

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Sidhu v. Bilin*,
2023 BCCA 361

Date: 20230919
Docket: CA48234

Between:

Lakhwinder Kaur Sidhu

Appellant
(Defendant)

And

Tarsem Singh Bilin

Respondent
(Plaintiff)

And

**Hardip Singh Sidhu, Hardip Auto Repair & Sales Ltd.,
and Santosh Singh Sidhu**

Respondents
(Defendants)

Before: The Honourable Madam Justice MacKenzie
The Honourable Madam Justice Stromberg-Stein
The Honourable Justice Marchand

On appeal from: An order of the Supreme Court of British Columbia, dated
March 18, 2022 (*Bilin v. Sidhu*, 2022 BCSC 399,
New Westminster Docket S156074).

Counsel for the Appellant: J.S. Virk

Counsel for the Respondent Tarsem Singh Bilin: D. Gautam

Place and Date of Hearing: Vancouver, British Columbia
September 5, 2023

Place and Date of Judgment: Vancouver, British Columbia
September 19, 2023

Written Reasons by:
The Honourable Madam Justice Stromberg-Stein

Concurred in by:

The Honourable Madam Justice Mackenzie

The Honourable Justice Marchand

Summary:

This appeal concerns the equitable ownership of the appellant's (Mrs. Sidhu) home that was purchased using funds borrowed by her husband, the respondent Mr. Sidhu, from the respondent Mr. Bilin, which he failed to re-pay. The trial judge held Mrs. Sidhu held a percentage of the equity in the home on a resulting trust for Mr. Sidhu. Mrs. Sidhu submits the trial judge erred by failing to infer that Mr. Bilin had abandoned his resulting trust claim because he did not address it in closing submissions. She further submits the judge erred in declaring Mr. Sidhu's interest as a percentage of the equity in the home instead of the dollar amount of his contribution toward the purchase price of the property, as agreed to by counsel. Held, appeal dismissed. The judge had no reason to infer that Mr. Bilin had abandoned the resulting trust claim. Mrs. Sidhu has provided no authority for the proposition that a judge can or should infer that where plaintiff's counsel does not address a claim in closing submissions they have abandoned that claim. At the end of his case, Mr. Bilin brought an application to amend his pleadings to include a resulting claim as between Mr. and Mrs. Sidhu as the home was the only asset available to execute a judgement. Counsel and the judge had a confusing and ambiguous discussion, which blended discussion of both a resulting and a constructive trust claim. Mr. and Mrs. Sidhu consented to Mr. Bilin's proposed amendments after the wording of the amendments had been revised to state that any claim to a resulting trust would be limited to the extent of Mr. Sidhu's contribution to the home. It is not evident there was an agreement between counsel limiting how Mr. Sidhu's interest in the property should be calculated; that is, as the dollar amount of his initial contribution or as a proportionate interest. The judge found Mr. Sidhu's intention was to contribute the borrowed funds to Mrs. Sidhu as a beneficial owner, giving rise to a resulting trust. The judge's approach to assessing a proportionate interest in the property was correct in law.

Reasons for Judgment of the Honourable Madam Justice Stromberg-Stein:**Introduction**

[1] The appellant, Lakhwinder Kaur Sidhu ("Mrs. Sidhu") was a defendant in the underlying action, along with her husband, Hardip Singh Sidhu ("Mr. Sidhu"), Mr. Sidhu's business, Hardip Auto Repair & Sales Ltd. ("HARS Ltd.") and Mr. Sidhu's father, Santokh Singh Sidhu ("Mr. Sidhu Sr."). The respondent, Tarsem Singh Bilin ("Mr. Bilin") was the plaintiff. The action primarily concerned three loans Mr. Bilin alleged he advanced to Mr. Sidhu. The judge found Mr. Bilin had established two of the three loans, for \$31,000 and \$341,000 respectively. These findings are not challenged on appeal.

[2] Mr. Sidhu gave a portion of the \$341,000 loan to his wife to put toward the purchase of a property located at 7905 123A St. in Surrey, BC (the “Sidhu Home”). Mrs. Sidhu purchased the Sidhu Home in her name and the name of Mr. Sidhu Sr., as joint tenants. When Mr. Sidhu Sr. passed away in 2017, title to the Sidhu Home passed to Mrs. Sidhu.

[3] When Mr. Bilin brought the underlying action against Mr. Sidhu, he was aware Mr. Sidhu personally had no funds available to satisfy any judgment against him and the only significant asset was the Sidhu Home.

[4] Mrs. Sidhu is the sole appellant. At the heart of her appeal is the equitable ownership of the Sidhu Home that was purchased using borrowed funds. Mrs. Sidhu submits the trial judge erred by failing to infer that Mr. Bilin had abandoned his resulting trust claim because he failed to address it in closing submissions. She further submits the judge erred in declaring that Mrs. Sidhu holds a percentage of the equity in the property on a resulting trust for Mr. Sidhu, as opposed to the dollar amount of his contribution toward the purchase price of the property. She seeks a declaration that the resulting trust between Mr. and Mrs. Sidhu with respect to the Sidhu Home be set aside as void, and an order that she does not hold 38% of the equity in the Sidhu Home in trust for Mr. Sidhu.

[5] For the reasons that follow, I would dismiss the appeal.

Background

[6] The evidentiary and factual matrix in the underlying dispute was lengthy and complex. It involved multiple family members and friends from the Sidhu and Bilin families. It is unnecessary to go into detail as it is clearly and concisely set out in the trial judge’s reasons and, for the most part, is not in dispute. I will, however, provide a synopsis of the background for context to the underlying dispute.

[7] Mr. Sidhu immigrated to Canada in 1989 and started working as a mechanic. With his parents, he purchased a home at 138 Street in Surrey, BC (“138 St. Home”)

where they lived together. Mr. and Mrs. Sidhu married in 1996 and had children. The extended Sidhu family lived together in the 138 St. Home.

[8] Beginning in the early 2000s, Mr. Sidhu encountered some serious financial difficulties arising from two separate fires. In 2002, a fire broke out on the property on which Mr. Sidhu ran his vehicle repair business, HARS Ltd., that damaged the premises and his customer's vehicles. Mr. Sidhu's customers sued, but his insurer denied him coverage. He testified the fire cost him about \$200,000 and it took until about 2010 to settle the claims. In February 2005, a fire occurred at the 138 St. Home. The insurer again denied coverage. Mr. Sidhu and his parents successfully sued the insurer: 2011 BCSC 1117. The insurer appealed (the appeal, CA39335, has been abandoned). During this general timeframe, Mrs. Sidhu was employed at Khalsa Credit Union.

[9] In August 2005, Mr. and Mrs. Sidhu purchased a new home at 88 Ave. in Surrey, BC ("88 Ave. Home") for \$375,000. Initially, both Mr. and Mrs. Sidhu's names were registered on title. In 2010, Mr. Sidhu's name was removed as a registered owner of the 88 Ave. Home and Mrs. Sidhu became the sole owner. Around this same time, in May 2010, Mrs. Sidhu transferred \$155,000 to HARS Ltd.

[10] Mr. Sidhu and Mr. Bilin met in 2004 or 2005 and became very good friends. Mr. Bilin testified Mr. Sidhu became like a brother to him.

[11] In January 2011, Mr. Sidhu told Mr. Bilin he needed a loan to pay for business expenses and to pay the lawyers in the court case against his insurer. Mr. Bilin agreed to provide a loan. Mr. Bilin loaned \$31,000 to HARS Ltd. ("Loan #1"). The terms of the loan agreement were set out in a promissory note dated January 25, 2011.

[12] The following year, in February 2012, Mr. and Mrs. Sidhu were again looking to purchase a new home. On February 5, 2012, Mrs. Sidhu entered into a contract for the purchase of the Sidhu Home for \$697,000. The judge found that Mrs. Sidhu did not have the funds to complete the purchase: at para. 139. She found that

Mr. Sidhu approached Mr. Bilin for another loan, this time to be used to contribute funds toward the purchase of the Sidhu Home. On February 10, 2012, Mr. Bilin loaned \$341,000 to Mr. Sidhu (“Loan #2”). The parties again signed a promissory note.

[13] Mr. Bilin testified that four or five days after he advanced Loan #2, Mr. Sidhu asked him for \$6,000 in cash, claiming he was short this amount for the purchase of the Sidhu Home and would return it by February 22, 2012. Mr. Bilin loaned Mr. Sidhu the cash (Loan #3), but there was no loan documentation. Mr. Sidhu provided \$6,000 to Mrs. Sidhu toward the purchase price of the Sidhu Home.

[14] Mr. Sidhu gave a \$260,000 bank draft to Mrs. Sidhu which was deposited into their account on February 13, 2012. On February 16, 2012, Mrs. Sidhu used \$20,000 of the funds to pay the deposit on the Sidhu Home and remove the subject clauses. On April 16, 2012, the remainder of the funds was used to complete the purchase.

[15] While only Mrs. Sidhu signed the offer to purchase, title to the Sidhu Home was registered in both Mrs. Sidhu and Mr. Sidhu Sr.’s names as joint tenants. Mrs. Sidhu testified she included Mr. Sidhu Sr.’s name on title because she believed he had given her \$50,000 based on what Mr. Sidhu told her when he gave her the \$260,000.

Trial Judgment

Pleadings

[16] Mr. Bilin filed his initial notice of civil claim on October 30, 2013, and an amended notice of civil claim on October 27, 2016. The trial commenced on March 29, 2021, and lasted approximately 28 (non-consecutive) days, ending on August 27, 2021.

[17] On August 16, 2021, at the conclusion of the plaintiff’s case, Mr. Bilin brought an application to further amend his pleadings, amongst other things to introduce the

claim that Mrs. Sidhu held Mr. Sidhu's contribution to the Sidhu Home on a resulting trust for the benefit of Mr. Sidhu.

[18] The application was initially opposed, but after some discussion all parties agreed to the amendment and consented to a revised version of the amended pleadings. On August 17, 2021, Mr. Bilin filed a further amended notice of civil claim ("FANOCC"), to reflect the discussion the parties had at trial, seeking:

18. A declaration that Mrs. Sidhu holds her registered interest in the [Sidhu Home] in trust and for the benefit of [Mr. Sidhu] to the extent of the monies due and owing under the 2012 Promissory Note and [Mr. Sidhu] in turn holds his beneficial interest in the [Sidhu Home] on a substantive and/or institutional constructive trust for the benefit of the Plaintiff.

[19] Following the amendment, Mr. Bilin's claims and requests for relief were as follows:

- i. Judgment for the contract debts on Loans #1, #2, and #3;
- ii. Fraud or breach of an equitable obligation, for which he claimed a constructive trust over the Sidhu Home;
- iii. Unjust enrichment, or money had and received, for which he claimed a remedial constructive trust over the Sidhu Home; and
- iv. A declaration of a resulting trust between Mr. Sidhu and Mrs. Sidhu over the Sidhu Home.

The trial judge's findings on Mr. Bilin's claim for the contract debts and constructive trust

[20] The judge granted judgment against Mr. Sidhu and HARS Ltd. on Loan #1, ordering payment for \$31,000 plus interest calculated to the date of the order in accordance with the promissory note Mr. Bilin and Mr. Sidhu had signed. She also granted judgment against Mr. Sidhu for Loan #2, ordering further payment of \$341,000 plus interest calculated to the date of the order in accordance with the second promissory note Mr. Bilin and Mr. Sidhu had signed. She found Mr. Bilin had failed to establish Loan #3.

[21] The judge found Mr. Bilin had not established fraud or a breach of an equitable obligation by Mr. or Mrs. Sidhu for which a constructive trust should be imposed over the Sidhu Home. She found Mr. Sidhu had not stated or represented to Mr. Bilin that he would purchase the Sidhu Home in his own name, and harboured no intention to deceive Mr. Bilin. Further, Mr. Bilin was unable to identify any other specific alleged equitable obligation that could support a constructive trust.

[22] Finally, the judge held Mr. Bilin had not established a claim of unjust enrichment against Mrs. Sidhu, or a claim for “money had and received”. There was a juristic reason for the enrichment, namely the Loan #2 agreement contract, and Mr. Bilin’s payment was not a case of mistakenly paid funds but was simply an unsecured loan. Accordingly, the judge concluded Mr. Bilin failed to establish a basis for a remedial constructive trust.

The trial judge’s findings on the nature of the \$260,000 payment from Mr. Sidhu to Mrs. Sidhu

[23] At trial, Mrs. Sidhu denied any knowledge of Loan #2, and claimed that the \$260,000 from Mr. Sidhu was a repayment of loans that she had given him. Mr. and Mrs. Sidhu produced two bank drafts for \$32,000 and \$9,000, which they alleged to be loans from Mrs. Sidhu to Mr. Sidhu. The third alleged loan was the \$155,000 transfer in May 2010 from Mrs. Sidhu to HARS Ltd. Mr. and Mrs. Sidhu testified that when Mr. Sidhu gave her the \$260,000 bank draft, he told her it was repayment of the three loans (\$155,000, \$32,000 and \$9,000) plus a claimed \$50,000 contribution from Mr. Sidhu Sr.: at para. 236.

[24] The judge rejected the argument that the \$260,000 payment from Mr. Sidhu to Mrs. Sidhu was repayment of these loans. First, the payee was not legible on either bank draft: at paras. 39–40. She noted Mrs. Sidhu did not obtain security for the loan, discuss interest rates, monthly payments, or whether the loan was repayable: at para. 41. The judge found that the \$155,000 payment from Mrs. Sidhu to Mr. Sidhu in May 2010 was Mr. Sidhu extracting his equity from the 88 Ave. Home for HARS Ltd. and it was not a loan.

[25] The judge made the following findings of fact:

[239] I find that when [Mr. Sidhu] provided the \$260,000 loan to [Mrs. Sidhu], he did so with the intent that this be his contribution to the purchase price as a beneficial purchaser and owner of the Sidhu Home. When [Mr. Sidhu] requested the loan from [Mr. Bilin], he said it was for the purpose of purchasing a new home. [Mr. Sidhu] and [Mrs. Sidhu] both viewed the Sidhu Home prior to purchasing it. [Mr. Sidhu] planned to and does live there with [Mrs. Sidhu] and their children. There was no evidence of a statement by [Mr. Sidhu] that indicated he intended to gift the \$260,000 to [Mrs. Sidhu]. The \$260,000 was placed into their joint account. He was assisting [Mrs. Sidhu] to obtain funds through Mr. Purewal and he borrowed the \$260,000 so the purchase could complete. This was “their home”. I find the Sidhu Home was registered in the name of [Mrs. Sidhu] and [Mr. Sidhu Sr.] only because [Mr. Sidhu] and HARS Ltd were in a poor financial situation.

[Emphasis added.]

The trial judge’s findings on the resulting trust

[26] Having made a finding on Mr. Sidhu’s intention in transferring the \$260,000 payment to Mrs. Sidhu, the judge then considered Mr. Bilin’s claim that Mrs. Sidhu held those funds on a resulting trust.

[27] The judge began her analysis by noting that although a declaration on a resulting trust is “usually sought by one of the parties to the transfer of the property or funds, or a judgment creditor”, she would nonetheless address the argument in this action as it was pleaded and argued, and she was granting Mr. Bilin judgment on Loan #1 and Loan #2: at para. 259.

[28] The judge reviewed the caselaw relevant to a resulting trust, and concluded on the facts she found arising from the evidence:

[267] For the reasons previously discussed, I have found that it was [Mr. Sidhu’s] actual intention that the \$260,000 was his contribution to the purchase price of the Sidhu Home and he was putting up the funds as a purchaser himself. A resulting trust is established. If I am wrong, then for the same reasons, I find that the presumption of a resulting trust in favour of [Mr. Sidhu] has not been rebutted, and that the presumption of advancement has been rebutted. I have rejected [Mrs. Sidhu] and [Mr. Sidhu’s] testimony that the \$260,000 was a repayment of the three alleged loans. [Mr. Sidhu] did not testify that the \$260,000 was a gift, and I do not find that it was.

[29] Having found a resulting trust, the judge calculated Mr. Sidhu's beneficial interest in the Sidhu Home. The purchase price of the Sidhu Home was \$697,000 and she found Mr. Sidhu had contributed \$266,000, which was \$260,000 plus the \$6,000 he gave to Mrs. Sidhu on the closing date. The proportion of Mr. Sidhu's contribution (\$266,000) to the purchase price of the home (\$697,000) amounted to 38%. She explained why she made declaration of beneficial ownership in the Sidhu Home based on a percentage of the equity rather than the amount of Mr. Bilin's judgment:

[269] When arguing for a constructive trust, [Mr. Bilin's] counsel suggested that instead of a declaration of a percentage interest, that a trust be declared in the amount found owing to [Mr. Bilin] under the loans. In my view, that would have been a consideration if a constructive trust in favour of [Mr. Bilin] had been ordered, but I have not found a constructive trust. I am making a declaration of a resulting trust between [Mrs. Sidhu] and [Mr. Sidhu] and which is not dependent on the amount of [Mr. Bilin's] judgments. I therefore make a declaration as to [Mr. Sidhu's] beneficial ownership in the Sidhu Home which is 38% of the equity.

[30] The judge did not declare a constructive trust in the amount of the loans in favour of Mr. Bilin. Rather, she declared a resulting trust as between Mr. and Mrs. Sidhu, which was not dependent on the amount of Mr. Bilin's judgment, but which reflected Mr. Sidhu's beneficial ownership in the Sidhu Home.

Analysis

Did the judge err by failing to draw an inference of abandonment of the resulting trust claim?

[31] Mrs. Sidhu submits the judge erred in declaring a resulting trust because Mr. Bilin's counsel "impliedly abandoned" the claim in his closing submissions. She says Mr. Bilin focused on a constructive trust, but made no submissions with respect to the resulting trust or the significance of the transfer of \$260,000 from Mr. Sidhu to Mrs. Sidhu in either his closing submissions or reply. The proper course, Mrs. Sidhu asserts, would have been for the judge to infer from his silence that he had abandoned the claim, and not to determine the issue of a resulting trust between Mr. Sidhu and Mrs. Sidhu.

[32] In support of her position, Mrs. Sidhu cites the following passage from this Court in *Equustek Solutions Inc. v. Jack*, 2022 BCCA 194 (in chambers):

[6] A factum is not, however, intended to be a full argument of the appeal. It can be distinguished in that sense from the type of written argument trial counsel deliver at the conclusion of a trial, where it is necessary to marshal all the evidence in an effort to persuade the trier of fact to make specific conclusions. In a factum, the statement of facts is not a summary of the evidence, but of the facts that are found by the trial judge or are otherwise not in dispute. The appeal will proceed on those facts, unless the appellant can convince the court that there was either no evidence to support a factual finding or the judge committed an obvious factual error that was material to the outcome.

[33] In my view, this passage provides no support for the inference Mrs. Sidhu urges this Court to make on this appeal. Justice Hunter made the referenced statement in the context of denying the appellant's application to file a 60-page (rather than the usual 30-page) factum. In permitting the appellant to file a 40-page factum, Hunter J.A. distinguished the practice of comprehensively reviewing the evidence in a written submission at the close of trial from the requirement that a factum "must consist of a concise statement of the history of the proceedings and the facts of the case": at para. 7, citing *Court of Appeal Rules*, B.C. Reg. 297/2001, R. 22 and Form 10. The statement says nothing at all about when a trial judge should infer that a plaintiff has abandoned a claim. It simply does not assist the appellant on this appeal.

[34] As I noted above, on August 16, 2021, at the conclusion of the plaintiff's case, Mr. Bilin brought an application to further amend his pleadings, amongst other things to introduce the claim that Mrs. Sidhu held Mr. Sidhu's contribution to the Sidhu Home on a resulting trust for the benefit of Mr. Sidhu. There were extensive submissions on the propriety of the amendment at that stage of the proceedings. The FANOC was filed on August 17, 2021, describing the resulting trust claim. The claim for a resulting trust was properly pleaded and was a live issue at trial.

[35] Less than ten days after he had amended his pleadings, on August 26, 2021, Mr. Bilin's counsel made closing submissions. Given the short period of time that elapsed between the date when the amendments were sought and the submission,

it is difficult to sustain the suggestion that counsel had impliedly abandoned the claim.

[36] More to the point, there was no reason for the judge to infer that Mr. Bilin wished to abandon the resulting trust claim that he vigorously pursued by way of an application to further amend his notice of civil claim. That application was made mid-trial and only ten days before Mr. Bilin made his closing submissions. Mr. Bilin sought to further amend his claim to clarify his resulting trust claim because everyone was aware that Mr. Sidhu and HARS Ltd. had no assets to satisfy a judgment, and Mr. Bilin wanted to establish a reasonable basis of collecting on any judgment the judge awarded. There was simply no incentive for him to abandon the resulting trust claim.

[37] Further, Mrs. Sidhu made extensive submissions on Mr. Bilin's claim of resulting trust. When the judge pointed out that the plaintiff had not argued it, her counsel responded that the plaintiff had pleaded it. Mrs. Sidhu had ample opportunity in closing submissions to suggest the plaintiff had abandoned the resulting trust claim. Instead, she made developed submissions on the claim. In these circumstances, it would have been quite wrong for the judge to infer the plaintiff had abandoned the claim.

[38] The judge explicitly recognized there was a claim for a resulting trust. Mrs. Sidhu has provided no authority for the proposition that a judge can or should infer that where plaintiff's counsel does not address a claim in closing submissions they have abandoned that claim. Such an argument should be made before the trial judge and not for the first time on appeal.

[39] I would not accede to the appellant's argument that the judge erred in deciding the resulting trust issue as between Mr. and Mrs. Sidhu.

Did the judge err by finding Mr. Sidhu had the requisite intention for a resulting trust?

[40] Even if the judge did not err in deciding the issue of a resulting trust, Mrs. Sidhu submits there was no basis for the judge's conclusion that Mr. Sidhu intended the \$260,000 to be a contribution to the Sidhu Home, since he did not consider himself to be an owner of the Sidhu Home and did not expect to receive any portion of his contribution. Mrs. Sidhu claims Mr. Sidhu considered the house as hers alone since she did not participate in Mr. Sidhu's business ventures or real estate holdings. Mrs. Sidhu says the spouses should be entitled to settle their economic affairs in their own manner.

[41] In her factum, Mrs. Sidhu shifted between claiming the judge heard no submissions from Mr. and Mrs. Sidhu as to whether a resulting trust arose, and that "both spouses have testified that no resulting trust arises." Whether her claim is that Mr. and Mrs. Sidhu were not given the opportunity to respond to the question of a resulting trust (which would be a legal error), or that the judge misapprehended the evidence in arriving at her conclusion on Mr. Sidhu's intention (a factual error), I am of the view the argument is without merit.

[42] As discussed above, the FANOC, dated August 17, 2021, put the question of whether Mrs. Sidhu held Mr. Sidhu's contribution to the Sidhu Property on a resulting trust squarely in issue. To decide that question, the judge was tasked with deciding what Mr. Sidhu's intention was in transferring the \$260,000 to Mrs. Sidhu. The parties' submissions addressed precisely that point.

[43] Mr. and Mrs. Sidhu defended against the claim of a resulting trust by claiming that when Mr. Sidhu gave Mrs. Sidhu the bank draft for \$260,000, he was repaying three previous loans (\$155,000, plus \$32,000 plus \$9,000) and providing \$50,000 from Mr. Sidhu Sr. The judge rejected that claim. She found, based on the evidence as a whole, that Mr. Sidhu's intention was to contribute the funds as a beneficial owner and purchaser of the Sidhu Home: at para. 239, referred to above.

[44] In my view, it cannot be said that Mr. Sidhu was not given the opportunity to make submissions as to his intention in providing Mrs. Sidhu \$260,000. He knew that the question of a resulting trust was a live issue at trial, and he and Mrs. Sidhu mounted a defence against that submission that the judge ultimately rejected.

[45] Mrs. Sidhu has failed to identify a palpable and overriding error in the judge's assessment of Mr. Sidhu's intention.

[46] I would not accede to this ground of appeal.

Did the judge err by declaring a resulting trust as a percentage of the equity in the Sidhu Home rather than in the amount of Mr. Sidhu's contribution?

[47] In the alternative, Mrs. Sidhu says the judge erred by declaring a resulting trust based on a percentage of the equity in the Sidhu Home instead of the dollar amount of his \$266,000 contribution. This issue is of significance to Mrs. Sidhu because the market value of the Sidhu Home and Mrs. Sidhu's equity in it have both presumably increased substantially since February 2012 when Mr. Bilin made Loan #2 to Mr. Sidhu. Far more of the equity in the Sidhu Home will be available for enforcement of Mr. Bilin's judgment against Mr. Sidhu if Mr. Sidhu beneficially owns 38% of it rather than \$266,000 plus interest.

[48] Mrs. Sidhu claims that, following a discussion in court, the parties agreed that the relief sought in the amendments would be limited to a sum rather than a percentage of the equity in the Sidhu Home.

[49] It is evident from the transcript at trial the parties had a confusing and ambiguous discussion, which blended with discussion of both a resulting and a constructive trust claim. Mr. and Mrs. Sidhu only consented to Mr. Bilin's proposed amendments after the wording of the amendments had been revised to state clearly that any claim to a resulting trust would be limited to the extent of Mr. Sidhu's contribution to the Sidhu Home. The discussions reveal that the amendments were tailored specifically so as to avoid any prejudice to the defendants.

[50] When Mr. Bilin brought the application to amend his pleadings, Mrs. Sidhu's counsel initially opposed the amendments on the basis that advancing the claim would be prejudicial to Mrs. Sidhu at that stage in the litigation. He argued that to defend against the claim of a resulting trust, Mrs. Sidhu would be prejudiced by the need to make certain other disclosures, including providing bank statements and transactional records related to the home. Mrs. Sidhu's counsel also opposed the amendments on the basis the proposed wording was "overly broad", and could be interpreted as alleging that Mrs. Sidhu held the entire property on trust as a bare trustee, as opposed to only Mr. Sidhu's contribution. Counsel stated that if the wording of the amendments were changed to limit the claim to \$260,000 then his client would consent. This would prevent his client, Mrs. Sidhu, from being prejudiced by needing to adduce further evidence regarding payments on the house, and would limit the claim to only that which Mr. Sidhu actually contributed to the house. Later, the parties discussed whether the trust claim should be assessed as a dollar amount or a proportionate share of Mr. Sidhu's contribution.

[51] Mrs. Sidhu's concern was that calculating the resulting trust as a percentage rather than the limited amount of the contribution opened the door to complications related to which parties had been responsible for paying property-related expenses since the date the Sidhu Home was purchased. However, the judge had no evidence concerning who had been responsible for property-related expenses after the date of the purchase.

[52] Mr. Bilin submits there was no prejudice to Mr. Sidhu, because the legal principles of a resulting trust address contributions to the purchase of property and are not designed to account for post-acquisition contributions. He submits the interest of a party by way of a resulting trust is calculated based on proportionate contributions to the acquisition. I agree.

[53] In my view, the judge did not err by awarding a resulting trust over the percentage of the equity in the Sidhu Home rather than the amount of Mr. Sidhu's contribution.

[54] Presumptively, a resulting trust gives rise to a proportionate share in the equity based on the party's contribution toward the initial purchase price of the property. The judge found that, as between Mr. and Mrs. Sidhu, the facts gave rise to a resulting trust. Specifically, as Mr. Sidhu advanced funds to contribute to the purchase price of the Sidhu Home, but did not take legal title to the property, Mrs. Sidhu held those funds on a purchase money resulting trust. The Supreme Court of Canada in *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33, described the interest the transferor retains on a purchase money resulting trust as follows:

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

[Emphasis added.]

[55] Although the parties to the resulting trust in the present case were related as being husband and wife, the judge had concluded Mr. Sidhu did not intend a gift. Instead, he intended to contribute the funds as a beneficial owner and purchaser of the Sidhu Home: at paras. 239–240, 267.

[56] In Donovan W.M. Waters, *Waters' Law of Trusts in Canada*, 5th ed. (Toronto: Thompson Reuters, 2021), Waters explained a resulting trust with multiple contributors to the purchase money, at 424:

What is the position if two persons advance the money for the purchase of certain property, which is taken in the name of one of them? If the amount subscribed by each is determinable, the transferee presumptively holds on a proportionate resulting trust. The other party is presumptively entitled to a declaration that the title holder holds on resulting trust for both parties, in shares proportionate to their contributions, as Equitable tenants in common.

[Emphasis added.]

[57] Having found that there was a resulting trust, the judge properly applied the legal principles and calculated Mr. Sidhu's interest as proportionate to his contribution toward the purchase price of the Sidhu Home. In my view, the judge's

approach does not violate the premise upon which the amendments were consented to at trial. Firstly, Mrs. Sidhu's concern was misplaced that the resulting trust claim could be interpreted as demonstrating that she held the entire property on trust as a bare trustee, as opposed to holding only Mr. Sidhu's contribution on trust. Mr. Bilin was only seeking a declaration of a resulting trust over Mr. Sidhu's alleged proportionate interest in the Sidhu Home based on his actual contribution to the purchase.

[58] Secondly, Mrs. Sidhu was not prejudiced by not adducing evidence related to post-purchase contributions to the home because that evidence is not relevant to a resulting trust. No party, including Mr. Bilin, made any claim concerning those contributions. In *Kerr v. Baranow*, 2011 SCC 10, the Supreme Court of Canada extensively canvassed how the principles of trust and equity recognise spousal contributions toward the upkeep of a property. As the Court explained, a resulting trust is poorly suited to accommodate those situations:

[25] ... The underlying principles of resulting trust law also make it hard to accommodate situations in which the contribution made by the claimant was not in the form of property or closely linked to its acquisition. The point of the resulting trust is that the claimant is asking for his or her own property back, or for the recognition of his or her proportionate interest in the asset which the other has acquired with that property. This thinking extends artificially to claims that are based on contributions that are not clearly associated with the acquisition of an interest in property; in such cases there is not, in any meaningful sense, a "resulting" back of the transferred property: *Waters*, at p. 432. It follows that a resulting trust based solely on intention without a transfer of property is, as Oosterhoff puts it, a doctrinal impossibility: "... a resulting trust can arise only when one person has transferred assets to, or purchased assets for, another person and did not intend to make a gift of the property": p. 642. The final doctrinal problem is that the relevant time for ascertaining intention is the time of acquisition of the property. As a result, it is hard to see how a resulting trust can arise from contributions made over time to the improvement of an existing asset, or contributions in kind over time for its maintenance. As Oosterhoff succinctly puts it at p. 652, a resulting trust is inappropriate in these circumstances because its imposition, in effect, forces one party to give up beneficial ownership which he or she enjoyed before the improvement or maintenance occurred.

[Emphasis added.]

[59] The only evidence relevant to the establishment of the purchase money resulting trust was Mr. Sidhu’s initial contribution to the purchase price of the Sidhu Home.

[60] It is not evident there was an agreement between counsel limiting how Mr. Sidhu’s interest should be calculated; that is, as the dollar amount of his initial contribution or as a proportionate interest. As counsel for Mrs. Sidhu acknowledged, the transcript is confusing and, at best, ambiguous in part.

[61] In my view, the judge’s approach was correct in law to assess the resulting trust interest as she did.

[62] The agreement that led to the amendment of pleadings only limited the amount Mr. Bilin could recover against the property if he were successful. The judge declaring Mr. Sidhu had a 38% interest in the property did not give Mr. Bilin a 38% interest in the property. It just gave Mr. Bilin a means to secure his judgment for the dollar amount he was awarded at trial.

[63] I would not accede to this ground of appeal.

Disposition

[64] I would dismiss the appeal.

“The Honourable Madam Justice Stromberg-Stein”

I agree:

“The Honourable Madam Justice Mackenzie”

I agree:

“The Honourable Justice Marchand”