepared to make whatever representation served his interest at the time about the terms of the alleged trust. His overarching

goal has been to keep the Property, and he has been prepared to say anything he thought necessary in order to do so.

[236] The plaintiffs place some emphasis on Mr. Perepolkin having failed to complain at various points when Mr. Shulman represented to him or others that he was an owner of the Property. I place no weight on this alleged failure. From the emails and texts entered into evidence, Mr. Shulman appears to have written a great deal more to Mr. Perepolkin than Mr. Perepolkin didto him. In fact, Mr. Shulman complained that Mr. Perepolkin frequently did not respond to him. Mr. Perepolkin may not even have read all of the various texts and emails Mr. Shulman wrote. Further, Mr. Shulman testified that Mr. Perepolkin was the least experienced in business and financial matters of the three men. He may not have appreciated the potential significance of Mr. Shulman's statements.

[237] The plaintiffs emphasized that Mr. Perepolkin initialled and signed the contract of purchase and sale in which it was stated that he held an unregistered two-thirds interest in the adjusted net equity of the Property for Mr. Shulman and his son. I do not find this of assistance to the plaintiffs. First, this contract was signed at a time when the dispute had arisen between the parties, and Mr. Perepolkin, according to Mr. Shulman's evidence, just wanted out. It is in the nature of a settlement, and does not necessarily reflect Mr. Perepolkin's true views. Second, Mr. Shulman signed it too, yet the plaintiffs do not submit that this means it represents what he believed to be the beneficial ownership of the Property. Third, after Mr. Perepolkin retained Mr. Burch, he refused to extend the time for the conditions to be removed, thereby walking away from this contract.

[238] Considering the evidence as a whole, I conclude that the plaintiffs have failed to establish that Mr. Perepolkin holds the Property in trust for them. The presumption of indefeasible title to which Mr. Perepolkin is entitled as the registered owner in fee simple of the Property has not been rebutted.

Conclusion

[239] The plaintiffs' action is dismissed. Mr. Perepolkin sought an order that Mr. Shulman deliver up vacant possession of the Property within 30 days of the court's order. The plaintiffs did not respond to such an order being made in their reply submissions. I consider such an order appropriate in the circumstances.

[240] Unless there are any matters of which I am unaware, Mr. Perepolkin is entitled to his costs at Scale B.

"L.M. Lyster J."

LYSTER J.