IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Singh v. Sharma,*
2024 BCSC 672

Date: 20240424
Docket: S189003
Registry: New Westminster

Between:

Veron Vinendh Singh and Shaileshni Mani Grounder

Plaintiffs

And

Hari Sharma and Gurpreet S. Minhas

Defendants

Before: The Honourable Justice Fitzpatrick

Reasons for Judgment

Counsel for Plaintiffs:	K. Frempong
Counsel for Defendant, Hari Sharma:	A. Syer
No other appearances.	
Place and Dates of Trial:	New Westminster, B.C. April 2-5, 2024
Place and Date of Judgment:	New Westminster, B.C. April 24, 2024

Introduction

[1] This trial concerns the plaintiffs' claim against the defendant, Hari Sharma, for unjust enrichment arising from payments they made to him pursuant to two mortgages granted in October and November 2009, respectively.

[2] The plaintiffs now allege that they received no advance of monies or other benefits as consideration for the granting of those mortgages. They allege therefore that there was no money secured by the mortgages and that they had no legal obligation to make payments to Mr. Sharma.

[3] The amount in issue is about $51,000.

[4] The matter has an unusual history, and a relevant procedural history, as I will describe below.

[5] The witnesses called for the plaintiffs were the plaintiff, Shaileshni Gounder, and her mother, Sushila Gounder. For ease of reference, to distinguish the Gounders, I will refer to Sushila Gounder by her first name, meaning no disrespect.

[6] The only witness for the defence was Mr. Sharma, who contends that the plaintiffs did obtain substantial benefits from him, both directly and indirectly, as agreed and as secured by the mortgages. Mr. Sharma denies that he was unjustly enriched by the various transactions that gave rise to the mortgages in question.

[7] For the reasons set out below, I dismiss the claim.

Facts

[8] The following are my preliminary findings of fact, which will be supplemented by further fact finding in the "Discussion" section below.

[9] I will define the two mortgage transactions in question as the "Langley Mortgage" and the "Prince Charles Mortgage", both executed in favour of Mr. Sharma.

The Parties

[10] There are a number of participants in the various transactions.

[11] The plaintiffs—Ms. Gounder and Veron Singh—are or were a married couple (Sushila referred somewhat obliquely to them having marital difficulties).

[12] Ms. Gounder was 45 years old at the time of trial and was working as a clerk at a hospital. She refers to having some post-secondary education.

[13] Sushila and John Naidu (herein after referred to as “John”, meaning no disrespect) are Ms. Gounder’s parents. In 1974, Sushila immigrated to Canada from Fiji. Sushila was 66 years old at the time of trial. She is now retired after a career working as a mental health worker.

[14] Sushila is experienced in the buying and selling of real estate in the Lower Mainland. All told, before her acquiring interests in the 96A Property and the Langley Property (as both defined below), she had been involved in the buying and selling of seven homes in the Lower Mainland. All purchases were financed by mortgages secured against the properties.

[15] Mr. Sharma has been a realtor for the last 39 years. He knows the Gounder family through various associations in the Fijian community, which I understand is a close-knit or smaller community. In particular, Mr. Sharma is a friend of Sushila’s brother.

[16] Sharon Rattan is also a member of the Fijian community. Members of the Gounder family, particularly Sushila, and Mr. Sharma know Ms. Rattan and her family. Ms. Rattan’s in-laws are Satya Nand and Uma Rattan (collectively, the “Rattan Relatives”).

[17] The former defendant, Gurpreet Minhas, is a Notary Public, who acted for Ms. Gounder and Mr. Singh in the 2009 transactions relevant to this litigation.

The Properties

[18] There are three different residential properties that are involved in the various transactions:

a) The “Langley Property”, located at 4644 199th Street, Langley, BC;

b) The “Prince Charles Property”, located at 127 – 9495 Prince Charles Boulevard, Surrey, BC; and

c) The “96A Property”, located at 12168 96A Avenue, Surrey, BC.

The Transactions

[19] The course of the somewhat convoluted transactions is better understood within a timeline.

2006

[20] In September 2006, Sushila purchased the Langley Property for $395,000 with some mortgage financing.

[21] After that time, the Langley Property was a rental property that was occupied by tenants. By at least 2008, Sushila and John were living in a home on Robertson Drive in Surrey, BC (the “Robertson Property”).

2007/2008

[22] Beginning sometime in 2007, Sushila listed the Langley Property for sale with two different realtors at two different times. The property did not sell.

[23] In May 2008, Sushila transferred the Langley Property to Ms. Gounder and Mr. Singh for the stated purchase price of $408,000. The title documents indicate that Ms. Gounder received a 90% interest and Mr. Singh received a 10% interest. The documents indicate the consideration for the transfer was for $1.00 and other good and valuable consideration. Other documents indicate that the transfer involved a gift to Ms. Gounder of $106,000, which presumably approximated Sushila’s equity in the property.

[24] Ms. Gounder and Mr. Singh's purchase of the Langley Property was financed at least in part by a mortgage for $306,000 from Prospera Credit Union ("Prospera"), the proceeds of which were used to pay out Sushila's mortgage on the Langley Property.

[25] After the transfer of the Langley Property to Ms. Gounder and Mr. Singh, it remained a rental property.

[26] Later, in June 2008, Ms. Gounder and Mr. Singh obtained further loans from Prospera for $32,934.28 and $39,137.23 that were described as "Loan #2" and "Loan #3". These amounts were secured under Prospera' mortgage against the Langley Property, along with a line of credit.

[27] Despite the transfer of the Langley Property by Sushila to Ms. Gounder and Mr. Singh, Sushila and Ms. Gounder considered that Sushila was the "true" owner of the Langley Property and Sushila made all significant decisions relating to the Langley Property.

[28] In June 2008, Ms. Rattan purchased the 96A Property. Mr. Sharma was involved in the purchase as the listing realtor. To finance the purchase, Ms. Rattan obtained a mortgage from First National Financial ("FNF") for $626,988. The purchase involved a bare trust agreement, by which Ms. Rattan agreed with the Rattan Relatives that she would hold title to the 96A Property in trust for them.

[29] Around the time of the purchase of the 96A Property in 2008, Ms. Rattan advised Mr. Sharma that the Rattan family was short of funds to complete the purchase.

[30] Mr. Sharma agreed to help the Rattan family. Mr. Sharma loaned the Rattan family about $60,000 for the down payment for the 96A Property, a vehicle purchase and some other needs, possibly relating to the 96A Property.

[31] On July 3, 2008, in consideration of advancing those loans, and to secure those loans, Ms. Rattan granted a second mortgage over the 96A Property in favour

of Mr. Sharma for $60,000 with a 12% interest rate (the “96A Mortgage”). The Rattan Relatives were covenantors of those loans.

2009

[32] In January 2009, Ms. Gounder and Mr. Singh purchased the Prince Charles Property. They obtained a mortgage from Prospera for $243,788.

[33] Sometime in 2009, the Langley Property was listed for sale pursuant to a series of listings. The last listing—at $420,000—expired on September 22, 2009.

[34] In fall 2009, John, while at Sushila’s brother’s place of business, approached Mr. Sharma to assist him and Sushila in selling the Langley Property. Sushila and John advised Mr. Sharma that they were in financial trouble and behind on mortgage payments relating to their principal residence, the Robertson Property.

[35] After checking the status of the Langley Property, toward confirming that no present listing existed, Mr. Sharma agreed to assist Sushila and John in selling the property.

[36] In addition, around this time, Mr. Sharma told Sushila and John about a possible opportunity to acquire the 96A Property. Mr. Sharma was aware that Ms. Rattan was not getting along with the Rattan Relatives in that home and that she had stopped making mortgage payments to FNF such that a foreclosure was a likely prospect. The arrears then owing by Ms. Rattan to FNF were about $30,000. Mr. Sharma told Sushila and John that they could get the 96A Property for $30,000 and that the ongoing mortgage payments could be made from rental revenue from the two suites.

[37] At the time, Mr. Sharma also told Sushila and John about the 96A Mortgage.

[38] Ultimately, Mr. Sharma’s son, Deepak Sharma (herein after referred to as “Deepak”, meaning no disrespect) became interested in acquiring the Langley Property. In September 2009, Deepak viewed the Langley Property.

[39] On September 28, 2009, Ms. Gounder and Mr. Singh signed a limited dual agency agreement with Mr. Sharma to allow him to act for both them, as vendors, and Deepak, as purchaser. On that same day, Ms. Gounder and Mr. Singh and Deepak entered into a contract of purchase and sale regarding the Langley Property for $438,000.

[40] Deepak provided Ms. Gounder and Mr. Singh with a $40,000 deposit, which Mr. Sharma delivered personally to the residence, possibly by handing it to John.

[41] With respect to the ensuing transactions in 2009 in relation to the sale of the Langley Property, at all times, Ms. Gounder and Mr. Singh were represented by Mr. Minhas, the notary handling their side of those transactions.

[42] Also, a lawyer, Ian Burroughs, acted for Mr. Sharma and Deepak with respect to the transactions.

[43] In October 2009, in addition to the ongoing transaction of the sale of the Langley Property, matters were progressing in tandem in relation to the 96A Property. Those events included:

a) On October 1, 2009, the Rattan Relatives, Sushila and John entered into a purchase agreement by which the Rattan Relatives sold and transferred to Sushila and John their interest in the 96A Property;

b) On October 1, 2008, pursuant to a bare trust agreement, Ms. Rattan remained as the “Bare Trustee” under a new bare trust agreement, confirming that she then held legal title for the 96A Property for Sushila and John; and

c) On October 8, 2009, Ms. Rattan executed a power of attorney in favour of Sushila and John allowing them to address all matters relating to the 96A Property.

[44] Some of the above documents relating to the 96A Property were signed before Mr. Minhas. Some were signed in the presence of another lawyer, Sanjeev Rai.

[45] When the 96A Property was transferred to Sushila and John, the property remained subject to the FNF mortgage and Mr. Sharma's 96A Mortgage.

[46] The stated consideration paid by Sushila and John to the Rattan Relatives for the transfer of the 96A Property was to pay the $30,000 in arrears that was owing to FNF and also, assume payments under the FNF mortgage into the future. Sushila expressly understood that she would be required to pay the FNF mortgage payments and, at some future date, refinance the 96A Property by obtaining her own mortgage to repay the balance owing to FNF.

[47] When they were introduced to the opportunity to acquire the 96A Property in fall 2009, Sushila and John were also well aware of Mr. Sharma's 96A Mortgage and that it was due and owing. As I will discuss below, there were also certain agreements between Sushila, John and Mr. Sharma regarding how the 96A Mortgage would be addressed, in that it was agreed that the 96A Mortgage would be repaid when the Langley Property was sold.

[48] The original closing date for the sale of the Langley Property to Deepak was October 2, 2009. No closing took place. It was later extended to October 9, 2009 by agreement.

[49] On October 8, 2009, Ms. Gounder and Mr. Singh executed a mortgage against the Langley Property in favour of Mr. Sharma for $93,600 (the "Langley Mortgage"). The terms of the Langley Mortgage provided that it was payable without interest and "on demand".

[50] On October 9, 2009, the Langley Mortgage was registered against the title as a second mortgage, behind the Prospera mortgage.

[51] On or about October 9, 2009**,** Ms. Gounder, Mr. Singh and Deepak agreed to further extend the closing of the Langley Property sale to that date.

[52] By October 9, 2009, Mr. Burroughs' vendor's statement of adjustments sent to Mr. Minhas indicated that, upon the sale of the Langley Property, the Langley Mortgage (then described as the pending second mortgage) was to be paid out on the closing of the sale to Deepak. Mr. Burroughs undertook to discharge the Langley Mortgage by paying Mr. Sharma or alternatively, allow Mr. Minhas to do so himself.

[53] In Mr. Burroughs' statement of adjustments, after payment of the Langley Mortgage, it was anticipated that Mr. Minhas would receive net sale proceeds of $300,760.89 less taxes owing.

[54] However, by October 9, 2009, the actual amount that was owing to Prospera included not only the balance of the original mortgage obtained by Ms. Gounder and Mr. Singh, but other loans that Ms. Gounder and Mr. Singh had obtained and secured against the Langley Property, described as "Loan #2, Loan #3 and Line of Credit". The total of these other loans was about $67,000.

[55] In addition, there were outstanding property taxes owing on the Langley Property of about $4,000.

[56] Accordingly, the total amount owing to Prospera upon a sale of the Langley Property was approximately $359,500, more than the amount to be paid to Mr. Minhas under the original Statement of Adjustments prepared by Mr. Burroughs, which provided for the payment of Mr. Sharma's Langley Mortgage.

[57] All of the witnesses were aware around this time that a "shortfall" had arisen. Ms. Gounder referred to her mother advising of a "shortfall" of about $60,000.

[58] On October 14, 2009, Mr. Burroughs confirmed to Mr. Sharma that the Langley Mortgage had been registered. Mr. Burroughs issued an invoice for $600 to Mr. Sharma.

[59] On October 30, 2009, various documents relating to their sale of the Langley Property were signed by Ms. Gounder and Mr. Singh in front of Mr. Minhas. These include the Form A transfer to Deepak and his wife, a statement of adjustments and orders to pay.

[60] By October 30, 2009, Mr. Minhas' documents, signed by Ms. Gounder and Mr. Singh indicated that the sale would give rise to payment by Ms. Gounder and Mr. Singh of the property taxes and Prospera's loans, but not the entirety of the amount owing under Mr. Sharma's Langley Mortgage.

[61] This resulted in Ms. Gounder and Mr. Singh not having to fund the "shortfall".

[62] On November 10, 2009, Ms. Gounder and Mr. Singh executed a number of documents in favour of Mr. Sharma. These include:

a) a second mortgage in favour of Mr. Sharma securing the amount of $64,800 to be registered against the Prince Charles Property that they owned (the "Prince Charles Mortgage"). The Prince Charles Mortgage was payable with 7.5% interest and the first payment was due on December 10, 2009;

b) a promissory note (the "Note") for $64,800, on the same terms as the Prince Charles Mortgage, including setting out the monthly installment of $990.26 which was to begin on December 10, 2009; and

c) Mr. Singh's security agreement over a vehicle he owned, to secure the amount due under the Note.

[63] Also, on November 10, 2009, Sushila and John executed the Prince Charles Mortgage as covenantors and acknowledged receipt of the Prince Charles Mortgage and the standard mortgage terms (as did Ms. Gounder and Mr. Singh). In addition, Sushila executed a security agreement over a vehicle she owned, to secure the amount due to Mr. Sharma under the Note.

[64] On November 16, 2009, Prospera provided a payout statement for all of the obligations secured under its mortgage against the Langley Property, totalling approximately $359,350.

[65] On November 16, 2009, the sale of the Langley Property to Deepak and his wife closed. Mr. Sharma agreed not to charge any commission on that sale.

[66] On closing, Mr. Sharma provided a discharge of the Langley Mortgage in consideration of the sum of $29,600 and in consideration of being granted the Prince Charles Mortgage. This represented the only remaining funds from the sale, after payment to Prospera, the taxes and other related disbursements.

[67] In December 2009, Ms. Gounder and Mr. Singh made the first monthly payment under the Prince Charles Mortgage and the Note for $990.26.

2010–2011

[68] For the entirety of 2010, Ms. Gounder and Mr. Singh made the monthly mortgage payments to Mr. Sharma under the Prince Charles Mortgage and the Note. The payment was also made in January 2011.

[69] In January 2011, Ms. Gounder sought financing from a mortgage consultant apparently on the basis of offering security on certain vehicles. That consultant advised Ms. Gounder that Mr. Sharma had a lien on the vehicles.

[70] From February–November 2011, Ms. Gounder and Mr. Singh continued to make payments to Mr. Sharma under the Prince Charles Mortgage and the Note.

[71] Then, after November 2011, they stopped making any payments.

2012

[72] In October 2012, Mr. Sharma's lawyer sent a demand letter to Ms. Gounder, Mr. Singh, Sushila and John with respect to the default under the Prince Charles Mortgage, the Note and the related security agreements. The lawyer advised that the entire amount owing under the loan was due and owing immediately.

[73] In November 2012, Mr. Sharma's lawyer further confirmed that the balance under the Prince Charles Mortgage was $53,429, supported by a detailed accounting of payments since December 2009.

2013

[74] In July 2013, the balance under the FNF mortgage against the 96A Property was about $568,400.

[75] In September 2013, FNF filed a foreclosure petition against Ms. Rattan in relation to the 96A Property.

2014

[76] In early 2014, Ms. Rattan and Sushila hired Mr. Sharma as the realtor to sell the 96A Property.

[77] In February 2014, the 96A Property was sold. FNF received the amounts under its mortgage. Mr. Sharma provided a payout statement under his second mortgage against the 96A Property for $67,743. However, there were insufficient proceeds to pay this amount to Mr. Sharma and he therefore agreed to accept $35,569.38 to allow the sale to go through.

[78] In June 2014, Sushila retained a lawyer, Robert Campbell, to write a letter of complaint to the Real Estate Council of British Columbia regarding Mr. Sharma. It is apparent from a reading that letter that it is rife with many inaccuracies. Whether those arose from Sushila's advice to Mr. Campbell or arose from his misreading of the documentation that Sushila says she gave him is of no consequence.

[79] Nothing came of that complaint.

[80] I consider it likely that this complaint was Sushila's attempt to dissuade Mr. Sharma from pursuing payment on the remaining loan amount due to him, once she knew that he was not being fully repaid from the sale of the 96A Property.

2016

[81] In February and May 2016, a judgment and a Crown debt were registered against Ms. Gounder's interest in the Prince Charles Property.

[82] In May 2016, Ms. Gounder and Mr. Singh defaulted in payments due under the Prospera mortgage against the Prince Charles Property. In addition, the property taxes were not paid.

2017

[83] In spring 2017, Ms. Gounder and Mr. Singh sold the Prince Charles Property.

[84] Arising from that sale, in March 2017, Prospera was paid in full in respect of its mortgage. Mr. Sharma was paid the remainder or his loan due under the Prince Charges Mortgage, being $42,633.

Procedural History

[85] On the same day that the final payment to Mr. Sharma was made—May 16, 2017—Ms. Gounder and Mr. Singh filed the notice of civil claim ("NOCC") in this action against Mr. Sharma and Mr. Minhas. This pleading was later amended in December 2020.

[86] The plaintiffs advanced a variety of allegations against both defendants. With respect to Mr. Minhas, the plaintiffs alleged negligence and breach of fiduciary duty.

[87] With respect to Mr. Sharma, the plaintiffs alleged breach of contract, breach of fiduciary duty, conflict of interest and unjust enrichment. Central to these allegations was the contention that Mr. Sharma had not provided any consideration for the granting of the Langley Mortgage and that he had "unduly influenced, coerced and inducted" the plaintiffs to grant the Prince Charles Mortgage by withholding a discharge of the Langley Mortgage, which had also been granted without them having received any consideration.

[88] In April 2021, Mr. Sharma and Mr. Minhas applied before Justice Fleming to dismiss the action pursuant to a summary trial. The central issue was whether the plaintiffs' claims were statute barred. As with this trial, Mr. Singh did not participate, including by filing an affidavit, such as were filed by the other parties and Sushila.

[89] On April 28, 2021, Fleming J. issued her reasons for judgment: *Singh v. Sharma* (28 April 2021), New Westminster S189003 (B.C.S.C.). The Court's summary of the evidence is not relevant here as I am required to only consider the evidence adduced at this trial in coming to my conclusions. In any event, Fleming J. held that all of the claims were statute barred and she granted order dismissing the action.

[90] The plaintiffs appealed and, in November 2002, the appeal was heard.

[91] On January 6, 2023, the appeal reasons were released: *Singh v. Minhas*, 2023 BCCA 7 [*BCCA Reasons*]. At para. 29, the court found that the unjust enrichment claim was not statute barred with respect to payments made after March 16, 2011. The court stated:

> [53] I am not persuaded that the enrichment occurred when the mortgage was granted. In British Columbia, a mortgage is registered as an encumbrance on title and constitutes the land as "collateral" for a loan (see *Shuey* and *Gill v. Bucholtz*, 2009 BCCA 137). However, the fact that a mortgage exists, does not, in and of itself, entitle the mortgagee to recover funds. The mortgagee must show that money was advanced:
>
> > The mortgagor is liable only to pay the principal amount actually advanced. The principal amount required to be paid is the amount advanced to the mortgagor, or an agent of the mortgagor. An acknowledgment of receipt for the amount claimed to be advanced is not sufficient to estoppe the mortgagor from providing evidence that the amount has not in fact been advanced. The mortgagor can raise a claim that moneys were not advanced even if the mortgagor paid interest during the currency of the mortgage based on the amount stated in the mortgage.
> >
> > ...
>
> [54] Even though they had executed the mortgage document, then, the appellants had no legal obligation to make payments if, as they allege, Mr. Sharma had not advanced funds to them. Payments would constitute

> enrichments of Mr. Sharma. Subject to a full analysis of the circumstances at trial, the requirements for a claim in unjust enrichment might be met.
>
> [55] In my view, the limitation period for unjust enrichment began to run only when each payment was made. Accordingly, the claim for unjust enrichment in respect of the March 16, 2017 payment had not expired when the action was commenced that same day.
>
> [56] While the appellants concentrated on the 2017 payment in their argument, the same analysis would apply to other mortgage payments made by the appellants. For payments made prior to the coming into force of the current *Limitation Act*, the limitation period is six years. Accordingly, the appellants' claim for unjust enrichment in respect of their monthly payments for the period from April 2011 through to November 2012 also appear not to be statute-barred.
>
> [57] This appeal, of course, concerns only the limitation period and not whether the appellants will be able to succeed in their unjust enrichment claim. Nothing in this judgment should be taken as an assessment of the merits of the appellants' claim or the likelihood that it will succeed.
>
> [Emphasis added.]

[92] Accordingly, the only claim remaining to be addressed is the plaintiffs' claim for unjust enrichment with respect to payments totalling $50,555.08, arising from:

a) April 2011–November 2011: eight monthly payments of $990.26 totalling $7,922.08; and

b) March 2017: $42,633 which Mr. Sharma received upon the sale of the Prince Charles Property.

Unjust Enrichment

[93] There is no dispute as to what is required to establish unjust enrichment. In *Harraway v. Harraway*, 2009 BCCA 561 at para. 14, the court cited the well-known criteria from *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30:

a) an enrichment by the defendant;

b) a corresponding deprivation of the plaintiffs; and,

c) the absence of a juristic reason for the enrichment.

[94] There is no doubt here that Mr. Sharma was enriched by the payments to him under the mortgages in question, in that he received a tangible benefit: *Stevested Machinery & Engineering Ltd. v. Metso Paper Ltd.*, 2014 BCCA 91 at para. 29.

[95] In addition, there is no doubt that the plaintiffs suffered a corresponding deprivation by making the payments in question.

[96] The issue here is whether there was a juristic reason for that enrichment.

[97] In the first instance, in relation to the issue of a juristic reason, the plaintiffs have the onus of establishing the absence of one of the established categories of juristic reasons: *Harraway* at para. 18. Out of the established categories listed in *Harraway* at para. 19, the only relevant category here is "a contract", in that the transfer of monies to Mr. Sharma under a valid contract will stand as a juristic reason for his enrichment such that no unjust enrichment could be said to have taken place: *Harraway* at paras. 27–28.

Credibility

[98] To a large extent, the course of the various real estate transactions, including the granting of the two mortgages, is well documented in the evidence. There is no dispute that Ms. Gounder, Mr. Singh, Sushila and John signed the various mortgage documents and other security documentation.

[99] That explains the "what happened?" question, but does not fully answer the "why did it happen?" question, which is the central question raised in this trial.

[100] Credibility is an important consideration at this trial. Not surprisingly, both sides argue that the other lacks any credibility.

[101] The matter of credibility assessments was discussed by Justice Dillon in the well-known authority of this Court in *Bradshaw v. Stenner*, 2010 BCSC 1398, as follows:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted,

> whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.),* [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> [187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[102] Here, credibility is a key consideration because the documentation does not fully address the "why" question. Nevertheless, the extensive documentation that was executed by the parties assists in providing a necessary framework within which to consider that question. The relevance and potential importance of contemporaneous documentation was also noted in *Bradshaw*:

> [188] Most helpful in this case has been the documents created at the time of events, particularly the statements of adjustments. These provide the most accurate reflection of what occurred, rather than memories that have aged with the passage of time, hardened through this litigation, or been reconstructed. It should also be remembered that the parties used documentation to accomplish undisclosed purposes here, particularly in the Peachland contract. The inability to produce relevant documents to support one's case is also a relevant factor that negatively affects credibility. As well, I have relied upon the evidence of the two lawyers involved, Dhindsa and Hordal, who were independent, professional witnesses who gave their evidence in a fair and objective manner and whose evidence forms a reasonable base for analysis.

[103] Therefore, I am required to consider the credibility and reliability of all three witnesses at this trial.

[104] I have found the evidence of Sushila and Ms. Gounder to be sorely lacking in credibility. In particular, Ms. Gounder displayed a profound lack of apparent recall concerning the central events in question, which I considered to be deliberate. At times, she was deliberately evasive or confrontational when faced with unpleasant truths that did not accord with her version of the events.

[105] Sushila indicated a much better recall than that of Ms. Gounder, which was more helpful given that she was the driving force behind all of the transactions, particularly her acquisition of the 96A Property and the sale of the Langley Property which took place at the same time and which were inextricably related in terms of how those transactions completed. Yet, I have found Sushila's evidence to be largely reconstructed only in hindsight with respect to key elements of the transactions, and to her own benefit. Sushila's evidence in that regard is contrary to the overall import of the evidence, as I will describe below.

[106] Mr. Sharma's counsel has pointed to similar comments by Fleming J. at para. 76 of her reasons to the effect that the Court had serious concerns about the plausibility and credibility of Ms. Gounder and Sushila as to their denial that they did not know that any proceeds were not paid. Justice Fleming described their version of events as defying "common sense and reason". I wish to emphasize that I do not rely on these comments—or any similar findings of Fleming J.—in coming to my own conclusions, which have been based on the evidence adduced at this trial only. To the extent that Fleming J. and I have come to same conclusion, it is merely coincidental and perhaps more indicative that Ms. Gounder and Sushila's approach to this litigation has been consistent.

[107] To the contrary, I found Mr. Sharma's evidence to be fairly presented and balanced. Overall, he presented a compelling picture of the overall circumstances that informed the various real estate transactions and his evidence was consistent with the course of events.

[108] To the extent that Mr. Sharma's evidence conflicts with that of Ms. Gounder and Sushila, I accept Mr. Sharma's evidence without hesitation.

Discussion

[109] The question therefore to be answered is what, if anything, was owed under the various mortgages granted in favour of Mr. Sharma, including the Langley Mortgage and the Prince Charles Mortgage. To answer that question, one needs to look at the substance of the transactions in late 2009, as they relate to all three properties, being the 96A Property, the Langley Property and the Prince Charles Property.

[110] I agree with Mr. Sharma's counsel's submissions that all three properties were intertwined in terms of what transactions were ultimately necessary and agreed to at the end of the day.

No Evidence from Mr. Singh or Mr. Minhas

[111] As stated above, the only witnesses called by the plaintiffs were Ms. Gounder and Sushila. They did not call any evidence from Mr. Singh despite that he signed the various documents, he is a plaintiff and he is advancing these allegations against Mr. Sharma, along with Ms. Gounder. By all accounts, he and Ms. Gounder signed the documents at the same time.

[112] Mr. Sharma argues that an adverse inference should be drawn from Mr. Singh's absence at this trial.

[113] In *Rohl v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 316, Justice Newbury helpfully summarized the law concerning the circumstances when an adverse inference in civil cases might be made:

> [1] … Since the scope and effect of the 'adverse inference' doctrine are often misunderstood, I begin with the formulation offered by S.N. Lederman, A.W. Bryant, and M.K. Fuerst in *The Law of Evidence in Canada* (4th ed., 2009):
>
> > In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or

> she has exclusive control and does not explain it away. Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the parties' case, or at least would not support it.
>
> [Emphasis in original.]
>
> …

A more succinct definition may be found in Donald Brown, *Civil Appeals* (looseleaf):

> An adverse inference may be drawn when, without explanation, a party does not give evidence or fails to call a witness who in the circumstances would be expected to favour the party and the witness would have knowledge of the facts in dispute. In such circumstances, the failure to call the witness or give testimony is seen as akin to an admission that the evidence would have been contrary to the party's case, or at least would not support it. [At § 13.2131.]

[2] In *R. v. Jolivet* 2000 SCC 29 at para. 25, Binnie J. for the Court noted that the general rule in civil cases regarding the drawing of an adverse inference from a failure to tender a witness can be traced back at least to *Blatch v. Archer* (1774), 1 Cowp. 63, 98 E.R. 969 at p. 65, where Lord Mansfield stated:

> It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted. [At 65.]

Binnie J. went on to note that the principle applies in criminal cases "but with due regard to the division of responsibilities between the Crown and the defence" and that in the criminal context it is subject to many conditions. The authors of McWilliams, *Canadian Criminal Evidence* (5th ed., 2018) list some of these as follows:

> According to the jurisprudence, an adverse inference or missing witness instruction is not "appropriate" where
>
> - counsel have offered an explanation for the failure to call the witness; such as a good faith belief in the unreliability of the witness; or, that the decision was a tactical one;
> - the party has no special access to the witness;
> - the evidence would be "unimportant to the case, cumulative, or inferior to the evidence already available on the relevant point";
> - where there is no evidence as to why the witness was not called.
>
> Courts have held that an instruction is "appropriate" where:

> • a party advises a jury or judge that the witness will be called;
>
> • a party has greater access to the witness than the other and the witness would corroborate the party's case in a significant respect; or, "where the accused in his own testimony first raises the corroborative significance of the witness to his defence".
> [At § 33.10.30.]

These apply with varying degrees of strictness in civil actions.

[3] In *Jolivet*, Binnie J. emphasized that one must be "precise" about the exact nature of the adverse inference sought to be drawn, endorsing the suggestion made in the Lederman text that in Canada, the inference is generally that the evidence of the absent witness *would not support* or, more significantly, that it would be *contrary to* the evidence of the party involved.
….

[4] It is now generally accepted that it lies in the discretion of the court whether to draw an adverse inference – contrary to what was suggested in older cases such as *Levesque v. Comeau*, [1970] S.C.R. 1010. As stated by Alan W. Mewett and Peter J. Sankoff in *Witnesses* (looseleaf):

> A considerable number of cases now reinforce the view that there is no such thing as a "mandatory adverse inference" to be drawn where a party fails to call a witness. Rather, the question of whether to make such an inference seems to depend upon the specific circumstances, in particular whether:
>
> • There is a legitimate explanation for the failure to call the witness;
>
> • The witness is within the "exclusive control" of the party, and is not "equally available to both parties"; and
>
> • The witness has material evidence to provide; and
>
> • The witness is the only person or the best person who can provide the evidence.
>
> Essentially, the decision to draw an adverse inference is discretionary and premised on the likelihood that the witness would have given harmful testimony to the party who failed to call him or her. In a case before a jury, where there are circumstances that support the drawing of such an inference, the trial judge should charge the jury that it is "appropriate for a jury to infer, although [jurors] are not obliged to do so, that the failure to call material evidence which was particularly and uniquely available to [a party] was an indication that such evidence would not have been favourable to [that party]. [At 2-23 to 2-24; emphasis added.]
>
> [Citations omitted.]

[5] Finally in terms of overview, some authors have distinguished between the issue of whether an adverse inference should be drawn *where*

> *one would be available,* as opposed to the issue of whether the conditions *permit* the drawing of such an inference. (See, e.g., Brown, *Civil Appeals*, at § 13.2134.) In the administrative law context, however, evidentiary issues arising under the rules of evidence are swept up into the reasonableness standard of review: see *The Cambie Malone's Corp. v. British Columbia (Liquor Control and Licensing Branch)* 2016 BCCA 165 at para. 14 and cases cited therein.

[114] In a later case, *Singh v. Reddy*, 2019 BCCA 79, dismissing the appeal of the trial judge's ruling on adverse inference, Newbury J.A. cited with approval and applied the following test for drawing an adverse inference:

> [10] The judge in the case at bar began her analysis by stating, correctly, that the approach to drawing an adverse inference engages the court's discretion and requires the trier of fact to consider the following factors:
>
> a) Whether there is a legitimate explanation for failing to call the witness;
>
> b) Whether the witness is within the exclusive control of the party or is equally available to both parties; and
>
> c) Whether the witness has key evidence to provide or is the best person to provide the evidence in question.

[115] In this case, I would exercise my discretion to draw an adverse inference from Mr. Singh's absence at this trial. As stated above, he was the person who signed the two mortgages in question in favour of Mr. Sharma and he could have been expected to have material evidence as to what he understood as the reasons for doing so.

[116] In addition, Ms. Gounder and Sushila have given evidence concerning the circumstances surrounding the execution of the mortgage documents, suggesting that Mr. Sharma was present and that he pressured them to sign without reading anything or understanding the contents. I do not accept their evidence at all, but in any event, Mr. Singh would have had key evidence on that issue and would have been the best person to confirm the presence or absence of Mr. Sharma and, if he was present, what if anything he did.

[117] The other two factors also speak in favour of drawing an adverse inference against the plaintiffs. No explanation has been provided for not calling Mr. Singh as

a witness. He is not simply a person in the control of the plaintiffs, but one of the plaintiffs himself. Under these circumstances, Mr. Singh's failure to give any evidence allows me to draw the inference that his testimony would not have supported the evidence of Ms. Gounder and Sushila and would have supported Mr. Sharma's version of events.

[118] The same analysis can be applied to the absence of Mr. Minhas. Clearly, he produced and witnessed many of the documents that were signed by the plaintiffs. Mr. Minhas would have had relevant evidence as to the circumstances of the signing of the documents, the details of how the transactions unfolded, particularly as to Mr. Sharma's involvement and any explanations he, as the notary, gave to the plaintiffs. Mr. Minhas would have been a "professional witness" whose key evidence would have formed "a reasonable base" for the credibility analysis: *Bradshaw* at para. 188. Even though the plaintiffs allege in the NOCC that it was Mr. Sharma who introduced Mr. Minhas to them, it cannot be said that Mr. Minhas was within "the exclusive control" of the defendant.

[119] Lastly, Mr. Minhas' absence was also unexplained, which allows me to draw an adverse inference against the plaintiffs that Mr. Minhas would not have given evidence to support Ms. Gounder and Sushila's version of events.

Why Were the Mortgages Granted?

[120] In considering this question, and as above, I reject the evidence of Ms. Gounder and Sushila to the extent that it conflicts with that of Mr. Sharma. In fact, my answer to this question is available based on Mr. Sharma's evidence alone and even without having to draw an adverse inference arising from the absence of Mr. Singh and Mr. Minhas.

[121] To begin, one must consider the evidence of the arrangements between Mr. Sharma and the Rattan family that was the reason for the granting of the 96A Mortgage against the 96A Property.

[122] I accept Mr. Sharma's evidence that he loaned about $60,000 to the Rattan family for various purposes and that this was the amount that was secured by the 96A Property. The plaintiffs have not provided any evidence to refute Mr. Sharma's evidence is that respect. Also, Ms. Rattan or the Rattan Relatives were not called to refute that evidence.

[123] I find as a fact that, despite the transfer of the Langley Property to Ms. Gounder and Mr. Singh, Sushila continued to have an interest in that property and she made all significant decisions in relation to it, relating to the tenancy and including when any sale took place. In fact, Ms. Gounder confirmed that her mother made all of the decisions relating to the sale of the Langley Property since "it was her money". Sushila states that the Langley Property was "really my property".

[124] Consistent with the *BCCA Reasons* at para. 8, the evidence at this trial supports that Sushila had the full authority of Ms. Gounder and Mr. Singh to deal with the Langley Property. This supports my conclusion that the Grounders and Mr. Singh recognized that Sushila continued to have an ongoing interest in the Langley Property even after it was transferred to them in June 2008.

[125] That then brings us to the events in fall 2009, when two converging transactions occurred. Firstly, there was the sale of the Langley Property; secondly, there was Sushila and John's acquisition of the 96A Property.

[126] In respect of the transactions in the fall 2009, Sushila and John were the moving parties who made all the decisions and the arrangements, including dealing with Ms. Rattan and Mr. Sharma. Sushila stated that she was telling Ms. Gounder what to do. Ms. Gounder herself confirmed that all of the discussions and dealings regarding the Langley Property were between Sushila and Mr. Sharma and that she did not have any personal dealings with Mr. Sharma.

[127] As stated above, Ms. Gounder's evidence as to the Langley Mortgage was only very vague. She only knew that she signed it and stated that Sushila would know more about it. The only thing she remembers is that a "shortfall" was

mentioned. Ms. Gounder refers to her and her mother as trying to figure out where this “shortfall” came from. This evidence is lacking in credibility, save that Ms. Gounder was aware of a “shortfall”.

[128] I reject Sushila’s evidence that, in the face of advice of the “shortfall” from Mr. Minhas, that she instructed Ms. Gounder and Mr. Singh to just “sign the paper” without knowing why. Sushila has crafted a story about the circumstances of the signing of the documents before Mr. Minhas that defies any logic or reason and is entirely contradicted by other evidence or unsupported by other persons said to have been there, other than Ms. Gounder.

[129] Sushila states that she only signed the documents—or instructed Ms. Gounder and Mr. Singh to sign the documents—because Mr. Sharma was pressuring her or confusing her or “brainwashing” her. In quite extravagant and inflated terms, she refers to being “tortured” or mentally abused by Mr. Sharma. This inflammatory language invites disbelief on its own.

[130] In addition, Sushila states that she trusted Mr. Sharma and that Mr. Sharma was present when the documents were signed and essentially only allowed her to flip through the pages quickly without reading them or understanding them. She purports not to have know what she was signing.

[131] I reject Sushila’s evidence in its entirety as to the circumstances under which she, John, Ms. Gounder and Mr. Singh signed the various documents and what she understood they were signing and why. In particular, I reject the assertion that she was not told anything by Mr. Minhas before the signing of the mortgage documents.

[132] In my view, this is an entire fabrication of the circumstances under which the two mortgages and related security documents were signed. In fact, Mr. Sharma’s evidence, which I accept, is that he was not present when the plaintiffs, Sushila and John signed the documents in front of Mr. Minhas. It is a stretch at best to consider that Sushila, who was experienced in real estate transactions, was placing so much trust in a person who she had just met only months earlier and who had been hired

to assist her in selling the Langley Property. In addition, she had the benefit of seeking advice from Mr. Minhas, the notary she had chosen to represent her and the plaintiffs in the transactions.

[133] I find as a fact that Ms. Gounder, Mr. Singh, Sushila and John were all very aware of the documents that they were signing and what effect those documents had. They fully understood that the mortgage and related documentation represented financial commitments to Mr. Sharma.

[134] To be clearer, I reject Ms. Gounder's statement at the trial that she was not aware that the Prince Charles Mortgage she signed was a mortgage. She states that she was only made aware of the Prince Charles Mortgage when her mother brought it to her attention. If nothing else, this evidence is directly contrary to a fact that Ms. Gounder admitted earlier in this proceeding—i.e., that on October 10 and November 10, 2009 respectively, she knew she had executed the two mortgages in favour of Mr. Sharma. During cross-examination, Ms. Gounder confirmed that she would not sign a document that she did not understand and I consider that to be an accurate statement in relation to the two mortgages in question.

[135] In particular, Sushila was well versed in the documentation surrounding a property purchase and sale and also, mortgage documentation. There is no suggestion that she was anything but well aware of what the various documentation meant in terms of the obligations that were being agreed to.

[136] At all times, the plaintiffs and Sushila had an opportunity to ask questions of Mr. Minhas if they had truly been uncertain about what they were signing and why. They did not do so. Nor did they at any time seek independent legal advice.

[137] I would reiterate again that, in fall 2009, Sushila was well aware that Mr. Sharma held the 96A Mortgage and that it was due and owing at the time she assumed the 96A Property. She agreed to repay the amounts owed to Mr. Sharma as part of the consideration of her obtaining an interest in the 96A Property.

[138] I reject Sushila's evidence that she only first learned of the 96A Mortgage years later when she went to refinance the 96A Property which would have included paying off the FNF mortgage. Although the evidence does not assist in pinpointing exactly when Sushila was reminded of the amount owing under the 96A Mortgage, it is likely in 2013 when she went to refinance the FNF mortgage and determined that the 96A Mortgage was still there and needed to be paid. The FNF mortgage, which was being paid by Sushila, went into default around that time.

[139] Needless to say, by 2013, Sushila was also still very much aware that the loan to Mr. Sharma was still outstanding, particularly from Mr. Sharma's lawyer's demand letter in fall 2012, which Ms. Gounder had given to her mother to address on her behalf.

[140] I agree that at no time did the plaintiffs receive a direct advance of monies from Mr. Sharma of $93,600 in consideration of the granting of the Langley Mortgage. The documentation of Mr. Burroughs and Mr. Minhas confirm that and Mr. Sharma also confirms that. In addition, the Prince Charles Mortgage was a substitute security for the amount that was left to be paid under Langley Mortgage after the sale of the Langley Property.

[141] However, that is not the end of the story or the answer to the question.

[142] To answer the question, we have to return to the issue of what exactly was the "shortfall" and what was the consideration for the granting of the Langley Mortgage and the later Prince Charles Mortgage?

[143] I accept Mr. Sharma's explanation as to how that arose, and find as fact, as follows:

a) In fall 2009, the amount owing by Ms. Rattan to Mr. Sharma was still outstanding at about $60,000;

b) The agreement between Sushila and John regarding the 96A Property was that they were to pay the $30,000 arrears on the FNF mortgage to obtain it from the Rattan family;

c) Sushila and John did not have $30,000 to conclude the transaction on the 96A Property. As a result, Mr. Sharma advanced those funds to Sushila and John;

d) The agreement between Mr. Sharma, Sushila and John was that the $30,000 was, in addition to about $60,000 that was still owed by the Rattan family under the 96A Mortgage, to be paid from what was initially expected as the net sale proceeds from the sale of the Langley Property. Sushila and John agreed to pay this $60,000 debt as part of the consideration in taking over the 96A Property, in addition to repaying Mr. Sharma the $30,000;

e) As a result, Sushila and John agreed that Mr. Sharma would obtain the Langley Mortgage for $93,600, approximating the total of the amounts owed ($60,000 plus interest and $30,000). That this was to be a short-term arrangement pending the close of the Langley Property sale is evident by the terms of the Langley Mortgage, in that no interest was to be charged. Ms. Gounder and Mr. Singh were aware of these arrangements and agreed to them;

f) Only later, did it become apparent to Mr. Minhas—and then all the other person involved—that the additional payment of $93,600 to Mr. Sharma was not possible because Prospera had added the further loans totalling about $67,000 (Loan #2, Loan #3 and the line of credit obtained by Ms. Gounder and Mr. Singh) to the amount due on the sale closing. This resulted in the “shortfall”; and

g) After Mr. Sharma received $29,600 on the sale of the Langley Property, which was all that was available, this resulted in the need for

> Mr. Sharma to demand further security for the remaining amount ($64,600), in the form of the Prince Charles Mortgage, the Note and the vehicle liens. By this time, Mr. Sharma was getting nervous about being paid by the Gounder family and he required this extra security. In addition, by this time, it was apparent that there was insufficient equity in the 96A Property to repay the amount still owing under the 96A Mortgage, which remained on title to the 96A Property.

[144] I agree with Mr. Sharma's counsel that the transactions logically line up with the mathematics of the amounts Mr. Sharma says he advanced to the Rattan family and Sushila and John in terms of the Langley Mortgage. And, the amount of the Prince Charles Mortgage directly flows from the amount remaining under the original advances less what Mr. Sharma obtained from the sale of the Langley Property.

[145] The plaintiffs dispute Mr. Sharma's evidence on the basis that he has no documents to support what he says were the initial advances to the Rattan family and the $30,000 advance to Sushila and John for the FNF arrears on the 96A Property.

[146] Mr. Sharma's evidence is that, when the plaintiffs advanced their claims in May 2017, it proved difficult, if not impossible, to obtain the banking and other records for the transactions. It is true that, by that time, the events in question had taken place in 2008/2009, about 8–9 years before Mr. Sharma became aware that he might need them. In particular, Mr. Sharma was advised by Mr. Burroughs, his lawyer, that his files had been purged or destroyed.

[147] I accept Mr. Sharma's evidence as to reason why he is not able to produce documentation as to the advances to the Rattan family and to Sushila and John. I do not accept the plaintiffs' counsel's argument that Mr. Sharma should have obtained or kept these documents when no issues about the transactions had been raised by the plaintiffs or Sushila or were known to him.

[148] I also accept Mr. Sharma's evidence that he loaned Sushila and John the $30,000 or so for the FNF arrears despite the fact that Deepak had just given the $40,000 deposit to Ms. Gounder and Mr. Singh (or Sushila as a beneficial owner). I accept Mr. Sharma's evidence that he was told by Sushila that they didn't have the money to pay that amount in any event, which he accepted was the case.

[149] I would add that the plaintiffs and Sushila continue to argue that they did not receive the $40,000 deposit. I reject this evidence and find as a fact that they did. The transaction documentation for the Langley Property sale clearly recorded that the deposit had been paid and credited toward the purchase. At no time did the plaintiffs or Sushila allege as part of the closing that it had not been paid. This seems to have arisen only in 2014 at the time of the complaint to the Real Estate Council and in 2017 when the NOCC was filed. In my view, this is an attempted reconstruction of the events in fall 2009 by Sushila and Ms. Gounder that does not accord with the documents or Mr. Sharma's evidence, which I accept.

[150] The only reasonable inference that arises is that Sushila, John, Ms. Gounder and Mr. Singh were fully aware of the import of the documents that they were signing that they knew were necessary to complete the transactions given that they needed Mr. Sharma's financial assistance in doing so.

[151] Later circumstances support the conclusion that Sushila, John, Ms. Gounder and Mr. Singh also had no difficulty understanding the continuing financial commitments to Mr. Sharma in the years that followed.

[152] In addition, Ms. Gounder's evidence that she only found out about Mr. Sharma's security against the vehicles in January 2011 is not credible. If she had only found out in 2011 that such liens existed and was "surprised"—as she asserts—she did absolutely nothing in the months or years following. This lack of action on her part is consistent with Ms. Gounder being fully aware of her and Mr. Singh's continuing financial obligations to Mr. Sharma and the reasons why those obligations arose, which resulted in her continuing to make the monthly mortgage payments.

[153] In particular, Ms. Gounder clearly understood that Mr. Sharma was owed money at the time of the sale of the Langley Property and that, since the "shortfall" had arisen, Mr. Sharma required further security for the outstanding amount ($93,600 less $29,600) which roughly corresponded to the amount of the Prince Charles Mortgage of $64,800.

[154] It is noteworthy that neither of them—Sushila or Ms. Gounder—objected to the payment of $29,600 to Mr. Sharma at the time of the sale of the Langley Property. Nor did Sushila and John—or Ms. Rattan—object to Mr. Sharma obtaining funds of $35,569.38 from the sale of the 96A Property in February 2014, a property that Sushila and John beneficially owned at the time.

[155] All of the above supports the conclusion that there is a juristic reason for the payments made to Mr. Sharma by the plaintiffs, in that they arose from a series of agreements—or contracts—between Sushila, John and Mr. Sharma in that certain payments would be made.

[156] In turn, I find that the plaintiffs agreed to pay the amounts under the Langley Mortgage and the Prince Charles Mortgage to directly benefit not only themselves, but also Sushila and John. I agree with Mr. Sharma that the reason that the plaintiffs would do so was because of the shortfall that arose from the loans that they had obtained and secured against the Langley Property. In those circumstances, Sushila and John's lost hope to obtain the benefit of what they thought was their equity in the Langley Property—that would allow them to acquire the 96A Property (i.e., pay the arrears and the 96A Mortgage)—was essentially laid at the feet of the plaintiffs to suffer the consequences.

[157] In addition, there is no doubt that the plaintiffs received the direct benefit from Mr. Sharma's advances by having their personal debts repaid (those in addition to the Prospera mortgage) from what was essentially Sushila's property (the Langley Property).

[158] The law is clear that consideration for an agreement is good consideration even if it is directed elsewhere by the contracting party rather than being received directly: see *Interville Development Limited Partnership v. The Owners, Strata Plan BCS2313*, 2019 BCSC 112 at para. 102. Here, the plaintiffs received a benefit from the agreements with Mr. Sharma, some directly, but other albeit indirectly by Sushila and John.

[159] I accept the statement in the *BCCA Reasons* at para. 54 that the execution of the mortgage documents is not the complete answer to the question of whether the plaintiffs had received a benefit that they were required to repay. However, here, those mortgages, and the other relevant security documentation, including the Note and lien security, support the existence of the agreements—or contracts—between the parties that I have described above and which recognized the benefits flowing from Mr. Sharma that formed the foundation for all of the security granted.

[160] Mr. Sharma advanced further limitation arguments concerning the matter, arguing that the plaintiffs had all the information needed to advance the unjust enrichment claim by November 2009, such that the limitation period would have expired by November 2015. Given that I have addressed the unjust enrichment claim on its merits, there is no need to discuss that alternate defence.

Conclusion

[161] The action is dismissed.

[162] As an aside, I will address the plaintiffs' claim for aggravated damages and punitive damages. It will be evident from my conclusion above that there is no foundation for such claims against Mr. Sharma because no unjust enrichment occurred.

[163] In any event, I have significant doubts as to the plaintiffs' arguments that aggravated and punitive damage claims could arise even if they had been successful on the unjust enrichment claim. The plaintiffs cite *Silva v. Sharma*, 2019

BCSC 460 and *Erhardt v. Kendrick*, 2017 BCSC 813. In both cases, the awards of aggravated or punitive damages arose from an award of damages.

[164] In *Erhardt* at para. 37, the Court stated that it was necessary to first determine pecuniary damages before moving to assess non-pecuniary damages. I accept that the Court also found unjust enrichment to be established (*Erhardt* at paras. 30–31) but that was seemingly unconnected to the later discussion regarding punitive and aggravated damages.

[165] Here, no claim for pecuniary damages is before the Court since those were determined to be statute barred. The only claim remaining was for unjust enrichment, which has no merit.

[166] The parties have liberty to address the matter of costs, failing agreement.

"Fitzpatrick J."