# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rana v. Ali,*
2024 BCSC 531

Date: 20240403
Docket: S247430
Registry: New Westminster



Between:

**Inam-ul-Haq Rana**

Plaintiff

And

**Zulfiqar Ali**

Defendant

Before: The Honourable Justice Walkem

## Reasons for Judgment

| | |
|---|---|
| The Plaintiff, appearing on his own behalf: | I. Rana |
| Counsel for the Defendant: | J. Parmar<br>J. Patrao |
| Place and Dates of Trial: | New Westminster, B.C.<br>January 8–12, February 7–9 and 13, 2024 |
| Place and Date of Judgment: | New Westminster, B.C.<br>April 3, 2024 |

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## INTRODUCTION

[1] The plaintiff, Mr. Inam-ul-Haq Rana, and the defendant, Mr. Zulifqar Ali, were friends who referred to themselves as brothers. Their relationship broke down over a real estate investment. The parties dispute whether they intended to purchase unit 430-5660 201A Street, Langley (the "Langley property"), through court ordered sale, as partners, or solely for Mr. Rana's benefit.

[2] Mr. Rana argues that Mr. Ali's inclusion on the bid, then subsequent inclusion on the land title and mortgage documents, was "in name only" and it was intended that Mr. Rana would be the beneficial owner of a 100% interest in the Langley property. Mr. Rana seeks to have Mr. Ali's name removed from title.

[3] Mr. Ali argues that the parties intended to be 50/50 partners in a short-term joint investment in the Langley property. Mr. Ali seeks to have the Langley property sold, under the *Partition of Property Act*, R.S.B.C. 1996, c. 347 [*PPA*], with the profits divided equally.

## PROCEDURAL HISTORY

[4] On December 1, 2022, Mr. Rana filed a petition (S247430) in the New Westminster Registry. On December 21, 2022, Mr. Ali filed a response to that petition. On January 10, 2023, Mr. Ali filed his own petition (S247297) in the New Westminster Registry. On February 28, 2023, Mr. Justice Verhoeven ordered that both petitions (S247297 and S247430) be consolidated. Mr. Rana's petition in S247430 stands as the notice of civil claim; Mr. Ali's response stands as the response to civil claim. Mr. Ali's petition in S247297 stands as the counterclaim.

[5] This matter proceeded before me on January 8, 9, 10, 11, and 12, and February 7, 8, 9, and 13, 2024. Mr. Rana was self-represented. Mr. Ali was represented by counsel.

## PRE-PURCHASE

[6] The parties met while working in Saudi Arabia. When Mr. Ali was offered a job in Vancouver, he got in touch with Mr. Rana. Mr. Rana picked Mr. Ali up at the

airport. Mr. Ali stayed with Mr. Rana for roughly a month and a half while he got settled. During that time, Mr. Rana loaned Mr. Ali his vehicle. The parties developed a mutually supportive friendship. Each supported the other with relationship issues.

[7] The parties discussed pooling their resources and purchasing an investment property together. They determined that they could qualify for a mortgage to support a property of approximately $800,000.

[8] The general agreement was reflected in this WhatsApp message exchange on August 26, 2021:

> [Mr. Rana:] We buy and very next day we sell it
>
> It is just an investment
>
> Even we do not need to visit the place if you want to do the investment
>
> If you are want to join me then good
>
> we can place offer and if we get it, will list it for selling on very next days and in 2 to 3 months time we will be able to sell it and get our profit.
>
> profit could be 35K total in 4 to 5 months
>
> [Mr. Ali:] Sounds good mortgage?

[9] Mr. Rana said that the agreement between the parties was that they would each contribute to the property, and own it to the extent of their contribution. Mr. Rana said that as he had more money to invest, the parties agreed that they would pool their resources and invest in a property together, with each receiving a proportionate share of a property depending on their contribution. Mr. Rana argues that, as Mr. Ali did not contribute toward the purchase, that Mr. Rana owns the Langley property completely despite Mr. Ali's name being on the title and mortgage. Mr. Rana claims that a resulting trust arose when a 50% interest in the Langley property was entered in Mr. Ali's name as a tenant in common despite the fact that he did not contribute financially to the purchase.

[10] Mr. Ali said that the arrangement was that the parties would contribute equally and share equally in the proceeds.

[11] Both parties agreed that the plan was for a short-term investment and that they planned to resell the property within one to three months.

[12] Mr. Rana planned to invest his share of the profits from his former family home as the down payment. Mr. Rana was concerned about spousal and child support he owed, and the potential that any funds he had, or made, may be subject to collection in fulfilment of a family law order registered with the Family Maintenance Enforcement Program ("FMEP").

[13] Mr. Ali's plan was to use the profit from the real estate investment to contribute to the purchase of a new-build property in Coquitlam that he had entered a sales contract for in August 2021, and which was set to complete around October 2022. Mr. Rana denied that he knew that Mr. Ali intended to purchase the Coquitlam property prior to the transaction at the center of this dispute.

[14] Mr. Rana asked a realtor he had worked with, Mr. Ijaz Chatta, to identify suitable investment properties. Mr. Chatta identified a property on Canada Way in Burnaby, in the $800,000 range. Mr. Rana arranged a viewing around August 28, 2021. Mr. Ali did not attend the viewing, but asked Mr. Rana to send a video of the property. Mr. Ali testified that he did not think he had to view the property in person, as it was an investment property. Mr. Rana became suspicious that Mr. Ali was not interested in purchasing a property with him because Mr. Ali did not attend the Canada Way viewing.

[15] Mr. Rana discussed with Mr. Chatta alternate investment options, including involving other investors, or purchasing a less expensive property on his own. Mr. Chatta identified properties offered by court ordered sale as potentially good investments.

[16] Mr. Rana argued that the parties discussed "big" properties (in the $800,000 range) that they may purchase together, and also "small" properties (in the $400,000 range) that Mr. Rana might purchase on his own. Mr. Ali testified that no distinction between big and small properties was made in the parties' investment discussions.

[17] Mr. Rana alleges that there was a discussion that occurred between the parties at the SFU tennis courts on August 27, 2021. Mr. Ali supposedly agreed that his name could be used to help secure a property for Mr. Rana, but Mr. Ali would only become an investment partner if Mr. Rana could not qualify on his own for a mortgage (the "Tennis court agreement").

[18] Mr. Chatta identified the Langley property which was subject to court ordered sale, and offered in the $400,000 range. Mr. Rana directed Mr. Chatta to enter a bid for the Langley property and to include Mr. Ali's name as a co-purchaser. Mr. Rana had Mr. Ali's name entered as "Zulfiqar Ali Leghari" on the bid document. This was an error and had to be corrected to "Zulfiqar Ali" before title and the mortgage could be registered.

[19] Mr. Chatta did not actually speak with Mr. Ali prior to submitting the bid documents, as he could not reach him by email or phone with the contact information Mr. Rana provided. Mr. Chatta's testimony was that he understood that Mr. Rana and Mr. Ali were seeking to purchase the Langley property together, as partners.

[20] Mr. Chatta sent the bid documents to Mr. Rana and asked him to have Mr. Ali sign them. Mr. Rana put Mr. Ali's signature on the bid along with his own at 12:16 pm on September 7, 2021. Mr. Rana then messaged Mr. Ali asking for "his" driver's license, job title, address, email, and phone number (the language asking for "his" as opposed to "your" was because Mr. Rana had forwarded the request from Mr. Chatta). Mr. Ali responded, asking "who's?" at 12:57 pm. At 12:58 pm, Mr. Rana then sent a message to Mr. Ali that he was adding his name to the bid as a precaution: "This is because I am adding your name in the mortgage, in case if I qualify for less."

[21] Mr. Rana pointed out that Mr. Ali sent a joke on WhatsApp on September 8, 2021. Mr. Rana suggests that Mr. Ali's lack of response, and subsequent sending of the joke, indicate that Mr. Ali was not upset with, or surprised by, Mr. Rana entering Mr. Ali's name on the bidding documents.

[22] Mr. Ali's testimony was that he was surprised when he got the message from Mr. Rana, and did not respond for a week, as the proposal to add him in name only did not accord with his understanding of their agreement. Mr. Ali testified that he was in shock as the parties had agreed to be investment partners and that they had been looking for properties for that purpose. Mr. Ali testified he now understood that Mr. Rana intended for Mr. Ali to be a "fake partner," and was concerned about the possible legal repercussions of such an arrangement.

[23] Mr. Ali testified that Mr. Rana did not have permission to put his name on bidding documents without Mr. Ali's consent. Mr. Rana signed addendums on September 8 and September 9, 2021, to extend the completion, possession, and adjustment dates. Mr. Rana also put Mr. Ali's signatures on those documents without Mr. Ali's consent.

[24] Mr. Ali testified that he initially kept his name on the bidding documents because he understood that the terms of the court-ordered sale would reflect the agreement he had with Mr. Rana that the parties would be 50/50 tenants in common on the Langley property, which they would purchase then sell as a short-term investment.

[25] The bid included a $50,000 down payment. These funds were provided from Mr. Rana's proceeds of a sale of his former family home. The bid was accepted on September 14, 2021. Court Order (#H-200294) reflected a sale to both parties as tenants in common for a sale price of $431,500.

[26] A mortgage had to be finalized and the land transfer documents filed to complete the sale. As Mr. Ali's name was on the Court Order, he needed to either proceed with the transfer and mortgage, or agree to remove his name.

[27] After the bid was successful Mr. Ali contacted Mr. Chatta expressing concern that his purchase of the Coquitlam property was jeopardized, and asked about removing his name from the Langley property. Mr. Chatta advised that he could not

remove Mr. Ali's name after the Court Order had been made, and that the matter needed to be dealt with legally, and likely through another court order.

[28] Discussions between the parties after the Court Order was made, and before title finally transferred and the mortgage was entered, were chaotic, and occurred in the context of a friendship that was breaking down. Evidence of dialogue between the parties was offered through the parties' *viva voce* testimony, as well as WhatsApp and text messages. In the course of the contested discussions, Mr. Rana alleges that Mr. Ali hit him during a particularly contentious discussion. Some correspondence suggests Mr. Ali struck his own car, and not Mr. Rana. Mr. Ali denies assualting Mr. Rana. Though police were called it does not appear that any charges resulted.

[29] Mr. Ali characterized the period as being marked by abusive communication from Mr. Rana. In the process of trying to get Mr. Ali to either agree to have his name on the title transfer and mortgage, or to remove his name from the contract of purchase and sale (which would require a new Court Order), Mr. Rana engaged in a series of offers, entreaties, and threats. Mr. Rana became increasingly desperate and afraid that unless Mr. Ali agreed to provide his information to complete the sale and mortgage, or consented to remove his name from the purchase documents, that Mr. Rana would lose his $50,000 deposit.

[30] Mr. Rana variously suggested that: the parties follow the 50/50 arrangement that they had initially discussed; that Mr. Ali keep the totality of the investment proceeds as long as Mr. Rana got his deposit back; or, that the parties could come to an agreement after the sale completed.

[31] Mr. Rana made several attempts to remove Mr. Ali's name. Mr. Rana sent Mr. Ali messages on September 15, 20, and 21, 2021 asking Mr. Ali to take his name off the Langley property. Mr. Ali refused, and admonished Mr. Rana for putting his name on the bidding documents without his consent. A similar exchange took place on October 22 and 23, 2021, when Mr. Rana sent Mr. Ali a form to remove Mr. Ali's name, which Mr. Ali refused to sign.

[32] Mr. Ali expressed concerns about the legality of removing his name after his name had been included on the bid and Court Order. Mr. Rana took Mr. Ali to a lawyer for what he deemed “independent legal advice” (ILA). Mr. Ali testified that when he told the ILA lawyer about the circumstances, she refused to assist the parties and opined that what Mr. Rana did was illegal. Mr. Rana offered Mr. Ali $3,000 to remove his name, but Mr. Ali refused. Mr. Chatta said that although he was asked to prepare an addendum to remove Mr. Ali’s name from the contract of purchase and sale that he advised that the change needed to be made through a court process.

[33] Mr. Ali consistently refused to sign any documents that would remove his name from the Langley property.

[34] Mr. Rana applied for a mortgage on his own for the purchase price. Mr. Rana got approval on October 18, 2021. Mr. Rana relies on the fact that he was approved for a mortgage on his own to argue that Mr. Ali was not needed as a co-convenantor to secure the Langley property and was therefore not a partner pursuant to the alleged Tennis court agreement. After learning he could qualify to purchase the Langley property on his own, Mr. Rana continued his efforts to have Mr. Ali’s name removed from the contract of purchase and sale.

[35] The Langley property could not be purchased with a mortgage in Mr. Rana’s name alone, as Mr. Ali was also on the purchase agreement.

[36] Mr. Rana argues that Mr. Ali provided his mortgage information late, just prior to mortgage approval, and therefore asks the court to infer that Mr. Ali did not, in fact, qualify for the mortgage.

[37] Mr. Rana testified that the parties came to a second agreement, that Mr. Ali would remove his name from title to the Langley property *after* the sale completed. Mr. Ali denies he had agreed to do this.

[38] Mr. Rana and Mr. Ali went together on November 5, 2021 to obtain homeowner’s insurance. Both men were insured as they were both on title.

[39] Ms. Hanna, the notary public engaged by the parties to complete the legal transfer of the Langley property, testified that both parties instructed her, on November 3, 2021, that the Langley property should be registered to Mr. Rana and Mr. Ali as tenants in common with a 50/50 split.

[40] Mr. Rana emailed Ms. Hanna on November 15, 2021 alleging that Mr. Ali's 50% share in the property was drafted by default and requested that Mr. Ali's interest be changed to 1% and that Mr. Ali receive $3,000 to remove his name from title. On November 16, 2021, Ms. Hanna responded, pointing out that Mr. Ali's 50% interest in the property was not done by default, but reflected the direct instructions given to her by Mr. Rana and Mr. Ali at their November 3, 2021 meeting, and confirmed during their signing appointment.

[41] Mr. Rana emailed TD Bank to have Mr. Ali's name removed from the mortgage. On November 16, 2021, a TD Bank representative responded that both Mr. Ali and Mr. Rana would need to agree to the change.

**POST-PURCHASE**

[42] A key was made so that Mr. Ali could access the Langley property to assist with getting it ready for sale.

[43] On November 12, 2021, Mr. Rana directed Mr. Ali to do various renovations, and purchase appliances for the Langley property, within timelines that were impossible for Mr. Ali to comply with, due to his work schedule.

[44] Mr. Ali attempted to participate in fixing up the Langley property for sale. On November 13, 2021, Mr. Ali proposed that the parties agree on a plan.

[45] On November 17, 2021, Mr. Ali wrote to Mr. Rana proposing that they visit the property together to identify problems to be addressed. Mr. Ali further stated he would follow up about electricity and search for appliances and that "cost will be equally distributed between us." Mr. Ali argues that his efforts were blocked by Mr.

Rana. Mr. Ali researched appliance purchases and contacted BC Hydro about the property.

[46] On November 17, 2021, Mr. Rana communicated to Mr. Ali that he was not allowed to touch the Langley property without Mr. Rana's consent, and that Mr. Rana intended to fix up the property and arrange for its sale on his own. Mr. Ali said that he tried, but could not access the property after that. Mr. Rana denied that he had the locks changed.

[47] Mr. Ali made inquiries about having half of the mortgage payments come from his account, but Mr. Rana's consent was required to alter the payment structure through the bank. Mr. Rana did not agree to add Mr. Ali's name and so this was not done.

[48] Mr. Rana continued to pressure Mr. Ali to remove his name from title. Mr. Rana refused to sell the property in the short time period the parties had discussed, in an apparent attempt to pressure Mr. Ali to remove his name from title. At one point, Mr. Ali communicated that his purchase of the Coquitlam property was at risk and asked Mr. Ali to share a copy of the rental contract in place for the Langley property, to assist Mr. Ali in qualifying for the Coquitlam property mortgage. Mr. Rana refused to provide rental income information or to list the Langley property for sale.

[49] Mr. Rana notified Mr. Ali that he would be leaving the country for an extended period of time, and may not return, which would require Mr. Ali to assume all liabilities and expenses for the Langley property.

[50] Mr. Rana lived at the Langley property for approximately 6 months from December to June 2022. Subsequently, the property was rented out.

**FINANCES**

[51] From November to December 2021, the unit was vacant while it was being prepared for sale. Mr. Rana lived in the unit for six months, from January to June 2022. He paid the mortgage during this time.

[52] The evidence of the parties was meagre regarding financial aspects of the Langley property post-purchase. Mr. Rana presented the following figures which were not disputed by Mr. Ali (in part because he did not have access to financial information):

a) Mr. Rana's total investment at the initial sale was: $50,000 deposit + $47,626.67 fees and other costs at closing = $97,626.67.

b) Mr. Ali did not make a direct contribution to the down payment or closing costs.

c) Mr. Rana claims he paid $6,929.50 on renovations and fixing the unit. I accept that he spent this amount.

d) The initial mortgage was for $345,200. Mortgage payments were $1,450.20 a month. The mortgage and other expenses were paid from Mr. Rana's account. Monthly strata fees of $300, and yearly water fees of $550, were paid through Mr. Rana's account.

e) Once the Langley property was rented in July 2022, the rent collected covered the carrying costs of the property.

f) Mr. Ali paid property taxes for 2022 in the amount of $1,526.69, on June 1, 2022. I accept that Mr. Ali made this contribution. Mr. Rana paid the property taxes for other years from rental proceeds.

g) The unit has been rented out from July 2022 to the present. Mr. Rana testified the rent was $1,900. The rent collected essentially equates to the amount of the mortgage, strata, and water fees for the unit: $1,450

> (mortgage) + $300 (strata) + $46 (monthly water) = $ 1,796. Mr. Rana did not provide evidence of the amount he has actually collected, and it is possible that the amount collected was greater. Mr. Ali has seen none of the rental income. I accept that any overage generated by the Langley property was kept by Mr. Rana.

[53] Mr. Rana asserts he should be credited with $100 per month for maintenance to the property and a $200 per month administration cost for cleaning services between tenants because Mr. Rana only hosted short-term rentals due to worry over the litigation. I decline to make this ruling. There is no evidence Mr. Rana spent this amount, and it was Mr. Rana's own refusal to sell the property in the short term that necessitated any further administrative work on his behalf.

**MR. RANA'S POSITION**

[54] Mr. Rana relies on the common law, particularly contract and trust doctrines. His pleadings referenced the *Land Owner Transparency Act*, S.B.C. 2019, c. 23, but he did not make any submissions on this *Act*.

[55] Mr. Rana argues that Mr. Ali has no beneficial interest in the Langley property and is a bare trustee holding title for Mr. Rana. Mr. Rana says he paid the down payment and nearly all expenses for the property. Mr. Rana argues that Mr. Ali's name was only added for mortgage qualification purposes, and Mr. Ali agreed that his name could be added to the bid as a reciprocal favour from Mr. Ali because Mr. Rana had previously given favours to him (such as letting Mr. Ali stay at his house, loaning him his car, and relationship support).

[56] Mr. Rana argues that since Mr. Ali provided no value towards the purchase of the Langley property, he received a gratuitous transfer from Mr. Rana when Mr. Rana purchased property as tenants in common with Mr. Ali. He argues that as a result of this gratuitous transfer, Mr. Ali holds the property in a resulting trust for Mr. Rana.

[57] Mr. Rana argues there are three agreements between the parties concerning the Langley property.

1. First, the “Tennis court agreement” which Mr. Rana alleges occurred while they played tennis (August 28, 2021, and supposedly reiterated in written form on September 7, 2021.) Mr. Rana alleges this was a verbal agreement that Mr. Rana could put Mr. Ali’s name on the bid to secure a mortgage. If Mr. Rana could secure a mortgage on his own, then Ali would remove his name. However, if Mr. Rana could not secure a mortgage on his own, then Mr. Ali would become his partner and have an interest in the property equal to his contribution. Mr. Ali denied he had agreed to these terms.

   Mr. Rana argues from September 7 (the date the bid was entered) to October 18, 2021 (the date Mr. Rana’s mortgage was approved) that Mr. Ali’s name was only on the bid document to protect and hold Mr. Rana’s interest, in line with the Tennis court agreement. Mr. Rana further argues that Mr. Ali’s potential interest (which would only have solidified on the condition that Mr. Rana’s mortgage was not approved) was then waived when Mr. Rana qualified for the mortgage. Mr. Rana argued that Mr. Ali allowed his name to be used, and bound himself in a mortgage document, out of friendship and to repay favours Mr. Rana had done for him.

2. Mr. Rana alleges the parties reached a second agreement while coming back from a meeting with a lawyer on October 29, 2021. Mr. Rana argues that Mr. Ali agreed to remove his name after the sale had gone through because there was not enough time to remove his name within the deadlines required for the property purchase. Mr. Ali was scared about legal issues if he tried to remove his name earlier in the process.

3. Mr. Rana futher argues that there was a third set of agreements, including reflected in November 2 and 3, 2021 audio messages, in which he made various promises to Mr. Ali to convince Mr. Ali to sign the necessary documents so that Mr. Rana would not lose his deposit. Mr. Rana argues that

> these agreements should be set aside because they were unconscionable, and he was subjected to duress or coercion when he purported to enter those agreements with Mr. Ali. These are the agreements outlined above (for example, that Mr. Ali could keep all profits as long as Mr. Rana had his deposit returned). In any event, Mr. Ali did not seek to rely on any of the offers made by Mr. Rana, during this period.

**MR. ALI'S POSITION**

[58] Mr. Ali's evidence was that during the summer of 2021, the parties discussed buying a property for short-term investment in a 50/50 partnership. The plan was to sell the property within 1-3 months. Mr. Ali was in the process of securing the Coquitlam property and planned to use the proceeds of the short-term investment for that purchase.

[59] Mr. Ali says his understanding of the parties' agreement is reflected in directions given to the realtor, the notary public, and in the land title registration and joint mortgage: that the parties own the Langley property as 50/50 tenants in common.

[60] Mr. Ali believed that the parties had agreed to jointly invest and that the Langley property purchase was part of that plan, albeit the initial bid occurred without his knowledge. Mr. Ali was shocked when Mr. Rana wanted to unilaterally alter their arrangement, and use Mr. Ali's name to secure a mortgage on the property, but then eliminate him from any partnership. Mr. Ali characterized this an effort to render him a "fake partner." Mr. Ali was concerned that his name was placed on the bid without his consent, and about potential legal repercussions to him of removing his name.

[61] Though he did not consent to the terms of the bid prior to it being entered, Mr. Ali asserts that he intended to proceed as 50/50 co-purchasers of the Langley property, as was the parties' agreement. Mr. Ali denies that he ever intended to hold his interest in the property for Mr. Rana's benefit. Mr. Ali also suggested that Mr. Rana had possibly included his name on the Langley property in an effort to shield

potential profits from collection through the FMEP for amounts Mr. Rana owed in spousal or child support, though this argument was not fully explored.

[62] Mr. Ali argues that Mr. Rana blocked him from contributing to the deposit, repairs, or mortgage payments on the Langley property.

[63] Mr. Ali's purchase of the Coquitlam property was impacted by the Langley property, and Mr. Rana's refusal to sell the Langley property in the short-term as the parties had agreed, or to provide confirmation of rental income received for that property. Mr. Ali had to seek other forms of funding at considerable expense to avoid losing the Coquitlam property and deposit he had made on it. Mr. Ali could no longer qualify on his own for a mortgage for the Coquitlam property as he was on a joint mortgage for the Langley property. Mr. Ali added a friend to title for the Coquitlam property to help him qualify for the mortgage. This assignment cost over $11,000. When both he and his friend combined could still not qualify for the mortgage, Mr. Ali sought private financing. He borrowed $37,500.00 from a private lender at an interest rate of 15% to be able to complete the sale. He had to extend the completion date while he got the new financing in order.

[64] Mr. Ali says the fact that he was unable to qualify for incentives as a first-time home buyer in BC—as a result of the purchase of the Langley property—should additionally be considered in the value he provided to the Langley property purchase.

## RELIABILITY ASSESSMENT

[65] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner,* 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, as including "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". Specific factors include: a witness' ability and opportunity to observe events, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness' testimony seems unreasonable, impossible, or unlikely, and whether a witness has a motive to lie. In *Faryna v.*

*Chorny*, [1952] 2 D.L.R. 354 at p. 357, 1951 CanLII 252 (BCCA) the Court of Appeal noted that: “the real test of the truth of the story of a witness … must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.”

[66] I apply these principles to my assessment of the evidence presented at trial, as set out below.

[67] I generally prefer the testimony of Mr. Ali to that of Mr. Rana in cases of conflict.

[68] I found Mr. Ali to be a largely straightforward witness, and have accepted his testimony, except where noted.

[69] At several points Mr. Rana’s evidence seemed unreasonable, and not in accord with the preponderance of other evidence I accepted. For example, Mr. Rana testified that Mr. Ali told him he could put Mr. Ali’s signature on purchase and sale documents to help Mr. Rana secure a mortgage. Mr. Ali denied that he gave Mr. Rana permission to do this. The evidence shows that Mr. Rana put Mr. Ali’s signature on the bid before messaging Mr. Ali that he had put Mr. Ali’s name on the bid.

[70] Mr. Rana testified that the parties agreed to look for a bigger property together and that Mr. Ali agreed to allow his name and credit to be used if needed to assist Mr. Rana to purchase a smaller property. I found Mr. Rana’s description of the “Tennis court agreement” to be self-serving and not to accord with the other evidence. Mr. Rana’s version cast Mr. Ali in the role of benevolent friend willing to sacrifice his own financial interests in service of Mr. Rana’s. This characterization did not make logical sense on the evidence before me. Further, it was not supported by evidence of Mr, Ali, Mr. Chatta, Ms. Hanna, nor the title and mortgage documents the parties signed.

[71] Mr. Rana testified that the arrangement at the Notary Public to put himself and Mr. Ali on title as 50/50 tenants in common was done by default. This evidence

was contradicted by Ms. Hanna's evidence that she explained that different percentages of ownership could be registered on title, and that the specific instructions of the parties were that the parties were to be put on title as 50/50 percent tenants in common.

## UNCONSCIONABILITY

[72] Mr. Rana argues that Mr. Ali's inclusion on the title and mortgage documents is as a result of Mr. Ali's unconscionable behaviour. Mr. Rana relies upon *Uber Technologies Inc. v. Heller,* 2020 SCC 16, for the proposition that the doctrine of unconscionability is meant to provide relief from improvident contracts, and protect those who are vulnerable in the contracting process.

[73] Mr. Rana argues that Mr. Ali forced him to proceed with the title transfer through threat that Mr. Rana could lose his $50,000 deposit. As I do not accept Mr. Rana's version of events, I do not accept his argument that Mr. Ali unconscionably forced Mr. Rana into an agreement. Mr. Rana put Mr. Ali's signature on the bid documents without Mr. Ali's consent. It was Mr. Rana's own actions that put his $50,000 deposit at risk.

## EVIDENTIARY ISSUES

### Case Planning Order

[74] At an earlier trial management conference, Master (now Associate Judge) Nielsen directed that if any translated audio files were going to be used, that the entirety of that recording should be translated, and not only portions. He directed that they be translated by a certified translator. Another order required that lists of documents that each party intended to rely on be exchanged by December 20, 2023. Mr. Rana sought to introduce evidence that was not on his list of documents, he also sought to introduce translated snippets of conversations (not the entire conversation). I did not allow this evidence to be introduced as it did not follow the order of Associate Judge Nielsen.

[75] Though I declined to allow Mr. Rana to introduce partially translated transcripts of a meeting with Mr. Ali, as they were not translations of the entire discussion, I directed that Mr. Rana could testify about his recollection of the discussions, which he did.

**Translator**

[76] Mr. Rana challenged the translated transcript of three WhatsApp messages introduced by Mr. Ali, because the translation was done by a Hindi translator. Mr. Rana speaks Urdu. Mr. Rana further claimed the translation was not acceptable because it was not accompanied by a written script in the original language, only the English translation.

[77] Mr. Rana said that his offers (recorded in the three translated messages) that Mr. Ali could take increasing shares of the profits as long as Mr. Rana got his deposit back were improperly translated. I understood Mr. Rana to suggest the nuance of him begging or pleading Mr. Ali to complete the sale so that Mr. Rana would not lose his $50,000 deposit was missing from the three translated WhatsApp messages. Mr. Rana argued that his statements (i.e., that Mr. Ali would take all profit as long as Mr. Rana's deposit was returned) were not intended to be offers, *per se*, but rather to convey Mr. Rana's desperation, and to entreaty and convince Mr. Ali to complete the sale so that Mr. Rana would not lose his deposit.

[78] The translator was called and testified that he would describe the language in the three messages he was asked to translate as Hindustani and said he had no difficulty with translating it. He was from an area in which this was the dominant language spoken. He said that the language may be written with different script depending on where one was from, but that the oral version of the language was Hindustani. He also testified it is his practice to provide only the translation, not a written script in the original language unless specifically asked to do so. I accepted the translations.

[79] That being said, as I have outlined above, I did not take the evidence contained in the translated transcript to be different from other evidence, including

Mr. Rana's own testimony. Mr. Rana's own *viva voce* testimony was remarkably similar to the recording which he challenged, and additional text and WhatsApp communications. The translated transcripts reflect evolving proposals from Mr. Rana to Mr. Ali, with the aim of getting Mr. Ali to agree to remove his name from the contract of purchase and sale. Overall, they show the parties engaged in active and increasingly acrimonious discussions. The three translated messages are part of this ongoing exchange.

[80] I find at no point did the parties come to an agreement other than the agreement on the August 26, 2021 WhatsApp message, and recorded on the land title and mortgage documents.

**WhatsApp Messages**

[81] Both Mr. Ali and Mr. Rana agree that the WhatsApp records—which were provided through screenshots and also a text printout—were the same conversation, though date stamps were one day apart. Both parties agreed that the dates on the screenshots were accurate and that the text print out of the same conversation was off by a day. Mr. Ali suggested that this may be because the device that the printout was generated from was set to a different geographic time zone. Mr. Rana had initially suggested Mr. Ali did this on purpose, but seemed to later agree with Mr. Ali's explanation.

[82] Mr. Rana suggested that a screenshot of part of the exchange was missing. Even accepting that the snippet of the exchange was left out, I do not find it makes a difference to the end result.

## FINDINGS OF FACT

[83] An Agreed Statement of Facts, provided, in part:

1. A Contract of Purchase and Sale was submitted for the property located at 430-5660 201A Street, Langley, BC (the "Property") on September 7, 2021, with both Mr. Rana and Mr. Ali as co-purchasers.

2. An Order Made After Application: Approval of Sale was filed in the Supreme Court of British Columbia, under file number H-200294, on September 14, 2021, approving the sale of the Property to Mr. Rana and Mr. Ali as tenants in common, and that the completion date would be November 8, 2021.
3. Mr. Rana proceeded with obtaining a mortgage, which was approved under Mr. Rana's name only on October 18, 2021.
4. The Toronto-Dominion Bank was unable to process Mr. Rana's sole mortgage as the Order Made After Application had Mr. Rana's and Mr. Ali's names on it.
5. On November 5, 2021, a meeting with the notary took place where Mr. Rana and Mr. Ali signed documents to execute the registration of the title of the Property.
6. A mortgage on the Property of $345,200.00 was registered with Toronto-Dominion Bank on November 8, 2021, with Mr. Rana and Mr. Ali as joint borrowers (the "Mortgage").
7. Title Insurance was obtained by Mr. Rana, insuring Mr. Rana and Mr. Ali for the Policy Amount of $431,500.00 starting on November 8, 2021.
8. The transaction of the Property was completed on November 8, 2021, where the Property was purchased for $431,500.00.
9. On January 10, 2022, a State of Title Certificate was issued with Mr. Rana and Mr. Ali as tenants in common.
10. The outstanding balance of the Mortgage as of December 19, 2023 is $341,654.49.

[84] Based on a totality the evidence presented, and my assessment of that evidence, I find on a balance of probabilities that:

a) Mr. Ali pledging his credit for the Langley property as a co-mortgagor impacted his financial ability to complete the purchase of the Coquitlam property;

b) Mr. Rana refused to sell the Langley property in the short-term despite the parties' agreement; and he did this, in part, in an attempt to force Mr. Ali to remove his name from the Langley property;

c) Mr. Rana and Mr. Ali discussed buying a short-term investment property together, but had not come to an agreement about which property to buy, or the exact terms of their respective contributions before a bid was entered on the Langley property;

d) Mr. Rana put Mr. Ali's name on the bid for the Langley property without Mr. Ali's consent or permission. Had Mr. Ali refused to move forward with the sale, given that Mr. Ali's name was on the Court Order, Mr. Rana would have lost his $50,000 deposit;

e) Mr. Rana's total financial investment in the Langley property at the outset was $97,626.67 in deposit and closing costs, plus $6,929.50 in renovations;

f) Mr. Ali provided value as a co-convenantor on the mortgage;

g) Mr. Ali did not agree to place his name on title or the mortgage to the Langley property as a favour or gift to Mr. Rana;

h) Mr. Rana lived at the Langley property for six months from January and June, 2022. Mr. Ali did not receive any rent during this time, or any other time;

i) From July 2022 to the present, the Langley property has been rented out with Mr. Rana receiving the totality of the rental proceeds;

j) Mr. Rana has paid the mortgage and expenses and most property taxes for the Langley property with these costs being covered through rental income generated by the Langley property;

k) Mr. Ali paid $1,526.69 in property taxes for 2022; and

l) Mr. Ali was willing to make contributions to the mortgage and expenses for the Langley property, and to participate in readying the property for sale, but was blocked from doing so by Mr. Rana.

## ISSUES

[85] What is Mr. Ali's interest in the Langley property?

[86] Should Mr. Ali's name be removed from Langley property, and title transferred into the sole name of Mr. Rana, pursuant to s. 37 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253?

[87] If Mr. Rana and Mr. Ali are found to be both validly on title as tenants in common, should a sale of the Langley property be ordered under s. 2 of the *Partition of Property Act*?

## LAW

[88] The *Land Title Act,* R.S.B.C. 1996, c. 250 [*LTA*], provides for the presumption of indefeasibility of title. It is presumed that the person(s) or entity(s) recorded on title, is in fact, the owner, as reflected in s. 23(2) of the *LTA:*

> 23. (2) An indefeasible title, as long as it remains in force and uncancelled, is conclusive evidence at law and in equity, as against the Crown and all other persons, 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 indefeasible title, […]

[89] There are limited circumstances upon which the presumption of indefeasible title can be rebutted. *Jesson v. Tanaka*, 2023 BCSC 1313 [*Jesson*] at para. 141, citing *Suen v. Suen*, 2013 BCCA 313 at para. 34, listed three considerations for determining whether the *LTA* s. 23(2) presumption had been rebutted:

> (i) the operation of a resulting trust which may be inferred where no value is given for a legal interest;
>
> (ii) the operation of an agreement between the parties that is contrary to the registered title; or
>
> (ii) taking into account the underlying equitable interests between the parties (e.g. considerations that arise in claims for unjust enrichment).

[90] Mr. Rana alleges that the first and second considerations apply here. He submits that Mr. Ali holds his interest in the Langley property for Mr. Rana in either a resulting trust or as a bare trustee because Mr. Ali gave no value for the legal interest he holds. In terms of the second consideration, Mr. Rana alleges that there was an agreement between the parties that Mr. Ali was on title in name only, and agreed to help Mr. Rana purchase the property. Mr. Rana alleges that these two considerations are interrelated, and both should result in a finding Mr. Ali holds his legal interest in the Langley property in trust for Mr. Rana.

[91] A resulting trust arises where a transfer of property title is made for no consideration. Where a gratuitous transfer occurs, the presumption arises that the granter intended to create a trust, rather than make a gift: *Kerr v. Baranow*, 2011 SCC 10 at para. 19. A resulting trust is imposed in order to return the property to the person who gave it, and is entitled to it beneficially: *Kerr* at para. 16.

[92] The Supreme Court of Canada, in *Pecore v. Pecore*, 2007 SCC 17, outlined the nature of resulting trusts as follows:

> [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. …
>
> …
>
> [24] The presumption of resulting trust is a rebuttable presumption of law and general rule that applies to gratuitous transfers. When a transfer is challenged, the presumption allocates the legal burden of proof. Thus, where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended: [Citations omitted]. This is so because equity presumes bargains, not gifts.
>
> [25] The presumption of resulting trust therefore alters the general practice that a plaintiff (who would be the party challenging the transfer in these cases) bears the legal burden in a civil case. Rather, the onus is on the transferee to rebut the presumption of a resulting trust.

[93] A bare trust arises where the trustee holds property without any duty to perform except to convey it to the beneficiary upon demand or as directed by the beneficiary: Donovan Waters, Mark Gillen & Lionel Smith, *Waters' Law of Trusts in*

*Canada*, 5th ed. (Toronto: Thomson Reuters Canada, 2021) at 33; *De Mond Jr. v. The Queen*, 1999 CanLII 466 (TCC). The trustee's sole duty is to account for the property while they hold it, to keep the property safe, and to transfer the property to the beneficiary on demand: *Waters' Law of Trusts in Canada* at 35.

[94] A gratuitous transfer of title gives rise to a presumed resulting trust. The case of *Nishi v. Rascal Trucking*, 2013 SCC 33, considered the circumstance where a person advances funds to contribute to the purchase price of property, but did not take legal title to that property. The court commented, at para. 1, that where the person advancing funds is unrelated to the person taking title, the law presumes a resulting trust—that is, 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. The presumption of resulting trust 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: *Nishi* at para. 2.

[95] In *Kennedy v. Smith*, 2022 BCSC 1622, this court held:

> [78] When a property is purchased by one party but title is held jointly by two parties, there is a presumption that the party providing the purchase funds intended to retain the entire beneficial interest, … unless there is evidence to the contrary: *McKendry*, at para. 36; and *Bergen v. Bergen*, 2013 BCCA 492 at para. 42.
>
> [79] The presumption is only invoked if there is insufficient evidence to determine the intention of the transferor on a balance of probabilities: *Fuller v. Harper*, 2010 BCCA 421 at para. 47.

[96] As emphasized in *Ishrat v. Anwar*, 2023 BCSC 1838, the transfer must be truly gratuitous in order for a trust to arise:

> [223] A resulting trust arises where title to property is held in one party's name, but that party is not the beneficial owner to the property because he or she acquired the property either in the capacity of a fiduciary, or without giving any consideration: *Pecore v. Pecore*, 2007 SCC 17 at para. 20. In *Pecore* it was held that a gratuitous transfer of property between adults gives rise to a presumption of resulting trust.
>
> [224] The presumption of resulting trust articulated in *Pecore* can be rebutted where the evidence establishes that a transferee gave something of value in exchange for the transfer of property. As explained in *Bajwa v.*

> *Pannu*, 2007 BCCA 260 at para. 16, "[i]f it is found as a fact that the person whose equitable interest is challenged did give value, there can be no resulting trust". The question of whether value is given is an issue of fact to be determined on all the evidence.

[97] A finding of a resulting trust therefore turns on the question of whether there has been a gratuitous transfer. Whether a transfer is gratuitous is a question of fact to be determined in the circumstances and on the evidence of the given case: *Pavlovich v. Danilovic*, 2019 BCSC 153 at para. 43; *Freeland v. Farrell,* 2022 BCCA 99 at para. 59. Different cases have considered whether a transfer can be truly said to be gratuitous, looking at factors such as the amount of contribution by either party, the use of a person's credit in securing a mortgage, and other considerations.

[98] In *Virk v. Pannu*, 2006 BCSC 921, aff'd *Bajwa v. Pannu*, 2007 BCCA 260, Baljit Bajwa and her mother, Balwant Virk, together with Rupinder Pannu, purchased a property as joint tenants for $249,000. Ms. Bajwa and Ms. Virk provided the down payment of $35,000, and the balance of the purchase price came from a mortgage. Mr. Pannu did not contribute any money towards the purchase, mortgage payments or property upkeep, but was listed on the mortgage (he was the principal borrower and Ms. Bajwa and Ms. Virk would otherwise not have qualified). He assisted in searching for the property and engaging a realtor. The court held that the onus was on the plaintiffs seeking to displace the presumption of indefeasible title created by s. 23(2) of the *LTA* and there was no cogent evidence to do so. The presumption of resulting trust did not apply because Mr. Pannu had given "value" for his interest, in particular by making it possible for the Virks to buy property they otherwise were unable to buy and exposing himself to risk, as a covenantor of the mortgage.

[99] The Court of Appeal concluded Mr. Pannu would not be unjustly enriched if he retained a one-third interest in the property. In *Bajwa* at para. 16, the Court of Appeal noted that "[w]hether value is given is a question of fact to be determined on the evidence in each case": and that value does not necessarily involve the contribution of money. A resulting trust occurs where a person gives *no value* for a legal interest that they acquire; however, "if it is found as a fact that the person whose equitable interest is challenged did give value, there can be no resulting

trust." The Court of Appeal indicated that cases determining similar issues "all turn on their particular facts and the equities seen to arise": *Bajwa* at para. 18.

[100] In *Bajwa*, no explicit agreement between the parties was able to be established on the balance of probabilities. The trial judge was unable to determine whether an agreement had been made, either for Mr. Pannu to become a covenantor for the mortgage debt gratuitously (as alleged by the Virks), or for Mr. Pannu to have a one-third interest in the property in exchange for him obtaining the mortgage and incurring the risk of being a covenantor on it (as alleged by Mr. Pannu): *Bajwa* at paras. 11-12. Given this, and the fact that Mr. Pannu had provided value, the Virks did not displace the presumption found in s. 23(2) of the *LTA*.

[101] In some circumstances, courts have found that unequal contributions leading to equal ownership may be considered a gratuitous transfer: See, for example, *Chuang v. Wong*, 2012 BCSC 233 at para. 10.

[102] *Freeland v. Farrell*, 2022 BCCA 99, provides an example of a case where a mortgage co-covenantor who did not contribute to a property's down payment was found not to have given value. The co-covenantor argued that she had given value because vendors required her to be identified as a co-purchaser, the mortgage was only formally approved with her participation, and she would be personally liable in the event of a default on the mortgage. The trial judge and the Court of Appeal disagreed, concluding that the value she had offered was not "material". The other party could have obtained the necessary financing on his own, and there was no real risk to her given the other party's assets: *Freeland* at paras. 63-64. The presumption of resulting trust applied and displaced the presumption of indefeasibility of the co-covenantor's title: *Freeland* at para. 68. The Court of Appeal commented at para. 59 that it is not an automatic presumption that a co-convenantor will be found to have given value.

[103] In *Jesson*, the court found that even if the down payment by the defendants was considered to be a gift, the defendants "made another contribution of value" through assuming liability for the mortgage:

> [145] […] By assuming liability for the mortgage, [the defendants] pledged their credit and took on substantial debt. It makes no difference whether they did this because [the plaintiff] did not qualify for the mortgage on his own or because the parties decided that [the defendants] should be on title to protect [the other plaintiff's] interest, which caused the bank to require [the defendants] to assume liability for the mortgage. In either case, by assuming liability for the mortgage [the defendants] made it possible for [the plaintiffs] to buy the property and in doing so they exposed themselves to the risk of having to make the mortgage payments or reimburse a shortfall if there was a default. Even without having made any of the mortgage payments, this is a contribution sufficient to preclude a finding of resulting trust: *Bajwa v. Pannu*, 2007 BCCA 260 at paras. 13–16; *Aujla v. Kaila*, 2010 BCSC 1739 at paras. 37–41, aff'd 2013 BCCA 158; *Jafar-Gholizadeh v. Larijani*, 2018 BCSC 279 at para. 133.

[104] In *Petrick (Trustee) v. Petrick,* 2019 BCSC 1319, the court found that pledging credit, on the facts of the case, provided value such that the presumption of resulting trust did not apply. Even if value had not been provided, the actual intention of the transferor is the determinative factor in the doctrine of resulting trust, and the court found that the intention of the transferor was inconsistent with the property being held on a resulting trust: *Petrick* at paras. 61-70.

[105] In *Dhaliwal v. Ollek*, 2012 BCCA 86, the Court of Appeal upheld that a financial contribution to the purchase of a home was not a gift, but rather an investment. The appellants, who were the only registered owners on title, were found to hold part of their title in resulting trust for the respondent, and the s. 23(2) presumption was rebutted:

> [36] The appellants also submitted that since the respondent was not a covenantor on the mortgage on the Property, his proportion of ownership in the Property ought not to exceed 20%. While being or not being a covenantor can be found to impact on ownership, as was the case in *Bajwa v. Pannu*, 2007 BCCA 260, 66 B.C.L.R. (4th) 192, I do not consider this factor to have much significance in the present case for two reasons. Firstly, the amount of the monthly mortgage payments was more than covered by rent payable by a tenant and secondly, it appears that the value of the Property was always ample to cover the face value of the mortgage. There was never any real risk that the Olleks would be called upon under their covenants for any potential deficiency.
>
> …
>
> [42] As the authorities make plain, a person's interest in property crystallizes at the time of acquisition: see *Pecore v. Pecore*, *supra*, and *Pettit v. Pettit*, [1970] A.C. 777 at 813-814. In determining the respective interests

> of the parties in the present case, the trial judge took account of a $2,000 retainer paid by Mr. Dhaliwal to Mr. Russell in the context of the Oak Park action, as well as expenses paid by Mr. and Mrs. Ollek over the years including taxes, insurance, mortgage interest and utilities. I consider that it was not permissible for the trial judge to take account of these post-purchase contributions by the parties in fixing their respective ownership interests. Rather, as was ordered by Arnold-Bailey J. in the trial judgment of *Virk v. Pannu*, 2006 BCSC 921, 57 B.C.L.R. (4th) 161, aff'd *sub nom*, *Bajwa v. Pannu, supra*, each party's respective payments or receipts should be credited to them through an accounting process.



## ANALYSIS

[106] The first question to be addressed is whether the transfer of a 50% interest as tenants in common to Mr. Ali, was, in fact, gratuitous.

[107] Mr. Ali did not put down any money toward the down payment. Though he attempted to help with renovations and upkeep, including through searching out appliances and with paying for a portion of the mortgage, Mr. Rana rebuffed those efforts.

[108] Mr. Ali says he gave value by assuming liability under the mortgage and that in doing so, he exposed himself to the risk of having to make the mortgage payments. He also asserts that he lost first time home buyer benefits and that he paid property taxes for one year. Pledging his credit to the purchase of the Langley property impacted Mr. Ali's purchase of the Coquitlam property.

[109] Mr. Rana's position requires a finding that Mr. Ali's name on the title transfer and mortgage had nominal value. If Mr. Ali's name on the mortgage and conveyancing documents was indeed a significant valuable contribution to the purchase of the property, then the transfer is not gratuitous, there can be no resulting trust, and the scenario is similar to *Bajwa* with Mr. Ali as a co-purchaser, not a trustee: *Bajwa* at para. 15.

[110] Mr. Ali says he did not agree to act as a bare trustee to secure Mr. Rana's interest. Mr. Ali points to the danger of absent consent, in allowing people to add other's names to bid documents for property purchases. People could put others on bidding documents unilaterally any time to serve their own self-interest and then,

once their use was done, claim that they never held any interest because they were “bare trustees”.

[111] Mr. Rana refused to sell the Langley property, and also threatened to leave Canada, thereby leaving Mr. Ali solely responsible for the mortgage payments.

[112] Here, on a consideration on a balance of probabilities of all of the evidence, I do not find that the transfer was gratuitous. Mr. Ali acquiesced to having his name on the purchase documents, and pledged his credit through the mortgage. His participation was required as his name was on the offer to purchase and resulting Court Order. Even if Mr. Rana could have secured a mortgage on his own, Mr. Ali’s name was entered on the bid documents, the resulting Court Order, the title transfer documents, and the final mortgage. As a result of agreeing to pledge his credit to purchase the Langley property, Mr. Ali encountered difficulties in closing the purchase of the Coquitlam property.

[113] The unique value that Mr. Ali added in this case was that he saved Mr. Rana’s down payment by acquiescing to moving forward with the sale despite Mr. Ali’s name being added to the bidding documents without his specific consent to bid on the Langley property. Once Mr. Rana had added Mr. Ali’s name to the bidding documents, the sale could only happen with both parties on board. Had Mr. Ali refused to go forward with the sale, Mr. Rana would have lost his deposit and been unable to secure the Langley property. Mr. Ali could have refused to go forward with the sale. It was Mr. Rana’s own wrongdoing that put himself in that precarious position. Mr. Ali’s acquiescence to having his name on the purchase and mortgage documents and to proceed as a tenant in common purchaser, avoided a significant loss to Mr. Rana.

[114] Given that the transfer was not gratuitous, a trust cannot result unless Mr. Rana can demonstrate that it was the intention of Mr. Ali to gift his valuable contribution to Mr. Rana.

[115] I do not find that Mr. Ali intended a gift to Mr. Rana. Mr. Ali was unequivocal that he always intended to be a co-purchaser with Mr. Rana, and I found his testimony to be credible. I do not accept Mr. Rana's assertions that there was an agreement for Mr. Ali to put his name on the mortgage gratuitously as a favour to Mr. Rana.

[116] I accept the testimony of Ms. Hanna, Mr. Chatta, and Mr. Ali, that the parties intended to be 50/50 tenants in common. That is the interest that they entered on the land title documents.

[117] I now address why Mr. Rana cannot invoke the aid of equitable principles such as unconscionability, duress, or coercion to establish that his interest is the only beneficial interest in the Property. Mr. Rana argues that, to the extent that he and Mr. Ali agreed to hold title to the Property together and be co-covenantors on the mortgage, this agreement must be set aside as it was unconscionable, or made under duress or coercion. Mr. Rana argues that he had to let Mr. Ali be on title and the mortgage in order to save Mr. Rana's down payment.

[118] Mr. Rana's claim to equitable relief is established through his misconduct and his reliance on his own misconduct: putting Mr. Ali on the bid without Mr. Ali's prior consent. As set out above, I do not accept Mr. Rana's assertions that there was any prior agreement for Mr. Ali to put his name on bidding documents, title or the mortgage, as a favour to Mr. Rana.

[119] To give Mr. Rana the orders he is seeking, or to allow him equitable relief, would reward his conduct in orchestrating this situation. This strongly goes against public policy. Mr. Rana would effectively be rewarded for this misconduct by benefitting from the security that comes with Mr. Ali sharing liability for the mortgage, and gaining a complete interest in the property.

**Finding on Title**

[120] The equal division of the proceeds of sale to which the parties are entitled may be subject to an accounting of their respective financial contributions to the

property, according to the principles of fairness: *Bajwa*; *Smith v. Davis*, 1978 CanLII 3087, [1978] B.C.J. No. 54 (S.C.); *Farrar v. Walker*, [1982] B.C.J. No. 965 (S.C.); *Aleksich v. Konradson*, 5 B.C.L.R. (3d) 240, 1995 CanLII 1692 (C.A.).

[121] I find Mr. Ali and Mr. Rana are each entitled to a one-half interest as tenants in common in the Langley property. Their respective interests are subject to an accounting of the parties' respective financial contributions to the property that accords with the principles of fairness: to Mr. Rana $97,626.67 + $6,929.50 = $104,556.17 and for Mr. Ali $1,526.69.



**Should a Sale of the Langley property be Ordered?**

[122] Having found that Mr. Ali has a one-half interest as a tenant in common with Mr. Rana in the Langley property, I now turn to his application for sale of that property.

[123] Parties with an interest in land (including tenants in common) can be compelled to sell the property, under the *PPA*. The court has the power to order a sale of the property and give directions where it is more beneficial for the parties than a division of the property: s. 7 of the *PPA*. Section 8 of the *PPA* allows other interested parties to undertake to purchase the share of the party requesting a sale.

[124] Section 6 of the *PPA* reads as follows:

> **Sale of property where majority requests it**
>
> 6. In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.

[125] Section 6 applies in this case given that Mr. Ali has a one-half interest in the Langley property. Under s. 6, the court must order a sale unless it sees good reason to the contrary.

[126] In *Bradwell v. Scott,* 2000 BCCA 576 at para. 45, the Court of Appeal held that the "facts and circumstances of each case must be examined to determine whether a good reason, of whatever sort, exists for refusing the order." Good reasons for refusing an order identified in *Bradwell* include serious hardship to a respondent, lack of good faith, vexatiousness, and maliciousness. In *Sundberg v Sundberg*, 2022 BCSC 2188, in ordering the sale of the property, the court observed that an "emotional attachment" to the property, the inability to purchase the opposing parties' shares, and the inability to buy a comparable property do not constitute good reasons to oppose a sale. In *Sundberg*, it was noted that:

> [9] Under s. 6 of the *Act*, […] an order of sale is mandatory in the absence of good reason to decline it. In practical terms, the onus rests with the party opposing the sale to establish good reason to the contrary, meaning, quite simply, that "justice requires that such an order be denied": …[Citations omitted.].
>
> [10] The Court confirmed in *Bradwell* at para. 45 that the grounds for refusing a sale under s. 6 of the *Act* include, but are not limited to, a lack of good faith or malice on the part of the petitioner.

[127] The discretion conferred by s. 6 is "broad and unfettered", and a refusal to order a sale should occur when "having regard to the particular facts and circumstances, such an order would not do justice between the parties": *Sahlin v. The Nature Trust of British Columbia,* 2011 BCCA 157 at para. 24. Mr. Rana has not shown a good reason not to order a sale of the Langley property. He did not focus on this issue in his submissions. Mr. Rana also did not indicate that he was willing to purchase Mr. Ali's share of the Langley property or make any undertaking to that effect.

[128] I order the sale of the Langley property pursuant to ss. 2 and 6 of the *PPA*. Mr. Rana's $97,626.67 investment should be returned, along with the $6,929.50 he spent on renovations and fixing the unit. Mr. Ali should have the $1,526.69 he spent on property tax returned to him. The sale proceeds should then pay off the mortgage, realtor and any conveyancing fees, and any other liabilities. The remaining proceeds should then be split evenly between the two parties.

[129] Mr. Rana did not provide full disclosure. I find it likely that Mr. Rana received and benefitted from amounts generated by rental income beyond the carrying costs, but cannot determine those amounts on the evidence before me. For the time period that Mr. Rana was not receiving rent, he was living at the Langley property and benefitting from it in that way. It would therefore not be fair for Mr. Rana to be credited with any of the amounts he spent on the mortgage payments, strata fees, water fees, or property tax.

[130] I find Mr. Ali's position that the parties should split the proceeds 50/50 irrespective of Mr. Rana's significant financial contribution to be untenable, as it would lead to an inequitable result. This is so despite Mr. Ali's argument that he suffered through Mr. Ali's actions because his costs to purchase the Coquitlam property grew considerably as a result of Mr. Rana's refusal to sell the Langley property, as the parties had agreed. The fact remains that Mr. Rana covered the down payment, closing costs and renovation expenses, and Mr. Ali did not. Despite Mr. Rana's misdeeds, this financial contribution must be taken into account to accord with principles of fairness.

## ORDERS

[131] The Langley property shall be listed for sale within one month of this decision and the parties have joint conduct of the sale on the following terms:

a) the parties are at liberty to each retain their own realtor;

b) the parties will correspond through legal counsel and/or the realtor(s) for the purposes of carrying out the sale;

c) the realtor(s) shall share in the commission, and the total commission to be shared shall be equivalent to the commission had it been just one realtor;

d) the parties shall list the property for sale at a price recommended by the realtor(s), and if two realtors are appointed, they will make best efforts to reach a consensus price for both listing and sale;

e) if the parties cannot agree to a listing or sale price, each party is at liberty to apply to the court for direction and an order; and

f) the proceeds of sale shall be used as follows:

i) to pay realtor commissions;

ii) to pay any outstanding mortgages or charges;

iii) to pay any applicable taxes; and

v) the remaining net proceeds of the sale are to be divided as set out in this order, including accounting for the parties respective contributions as I have outlined above, with any remaining amount to be split equally between them.

## COSTS

[132] The parties have had mixed success in this matter. Mr. Rana has failed to establish that Mr. Ali has no beneficial interest in the property. On the other hand, Mr. Ali's position would not have given any effect to the $104,556.17 that Mr. Rana advanced towards the purchase and renovation of the property. I therefore order both parties to bear their own costs of the proceeding, unless there are matters of which I am not aware, in which case, the parties may schedule submissions before me.

"A. Walkem J."