IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dhillon v. Dasta*,
2024 BCSC 360

Date: 20240214
Docket: 196247
Registry: New Westminster

Between:

Manjinder (Ryan) Singh Dhillon and Charanjit Dhillon

Plaintiffs

And:

Saroop Dasta

Defendant

Before: The Honourable Mr. Justice Riley

Oral Reasons for Judgment

Counsel for the Plaintiffs:	T. Dewar M.S. Shergill
Defendant:	No Appearance
Place and Date of Trial:	New Westminster, B.C. January 15-18, 2024
Place and Date of Judgment:	New Westminster, B.C. February 14, 2024

Introduction

[1] These are reasons for judgment following a trial in a civil action for breach of contract, breach of trust and unjust enrichment. These claims arise out of a business arrangement between the plaintiff Ryan Dhillon and the defendant Saroop Dasta, relating to the acquisition of a property located on Lefeuvre Road in Abbotsford. The defendant did not appear at trial, though duly notified under the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. Hence, this was a trial in which the evidence presented by the plaintiffs was effectively unchallenged. I can say at the outset that the case against the defendant is overwhelming and I have been given no reason to question the credibility and reliability of the plaintiff's witnesses or the accuracy of their account of what occurred.

Facts

[2] The plaintiff Charanjit Dhillon is the father of the plaintiff Ryan Dhillon. Charanjit Dhillon is a truck driver, or truck owner-operator by trade. He testified that in the past he has given money to his two older children to help them to get on their feet and he wanted to do the same for Ryan Dhillon, who was in his early 20s at the time of the events in question.

[3] The evidence reflects that some time in early 2015 Charanjit Dhillon's good acquaintance Sam Jawanda advised him of a possible investment opportunity. Mr. Jawanda was described in evidence as Ryan Dhillon's uncle but I cannot tell if that was a term of affection or if Mr. Jawanda is actually Charanjit Dhillon's brother. In any event, at this meeting Mr. Jawanda explained to Charanjit Dhillon that he and his friend Saroop Dasta (the defendant) had become aware of an acreage property in Abbotsford, owned by Donald Ries, who was in financial difficulty and facing threats of foreclosure and was therefore motivated to sell. Charanjit Dhillon's response was that he was interested in the proposal, but that he would prefer to give the opportunity to his son Ryan Dhillon, to whom Charanjit Dhillon would gift the money to participate in the endeavour. This initial conversation between Charanjit Dhillon and Mr. Jawanda took place at Charanjit Dhillon's residence in Richmond.

[4] Shortly after this first meeting, a second meeting took place, between Charanjit Dhillon, Mr. Jawanda, and Mr. Dasta. This meeting took place at Mr. Dasta's residence on Argyle Street in Vancouver. The upshot of this meeting was a proposed joint venture in which Ryan Dhillon and Mr. Dasta would make an offer to purchase the Lefeuvre Road property and would become joint owners. Charanjit Dhillon would gift Ryan Dhillon the money for Ryan Dhillon's contribution to the property purchase. The apparent intent or objective was for Ryan Dhillon and Mr. Dasta to acquire the Lefeuvre Road property as an investment property.

[5] There then followed a third meeting, still in early 2015, at Charanjit Dhillon's residence in Richmond. The attendees were Charanjit Dhillon, Ryan Dhillon, Mr. Dasta, and Mr. Jawanda. With input from Charanjit Dhillon and Mr. Jawanda, Ryan Dhillon and Mr. Dasta reached an agreement that they would purchase the Lefeuvre Road property together. The proposed purchase price would be $850,000. Using money provided by his father, Ryan Dhillon would contribute $130,000 toward the purchase. Ryan Dhillon and Mr. Dasta would then jointly obtain a mortgage. Ryan Dhillon and Mr. Dasta would become joint owners, each with a 50% ownership stake in the property. The property would be rented back to the vendor or former owner Mr. Ries. The rental proceeds would go toward the mortgage, and Mr. Dasta would be responsible for any balance or shortfall between the rental proceeds and the mortgage costs. That was the agreement.

[6] The evidence reflects that subsequent to this third meeting, the following steps were taken to implement the agreement:

> (a) Charanjit Dhillon gifted Ryan Dhillon a total of $145,000 for Ryan Dhillon's use in purchasing the property. The gift was evidenced by way of a typewritten gift letter signed by Charanjit Dhillon, stating that he was providing the funds to Ryan Dhillon as a gift. A copy of this document, dated 15 March 2015, was marked in evidence as Ex. 4 at trial. In response to questioning from the Court, Charanjit Dhillon explained that $130,000 was to be used for the purchase price, and $15,000 would cover "other aspects of the deal".

(b) Ryan Dhillon and Mr. Dasta signed a written contract of purchase and sale offering to purchase the Lefeuvre Road property from Mr. Ries and his daughter Ms. Ries for $850,000. This contract of purchase and sale, dated 15 March 2015, was marked in evidence as Ex. 2 at trial.

(c) Ryan Dhillon and Mr. Dasta signed a written tenancy agreement, in which they would rent the Lefeuvre Road property back to the sellers, Mr. Ries and his daughter Ms. Ries, so that they could remain on the property. This tenancy agreement, dated 15 March 2015, was marked in evidence as Ex. 3 at trial.

(d) Ryan Dhillon and Mr. Dasta applied for and were granted a mortgage to finance the balance of the purchase price for the Lefeuvre Road property. A copy of the commitment letter from the bank, dated 28 July 2015, was marked in evidence as Ex. 6 at trial.

(e) Ryan Dhillon's name was added to Mr. Dasta's exiting bank account, for the purposes of administering the mortgage. Bank records reflecting Ryan Dhillon and Mr. Dasta's names on the relevant bank account were marked in evidence as Ex. 5 at trial.

(f) Ryan Dhillon and Mr. Dasta retained a conveyancing solicitor, Mr. Burroughs, to complete the transfer of the Lefeuvre Road property. Copies of the documents related to the intended transfer were marked as exhibits at trial. These include a purchaser's statement of adjustments dated 19 August 2015, bearing signatures of Ryan Dhillon and Mr. Dasta, which was marked as Ex. 10.

[7] The purchaser's statement of adjustments reflects that the purchase price of $850,000, plus taxes, and legal fees, for a total of $870,218 was to be funded by (a) a deposit of $245,000, (b) mortgage proceeds in an amount slightly under $497,000, and (c) a cash balance due on completion in the amount of $127,700.

[8] The evidence at trial reflects that at the last minute, before the property transfer was effected, Mr. Ries backed out. The ostensible reason was that he did not went to sell the property to both Mr. Dasta and Ryan Dhillon because Ryan Dhillon was too young and thus presumably unreliable. The reason does not really matter. The fact is that Mr. Ries did complete the purchase with Mr. Dasta and Ryan Dhillon becoming joint owners and subsequent landlords with respect to his future tenancy.

[9] After the deal fell through, Mr. Dasta came up with a proposal to revive it, in a slightly different form. Mr. Dasta's proposal was that he would take title to the Lefeuvre Road property in his name alone, and that he would hold title for the benefit of both himself and Ryan Dhillon, and that after Mr. Ries passed away, Ryan Dhillon's name would be added to the title as a joint tenant.

[10] I will pause here to make an editorial comment. While this point was not addressed directly in the evidence, I infer from all the circumstances that the reason Charanjit Dhillon, Ryan Dhillon, and Mr. Dasta were interested in somehow reviving the property purchase was because at a price of $850,000, they would be getting the property at a real bargain. This was an acreage property in Abbotsford, with one residential structure and several other useable buildings. The property appraisals tendered in evidence, though not available to the parties at the time, indicate that the market value of the property was actually much higher than $850,000.

[11] To return to the narrative, after securing Ryan Dhillon's agreement to the alternative arrangement, Mr. Dasta approached Mr. Ries, and Mr. Ries was willing to sell the Lefeuvre Road property to Mr. Dasta alone. The property purchase subsequently went ahead. Charanjit Dhillon wrote a draft or cheque in the amount of $130,000 payable to the conveyancing solicitors, to cover Ryan Dhillon's $130,000 contribution. Mr. Dasta deposited those funds, and used them, together with the mortgage proceeds, to purchase the Lefeuvre Road property with Mr. Dasta becoming the sole registered owner. This is confirmed by documentary evidence tendered at trial, including Ex. 12, the aforementioned cheque for $130,000, which

was deposited into the solicitor's account on 20 August 2015, and land transfer records showing that Mr. Dasta became the sole registered owner of the Lefeuvre Road property.

[12] I should also note that in read ins from the defendant Mr. Dasta's examination for discovery, Mr. Dasta admitted that he received a $130,000 cheque from the conveyancing solicitor and deposited those funds into his own account. There is also a notice to admit, duly served on Mr. Dasta's address for service, paragraphs 22 to 25 of which state that Mr. Dasta deposited the $130,000 in funds obtained from the conveyancing solicitor into his own account and then used those funds to purchase the Lefeuvre Road property and register it in his own name. The transfer of title into Mr. Dasta's name was entered and acted upon by the Land Title office on or about 18 November 2015. I should say that even without any reliance on the notice to admit, on the whole of the uncontested testimony and supporting documentary evidence, I have no difficulty concluding that Mr. Dasta obtained the $130,000 in question and then used the funds together with the mortgage proceeds and the deposit amount to purchase the Lefeuvre Road property and have the title registered in his own name.

[13] As somewhat of an aside, Charanjit Dhillon also gave evidence of other business dealings he had with Mr. Dasta, earlier in 2015. In particular, Charanjit Dhillon gave evidence about having loaned Mr. Dasta a total of some $145,000. Charanjit Dhillon testified that Mr. Dasta eventually paid this loan back, with interest. There are some records in evidence that support this, and it is also confirmed by statements made by Mr. Dasta in examination for discovery, read in as part of the case for the plaintiffs. I do not need to go any further into the details of the loan transactions between Charanjit Dhillon and Mr. Dasta.

[14] I return, then, to the focus of the case for the plaintiffs, which is the agreement between Ryan Dhillon and Mr. Dasta concerning the Lefeuvre Road property. After the purchase of the property was completed, things seemed to go well for a period of time. Mr. Dasta basically administered or handled the property. Although there is no

direct evidence on the point, I infer that Mr. Dasta collected the rent and covered the mortgage. At this point it appears that Ryan Dhillon was simply a passive investor, understanding or believing that he was the beneficial owner of a one-half interest in the Lefeuvre Road property.

[15] However, things later went awry some time in late 2016 or early 2017, when Mr. Jawanda learned that Mr. Ries had passed away, and then informed Charanjit Dhillon and Ryan Dhillon about this development. Upon learning this, Charanjit Dhillon, acting on behalf of Ryan Dhillon, asked Mr. Dasta to follow through on the agreement to add Ryan Dhillon's name to the title of the Lefeuvre Road property as a joint tenant. To be more specific, both Charanjit Dhillon and Mr. Jawanda gave testimony, which I accept, that they tried on multiple occasions to get Mr. Dasta to add Ryan Dhillon to the title, with no success. Mr. Jawanda testified that on the first occasion when he spoke with Mr. Dasta about this issue, Mr. Dasta said he would add Ryan Dhillon to the title, but never actually did so. He said he would do it but he was too busy. Mr. Jawanda gave evidence about his efforts to communicate with Mr. Dasta on this issue, which included going to Mr. Dasta's house on Argyle Street in Vancouver, attending one of Mr. Dasta's business establishments in downtown Vancouver, and calling and emailing Mr. Dasta. None of Mr. Jawanda's efforts, effectively as an agent for Ryan Dhillon, were fruitful.

[16] In the result, Charanjit Dhillon and Ryan Dhillon commenced the current action. They filed a NOCC on 10 November 2017, and an amended NOCC on 15 November 2017. Mr. Dasta filed a response to civil claim on 26 January 2018.

[17] In his response to civil claim, Mr. Dasta alleges that Charanjit Dhillon had prior dealings with Mr. Ries and in fact owed Mr. Ries a debt for certain vehicles that he had purchased from Mr. Ries but for which Mr. Ries had never been paid. Of course, at trial, there was no evidence of any such debts, and it is difficult to see how they would offer any defence to Mr. Dasta for any alleged breach of contract or unjust enrichment in the arrangement with Ryan Dhillon.

[18] Mr. Dasta's response to civil claim also relies on the presumption of indefeasible title as reflected in s. 23(2) of the *Land Title Act*, R.S.B.C. 1996, c. 250. Basically, Mr. Dasta says that because title to the Lefeuvre Road property was registered in his name, there is a presumption that he is the legal and beneficial owner of the property. I will return to that point later in these reasons.

[19] I conclude my discussion of the facts of the case with reference to additional evidence relevant primarily to the issue of damages.

[20] As noted, Mr. Dasta's purchase of the Lefeuvre Road property completed in mid November 2015, for $850,000. The plaintiffs have tendered an expert report from a property appraiser indicating that the actual market value of the property as of 15 March 2015 (the date of the formation of the alleged contract between Mr. Dasta and Ryan Dhillon) was $1,650,000. Even though the appraisal date is six months before the closing date, the discrepancy between the expert's appraised market value and the actual sale price is substantial. The difference may well be explainable by reference to one or more of the following factors: i) the owner, Mr. Ries, was in some financial distress, (ii) the transaction included an arrangement where Mr. Ries would stay on as a tenant at the Lefeuvre Road property pursuant to a written lease agreement, and (iii) there was evidently a prior relationship between Mr. Ries and Mr. Dasta. I certainly have been given no reason to question the accuracy of the expert's property appraisal.

[21] The evidence further indicates that Mr. Dasta eventually sold the Lefeuvre Road property, on 20 April 2021, for $1,800,000. I am told that the net proceeds from that sale, after paying out the mortgage, were paid into trust in connection with this law suit. The plaintiffs tendered an expert report from a property appraiser indicating that the actual market value of the property as of 20 April 2021 was $2,450,000.

Analysis

[22] As a procedural matter I repeat that this trial proceeded in the absence of the defendant Mr. Dasta, who was duly notified of the trial date by service of the notice

of trial on his address for service as provided for under the *Rules*. I gave a ruling in the course of the trial addressing the manner in which Mr. Dasta was served. I concluded that the plaintiffs did everything required of them under the *Rules* and everything that could be reasonably be expected to give Mr. Dasta notice of the trial.

[23] Turning to the merits, I will deal firstly with the credibility and reliability of the evidence adduced by the plaintiffs to prove their case. As noted above, the defendant did not appear at trial so the case advanced by the plaintiffs is basically unopposed. Still, the court has a responsibility to assess and critically evaluate the evidence. I find no reason to question the credibility of any of the three witnesses called by the plaintiffs. Their evidence was also, for the most part, reliable. There may have been some lapses in memory with respect to the details, but in the broadest strokes all of the evidence was entirely consistent and there is no reason to question the overall accuracy of the account offered by the three witnesses. Their testimony was more or less entirely consistent with the documentary evidence. I would say, even without considering the read ins from Mr. Dasta's discovery, or the undisputed facts in the notice to admit, I would accept the unchallenged evidence of the three plaintiff witnesses. The read ins and the undisputed assertions in the notice to admit simply confirm various details, but the case for the plaintiffs was supported independently by the *viva voce* and documentary evidence presented at trial.

[24] I move on to consider whether the plaintiffs have proven the elements of their claims against Mr. Dasta. The plaintiffs advance alternative claims for (a) breach of contract or (b) breach of trust or unjust enrichment. I will address each of these claims in turn.

[25] Before doing so, I have one general comment about the distinction between the two plaintiffs, Charanjit Dhillon and Ryan Dhillon. The evidence proves that while Charanjit Dhillon was centrally involved in both the negotiations between the parties, and in funding Ryan Dhillon's participation in the transaction with Mr. Dasta, Charanjit Dhillon was not actually a party to the agreement. I accept that Charanjit Dhillon put up the money that Ryan Dhillon used for the deal, but on Charanjit

Dhillon's own evidence, confirmed by Ex. 4, the gift letter, Charanjit Dhillon gifted the money to Ryan Dhillon, and it was in fact Ryan Dhillon who entered into an agreement with Mr. Dasta to acquire the Lefeuvre Road property. As regards the breach of contract claim, the alleged contract was between Ryan Dhillon on the one part and Mr. Dasta on the other part. Charanjit Dhillon was not a party to any contract regarding the purchase of the Lefeuvre Road property. And as regards the trust and unjust enrichment claims, the trust beneficiary and party who allegedly suffered a deprivation was again Ryan Dhillon. Charanjit Dhillon did not have a personal financial interest in the arrangement, because he gifted the funds in issue to Ryan Dhillon. Having dealt with that preliminary point I will go on to consider whether the plaintiff Ryan Dhillon has made out his breach of contract or his trust and unjust enrichment claims.

The Breach of Contract Claim

[26] I was referred to *Salminen v. Garvie*, 2011 BCSC 339, a case which has been cited with approval in this court dozens of times, and multiple times by the Court of Appeal. There are four specific principles of contract law that I take from *Salminen*.

[27] First, a contract is usually the product of negotiations. To form a binding contract, the terms of an agreement proposed by one party (the offeror) must be accepted without qualification by the other party (the offeree). Thus, there must be a manifest meeting of the minds or consensus *ad idem* on all the essential elements of the contract.

[28] Second, a formal written agreement that has been signed by the parties is not essential to the formation of a contract. A contract can be made by oral agreement, so long as the requisite consensus *ad idem* has been reached on the essential elements.

[29] Third, the burden of proving a consensus on all of the essential elements is on the party seeking to prove the existence of a contract. The standard to be met is proof on a balance of probabilities.

[30] Fourth, the test for determining whether the parties reached a consensus *ad idem* is an objective one. The question is whether the parties have indicated to the outside world, taking the form of an objective reasonable bystander, an intention to contract and the terms of the contract.

[31] As explained in the leading case of *Suen v. Suen*, 2013 BCCA 313 at para. 44, contracts in respect of real property are also subject to s. 59 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. Of particular relevance is s. 59(3), which reads as follows:

> (3) A contract respecting land or a disposition of land is not enforceable unless
>
> (a) there is, in a writing signed by the party to be charged or by that party's agent, both an indication that it has been made and a reasonable indication of the subject matter,
>
> (b) the party to be charged has done an act, or acquiesced in an act of the party alleging the contract or disposition, that indicates that a contract or disposition not inconsistent with that alleged has been made, or
>
> (c) the person alleging the contract or disposition has, in reasonable reliance on it, so changed the person's position that an inequitable result, having regard to both parties' interests, can be avoided only by enforcing the contract or disposition.

[32] Further, s. 59(4) provides as follows:

> (4) For the purposes of subsection (3)(b), an act of a party alleging a contract or disposition includes a payment or acceptance by that party or on that party's behalf of a deposit or part payment of a purchase price.

[33] Turning back to the facts of this case, I find that the plaintiff Ryan Dhillon and the defendant Mr. Dasta initially formed an agreement to purchase the Lefeuvre Road property, as follows:

> (a) They would offer to purchase the property for $850,000.
>
> (b) The purchase price would be funded as follows (i) Ryan Dhillon was to contribute $130,000, (ii) the parties would obtain a mortgage in the amount of $500,000, and (iii) Mr. Dasta would cover the balance of the purchase price.

(c) They would enter into a rental agreement with the seller Mr. Ries to rent the main house on the property back to him. The rental proceeds would be used to pay the mortgage, and Mr. Dasta would be responsible for covering any shortfall.

(d) Mr. Dasta and Ryan Dhillon would each have a 50% ownership interest in the property, as joint tenants.

[34] I further find that when the seller, Mr. Ries, balked and refused to complete the sale, the agreement between the plaintiff Ryan Dhillon and the defendant Mr. Dasta was altered or modified. Under the amended agreement:

(a) On the basis of the funding arrangement described above, Mr. Dasta would complete the purchase of the Lefeuvre Road property on his own, and title to the property would be registered solely in his name, although he would hold a one-half interest in trust for Ryan Dhillon.

(b) When Mr. Ries passed away, Mr. Dasta would add Ryan Dhillon's name to the Lefeuvre Road property title, as a joint tenant with a 50% interest.

(c) All other terms of the agreement would be the same.

[35] I find that this agreement involved a meeting of the minds between the plaintiff Ryan Dhillon and the defendant Mr. Dasta, on all the essential elements of a contract. There was an agreement as to the subject matter, the consideration that each party would give, and the obligations that each party would have. Ryan Dhillon's obligation was to provide the $130,000 that Mr. Dasta required to effect the purchase of the Lefeuvre Road property, and to be a party to the mortgage thereby assuming the associated risk. In exchange, Mr. Dasta was to purchase the Lefeuvre Road property initially in his own name while holding Ryan Dhillon's one-half interest in trust, collect the rent and use it to pay the mortgage, and cover any shortfall in the mortgage. If and when Mr. Ries passed away, Mr. Dasta was to add Ryan Dhillon's name to the property title as a joint tenant with a 50% interest.

[36] It is also necessary to consider the effect of s. 59(3) of the *Law and Equity Act*, which makes contracts respecting land unenforceable unless (a) they are in writing, (b) the party whose interest in the land is charged has done something to indicate that a contract has been made, or (c) the party seeking to enforce the contract in respect of land has acted in reasonable reliance upon the contract such that it would be inequitable, having regard to the expectations of the parties, not to enforce it. In this case, I find that s. 59(3)(c) applies, because Ryan Dhillon made his contribution of $130,000 toward the purchase of the property, acting in reliance upon Mr. Dasta's oral commitment to add his name to the title upon the demise of Mr. Ries. It is also arguable that s. 59(3)(b) applies, because Mr. Dasta took Ryan Dhillon's money and used it to purchase the Lefeuvre Road property, and when later approached by Mr. Jawanda (acting as Ryan Dhillon's agent), agreed to add Ryan Dhillon's name to the title, although he claimed to be too busy to do it right away. Both actions, that is, obtaining the $130,000 and using it in the purchase, and acknowledging his commitment to add Ryan Dhillon to the title, are actions entirely consistent with the existence of a binding contract, and inconsistent with any denial of that contract.

[37] I should also address the position put forward by Mr. Dasta in his response to civil claim. Mr. Dasta relies on s. 23(2) of the *Land Title Act*, which creates a legal presumption of indefeasible title in favour of the registered owner of real property. However, the case law holds that this presumption is rebuttable and can be displaced by proof of (a) the operation of a resulting trust, (b) an agreement between the parties, or (c) a successful claim of unjust enrichment: *Suen* at para. 34.

[38] In this case, I find that the presumption of indefeasible title in s. 23(2) is rebutted by proof of a contractual agreement between Mr. Dasta and Ryan Dhillon in which Mr. Dasta would hold Ryan Dhillon's one-half interest in the Lefeuvre Road property in trust, and further that he would add Ryan Dhillon's name to the title upon the demise of the former owner Mr. Ries.

[39] I find that Mr. Dasta breached the terms of the contract by refusing or failing to add Ryan Dhillon's name to the title of the Lefeuvre Road property after Mr. Ries's passing, and by failing to honour his contractual obligation to hold Ryan Dhillon's one-half interest in trust.

[40] With regard to damages, it seems to me there are a number of ways to approach the question of damages flowing from Mr. Dasta's breach of the contract.

[41] One approach would be to say that at the point in time when Ryan Dhillon learned of Mr. Ries's passing and demanded that Mr. Dasta add his name to the property title, Mr. Dasta's breach resulted in a loss to Ryan Dhillon equal to one half of the equity in the Lefeuvre Road property at that point in time. I will call this the title commitment breach approach.

[42] There are several wrinkles or complications with respect to this approach.

[43] The first wrinkle is that the date on which Mr. Dasta refused to effect the change in title is not established with precision on the evidence. In these circumstances, I will proceed on the basis that the breach occurred 30 days before the filing of the NOCC, which would be 10 October 2017. The date of the title commitment breach could have been earlier, as early as the end of 2016 or the beginning of 2017, but the date I have selected is in my view the most favourable date to the defendant on this record.

[44] Another wrinkle is that there is no direct evidence as to value of the Lefeuvre Road property as of the date of the title commitment breach, 10 October 2017. I accept the uncontested expert evidence of the appraiser that the property had a market value of $1,650,000 as of the date that the parties formed their initial agreement on 15 March 2015. There is also uncontested evidence that the market value of the property as of the date that Mr. Dasta sold it on 20 April 2021 was $2,450,000. However, even assuming the latter value of $2,450,000 is accepted, I do not think it would be legally permissible, or fair, as a matter of evidence, to assume that the property increased in value on a straight line basis between the two

dates, in a manner that I could ascertain the value on 10 October 2017. I am, however, prepared to find on a balance of probabilities that the value of the property on the date of the title commitment breach of 10 October 2017 was no less than its value on the date that the parties formed their initial agreement on 15 March 2015. This is the lowest market value that emerges from the record and is, accordingly, the value that is most favourable to the defendant's position. That market value is $1,650,000.

[45] A third and final wrinkle associated with the title commitment breach approach is that there is no direct evidence as to the outstanding balance of the mortgage on the Lefeuvre Road property as of the date of the breach as I have found it. This is important because it is necessary to know how much equity or potential equity was in the property as of the date of the breach. The safest and simplest approach in these circumstances is to take the principal amount of the mortgage, $500,000, as the outstanding balance as of the date of the breach. This is consistent with the approach taken by the plaintiff in their written closing, which position appeared to be focused on what counsel referred to as the increase in equity in the property. The increase in equity would be the increase in value after accounting for the debt. The plaintiffs evidently used the $500,000 outstanding balance figure to calculate the increase in equity.

[46] Thus, I would assess the damages for breach of contract on the title commitment breach approach as follows. The date of the breach is 10 October 2017. The total equity in the property at that time was $1,150,000, which is $1,650,000, less $500,000. Ryan Dhillon's one-half interest had a value of $575,000. To this figure I would add pre-judgment interest from the date of the breach on 10 October 2017 to the date of judgment. This figure represents the contractual damages that Ryan Dhillon suffered on the commitment breach approach. To explain, if Mr. Dasta had acted on his obligation to register Ryan Dhillon's name on the title to the Lefeuvre Road property, as a joint owner with a 50% interest in the property, then Ryan Dhillon would have been able to sever the joint tenancy and

realise his interest, either by some private arrangement or via the *Partition of Property Act*, R.S.B.C. 1996, c. 347.

[47] The other approach to valuation of damages for breach of contract focuses on the second component of Mr. Dasta's obligation to Ryan Dhillon under their verbal contract. Even after failing to add Ryan Dhillon's name to the title, Mr. Dasta was in continuing breach of his contractual commitment to hold Ryan Dhillon's one-half interest in the Lefeuvre Road property in trust. I would refer to this as the trust commitment breach.

[48] On the trust commitment breach approach, the reasoning is that Mr. Dasta continued to hold Ryan Dhillon's 50% interest in the Lefeuvre Road property in trust pursuant to the terms of their oral agreement, all the way up to the date when Mr. Dasta sold the property on 20 April 2021. The damages would therefore be assessed as one-half of the value of the equity in the property as of the date of sale.

[49] Again, there is the wrinkle of not having the exact amount of the outstanding mortgage as of the date of the sale. Again, I would use the initial principal amount of the mortgage, $500,000.

[50] The other wrinkle associated with the trust commitment breach approach has to do with the value of the property at the time that it was sold on 20 April 2021. The plaintiff has presented evidence to show that the actual market value of the property on that date was $2,450,000. However, in fact Mr. Dasta only sold the property for $1,800,000. Although in theory Ryan Dhillon could argue that damages should be assessed based on the former property value and not the latter, I would not accept that approach, for two reasons. First, while the property appraiser estimated the value at $2,450,000, the fact is that the property was actually sold for $1,800,000, and there is no evidence that it was a non-arm's length sale. There does not seem to be any legitimate business reason why Mr. Dasta would sell the property for $1,800,000 when he could have gotten $2,450,000; after all, Mr. Dasta himself continued to have a substantial interest in the property and I would infer that he would be interested in selling it for as much as he could. As I say, there is no

evidence that the sale was to a non-arm's length party. Second, I am aware that Ryan Dhillon's NOCC sought a CPL against the property, and that the net proceeds from the sale were actually paid into trust in connection with this litigation. Although I do not have all the evidence, the context suggests to me that the plaintiffs had at least some control over the sale being allowed to proceed. If there was in fact a CPL on the property, the sale could not have proceeded without an agreement to remove the CPL on some terms. In any event, I was told that the net proceeds were paid into trust. It may not have been a court-ordered sale, but I infer that the plaintiffs had some input or control over allowing the sale to proceed. In the absence of more specific evidence to show that the sale proceeded without prejudice to Ryan Dhillon's right to claim damages based on a higher sale price, I am unwilling to assess damages based on a theoretical property value of $2,450,000, when the property in fact sold for $1,800,000. For all of these reasons, I would assess damages based on the actual sale price of $1,800,000.

[51] On that basis, on the trust commitment breach approach to damages, I would assess the damages as follows. $1,800,000 minus $500,000, equals $1,300,000. One-half of that is $650,000. To that figure I would add pre-judgment interest from 20 April 2021 to the date of judgment.

The Trust and Unjust Enrichment Claims

[52] My ruling on the breach of contract claim effectively disposes of the matter, but in the event that I am wrong in concluding that there was a binding contract I will go on to consider, in the alternative, Ryan Dhillon's trust and unjust enrichment claims.

[53] The three essential elements of a successful claim for unjust enrichment are: (i) an enrichment of the one party (the defendant), (ii) a corresponding deprivation of the other party (the plaintiff), and (iii) absence of a juristic reason for the transfer of wealth: *Pettkus v. Becker*, [1980] 2 S.C.R. 834. The law of unjust enrichment is closely tied to the law of trusts. This is because, among other things, the remedy for an unjust enrichment claim can include the declaration of a trust.

[54] Once again, I note that in his response to civil claim, the defendant relies on the presumption of indefeasible title in s. 23(2) of the *Land Title Act*. However, as I have already explained above, on the authority of the *Suen* decision this statutory presumption may be rebutted by proof of (a) the operation of a resulting trust, (b) an agreement between the parties, or (c) a successful claim of unjust enrichment. I am satisfied that the presumption has been rebutted in this case. If the agreement between the parties was not sufficiently precise to constitute a binding contract, then I find in the alternative that the presumption of indefeasible title is rebutted by proof of (i) an express trust agreement, or, alternatively (ii) a purchase money resulting trust. I also have no difficulty in finding that Ryan Dhillon's contribution toward the purchase of the Lefeuvre Road property was not a gift.

[55] Proof of an express trust depends upon the existence of three certainties, namely (i) certainty of intention, (ii) certainty of object, and (iii) certainty of subject matter: *Dusanjh v. Appleton*, 2017 BCSC 340 at para. 37 citing *Mordo v. Nitting*, 2006 BCSC 1761 at para. 292.

[56] An express trust does not require a written trust agreement. It can be proven by verbal agreement. As explained in *Virk v. Singh*, 2020 BCSC 225 [aff'd 2022 BCCA 153] at para. 122:

> The asserting party carries the burden of establishing the existence of a verbal agreement to create a trust. To discharge the burden, the asserting party must prove on the balance of probabilities with clear and satisfactory evidence that the parties intended to enter into a binding agreement. A verbal agreement may be enforced, including by the imposition of an express trust over an asset: *Usher v. Larabee*, 2010 BCSC 1608 at paras. 81 and 83; *Chinn v. Hanrieder*, 2009 BCSC 635 at paras. 111-112.

[57] In this case, I have already dealt with the plaintiff's claim of a verbal agreement. I find that the agreement was a binding contract in which Mr. Dasta had taken on a contractual obligation to (i) add Ryan Dhillon's name to the title of the Lefeuvre Road property upon Mr. Ries's passing, and (ii) hold Ryan Dhillon's one-half interest in the Lefeuvre Road property in trust until then. The express trust was effectively the second component of the contractual agreement that I found to exist above. Without delving into all the details, the agreement with respect to the

Lefeuvre Road property addressed the three certainties required to establish an express trust. In this context, I believe that the plaintiff Ryan Dhillon's express trust claim is really duplicative of the breach of contract claim. Further, Ryan Dhillon's remedy for breach of an express trust would be a declaration of trust over the property in issue, namely a one-half interest in the Lefeuvre Road property, and the value of the trust property would be the same as the value of the property as of the date of the breach under the trust commitment approach to contractual damages described above. When reduced to monetary terms, the value would be the same as the damages award I determined above. This would effectively be an alternative remedy leading to the same result, in dollars and cents, for the plaintiff Ryan Dhillon. Consequently, I need not take this aspect of the analysis any further.

[58] However, in the event that I am wrong about both the breach of trust claim and the express trust claim, I will go on to address Ryan Dhillon's further alternative claim based an alleged purchase money resulting trust.

[59] To go back a step, the concept of resulting trust is explained in the leading case of *Pecore v. Pecore*, 2007 SCC 17 at para. 20:

> A resulting trust arises when title to property is in one party's name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner: see D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (3rd ed. 2005), at p. 362. While the trustee almost always has the legal title, in exceptional circumstances it is also possible that the trustee has equitable title: see *Waters' Law of Trusts*, at p. 365, noting the case of *Carter v. Carter* (1969), 1969 CanLII 756 (BC SC), 70 W.W.R. 237 (B.C.S.C.).

[60] More specifically, the concept of purchase money resulting trust was recognized in *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33. At the very beginning of the decision, Justice Rothstein speaking for the Court explained the concept as follows:

> [1] A purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property. Where the person advancing the funds is unrelated to the person taking title, the law presumes that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in

> proportion to that person's contribution. This is called the presumption of resulting trust.
>
> [2] The presumption can be rebutted by evidence that at the time of the contribution, the person making the contribution intended to make a gift to the person taking title. While rebutting the presumption requires evidence of the intention of the person who advanced the funds *at the time of the advance*, after the fact evidence can be admitted so long as the trier of fact is careful to consider the possibility of self-serving changes in intention over time.

[61] Turning back to the facts of the case at bar, if for any reason I am wrong in concluding that there was a binding contract and, and wrong in my alternative finding of an express trust agreement between Mr. Dasta and Ryan Dhillon, then I find in the further alternative that Ryan Dhillon's contribution toward the purchase of the Lefeuvre Road property gave rise to a purchase money resulting trust.

[62] Once again, I note that in his response to civil claim, the defendant relies on the presumption of indefeasible title in s. 23(2) of the *Land Title Act*. However, I am satisfied that the presumption has been rebutted in this case. If the agreement between the parties was not sufficiently precise to constitute a binding contract, then I find in the alternative that the presumption of indefeasible title is rebutted by proof of a purchase money resulting trust. I also have no difficulty in finding that Ryan Dhillon's contribution toward the purchase of the Lefeuvre Road property was not a gift. Hence, in the language of unjust enrichment, there was no juristic reason for the transfer of wealth between the plaintiff and the defendant.

[63] In the result, I find in the alternative that if Ryan Dhillon's claims based on breach of contract and express trust both fail, then his alternative claim of a resulting trust must succeed. The remedy is to declare a resulting trust in proportion to Ryan Dhillon's initial investment in the Lefeuvre Road property.

[64] The evidence reflects that the total purchase price was $850,000. Of that, $500,000 was funded by a mortgage. That means the parties contributed a total of $350,000 toward the purchase. With regard to Ryan Dhillon's contribution, there are two different numbers that emerge from the evidence. The gift letter from Charanjit Dhillon to Ryan Dhillon is in the amount of $145,000. However, at the end of the day,

the plaintiffs relied on the evidence that Ryan Dhillon's contribution was $130,000, together with the admission of Mr. Dasta at examination for discovery that he obtained the same amount, $130,000 from the conveyancing solicitor, deposited it into his account, and used those funds toward the purchase of the Lefeuvre Road property in his own name. Thus, Ryan Dhillon's resulting trust claim is focused on his $130,000 contribution toward the purchase of the property. That represents 37.14% of the funds put up to acquire the property.

[65] The Lefeuvre Road property was ultimately sold on 20 April 2021 for $1,800,000. Again, in the absence of more specific evidence as to the outstanding balance of the mortgage at the time of sale, I will use the initial principal amount of $500,000 as the amount of outstanding debt. That leaves $1,300,000 in equity. On the basis of a purchase money resulting trust, Ryan Dhillon's share would have a value of $482,820. I therefore find that, in the event that I am wrong in my analysis of Ryan Dhillon's breach of contract and express trust claims, then in the further alternative, Ryan Dhillon is entitled to a declaration of a resulting trust in the amount of $482,820, and I would order that the defendant Mr. Dasta pay that amount to Ryan Dhillon, plus pre-judgment interest from 20 April 2021.

[66] I will complete my analysis of the alternative claim by noting that I have considered whether the purchase money resulting trust claim should be valued by reference to the actual sale price of the Lefeuvre Road property on 20 April 2021 ($1,800,000) or alternatively by reference to the appraiser's opinion as to the market value of the property ($2,450,000). I conclude that it would not be appropriate to use the latter figure, for three reasons. The first two reasons were given above in relation to the breach of contract damages assessment and I will not repeat them here. The third reason is that I find that on the particular facts of this case it would overshoot the mark of the principles of trust and unjust enrichment to value the resulting trust based on a notional market value, as opposed to the actual amount realized for the sale of the subject property. For all of these reasons, I reiterate that the alternative remedy of a resulting trust should be valued at $482,820, and Mr. Dasta would be

ordered to pay that amount plus pre-judgment interest from the date of sale on 20 April 2021.

Costs

[67] The plaintiffs are entitled to costs at scale B.

Summary and Conclusion

[68] The resulting order will be as follows:

> (1) The plaintiff Ryan Dhillon's breach of contract claim is allowed and the defendant Mr. Dasta is ordered to pay him damages of $650,000, plus pre-judgment interest from 20 April 2021 to the date of judgment, to be assessed under the *Court Order Interest Act*.
>
> (2) The plaintiffs are entitled to costs at Scale B.

[69] I have not included my alternative findings with respect to express trust, or resulting trust, in the court's order. Those findings would only be operative if for some reason I was found to have erred in my determination of the breach of contract claim.

Postscript

[70] That concludes my reasons, but I have two other matters to raise with counsel.

[71] First, recall that I had two different approaches for assessment of damages for breach of contract. The breach of title commitment approach would result in a damages award of $575,000, plus pre-judgment interest from 10 October 2017. The breach of trust commitment approach would result in a damages award of $650,000, plus pre-judgment interest from 20 April 2021. Now, in my order, I included the latter amount, which is the higher damages award on its face. However, it could well be that when you crunch the numbers on the interest, that the former award ends up yielding a higher quantum than the latter. If that is the case, you can put those

figures, $575,000 plus pre-judgment interest from 10 October 2017, into the order. When I see the order I will know why that has been done, and I will be prepared to sign it, as it is consistent with my reasons and the result. Do you have any questions about that?

[discussion]

[72] Second, recall that in my assessment of damages – for both breach of contract under the breach of trust commitment approach, and for breach of express trust – I did not accept the evidence as to the market value of the property being $2,450,000 as of 20 April 2021. That was my finding based on the evidence before the court at trial. Now, if in fact, there was some correspondence between the parties, in which the plaintiffs made it clear that when the defendant was going to sell the property for $1,800,000, the plaintiffs reserved the right to sue for damages based on a higher amount, or if there is other evidence with respect to the circumstances in which the property was sold for $1,800,000, then I would be prepared to consider an application to re-open. You may consider that. If you choose to do so, any application should be made before the order is entered. If an application is filed, you can schedule a further appearance before me by way of a request to appear through Supreme Court Scheduling. Do you have any questions about that?

[discussion]

[73] Thank you, we are adjourned.

"Riley J."