IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yang v. Hart,*
2024 BCSC 1547

Date: 20240827
Docket: S-233069
Registry: Vancouver

Between:

Chung-Hsien Yang also known as Robin C.H. Yang

Plaintiff

And

Simone Rachelle Hart formerly known as Simone Rachelle Yang

Defendant

Before: The Honourable Justice K. Loo

Reasons for Judgment

Counsel for the plaintiff:	D.G. Fetterly J. Leinburd, Articling Student
Counsel for the defendant:	K. Sandulescu A. Kumar
Place and Dates of Trial:	Vancouver, B.C. July 8-11, 2024
Place and Date of Judgment:	Vancouver, B.C. August 27, 2024

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Introduction

[1] In 2020, the plaintiff Chung-Hsien (Robin) Yang transferred approximately $300,000 to his daughter, Tzu-Hsin (Shaelyn) Yang, and Ms. Yang's spouse, Simone Hart, to assist them in purchasing a townhouse. Tragically, Ms. Yang, who was an RCMP constable, was killed in the line of duty on October 18, 2022.

[2] Mr. Yang claims that the funds were a loan to Ms. Yang and Ms. Hart, and advances a claim in debt or unjust enrichment against Ms. Hart. He alleges that Ms. Yang signed a promissory note both on her own behalf and for Ms. Hart, either as Ms. Hart's agent or pursuant to a power of attorney ("POA") that Ms. Yang had over the affairs of Ms. Hart.

[3] Ms. Hart claims that the funds provided by Mr. Yang were a gift. She denies that Ms. Yang created the promissory note or that Ms. Yang bound Ms. Hart to the obligations in the note.

Issues

[4] The issues to be determined in this action include the following:

a) Is the promissory note binding on Ms. Hart? In order to determine this question, I must consider whether the document is authentic, and if so, whether the document is binding on Ms. Hart. In this regard, I must determine how Ms. Hart's signature was affixed to the document and, if Ms. Yang signed it on behalf of Ms. Hart, whether her signature is binding on Ms. Hart pursuant to a POA that Ms. Hart had granted to Ms. Yang.

b) If the promissory note is not binding, was the provision of funds by Mr. Yang the subject of an enforceable loan agreement?

c) Was Ms. Hart unjustly enriched?

Chronology

[5] Before addressing the issues above, it may be useful to set out a chronology of some of the events giving rise to this action.

[6] Mr. Yang moved to Canada with his wife and children, including Ms. Yang, in 1993.

[7] In 2008, Mr. Yang moved back to Taiwan to care for his ailing mother.

[8] In 2015, Ms. Yang purchased a condominium on Ackroyd Road in Richmond, assisted by a contribution of $188,000 from Mr. Yang.

[9] In 2019, Ms. Yang joined the RCMP.

[10] On February 9, 2020, Ms. Yang and Ms. Hart were married.

[11] In March 2020, Ms. Yang and Ms. Hart entered into an agreement to purchase a townhouse on McKim Way in Richmond for $888,000.

[12] On or about June 29, 2020, Mr. Yang transferred approximately $316,000 to an account in the name of Ms. Yang, and most of these funds were used to complete the purchase of the McKim property.

[13] In January 2021, Ms. Yang and Ms. Hart signed wills and representation agreements, as well as enduring POAs appointing each other as their attorneys.

[14] On April 20, 2021, the Ackroyd property was sold for $585,000.

[15] On May 14, 2021, a screenshot of a promissory note dated May 13, 2021, was transmitted from Ms. Yang to Mr. Yang by way of a mobile phone application called “LINE.”

[16] On October 18, 2022, Ms. Yang was killed in the line of duty.

[17] Mr. Yang subsequently began demanding repayment of funds that he said were owed to him by Ms. Hart. This action was commenced in April 2023.

Analysis

The promissory note

[18] The content of the promissory note is unambiguous. It states:

> **Promissory Note**
>
> (this "Note")
>
> Borrower(s): Shaelyn and Simone Yang of Richmond (the "Borrower")
>
> Lender: Robin C.H. Yang of Taichung (the "Lender")
>
> Principal Amount: $330,000.00 CAD
>
> 1. For value received, The Borrower promises to pay to the Lender upon request, the principal sum of $330,000 CAD.
>
> 2. This note will be repaid in full or in instalments.
>
> 3. The lender may request payment at any time and without expiry.
>
> 4. This note is not transferable to any other individuals by the Lender. No other parties may lay claim to this note regardless of relationship to the Lender.
>
> …

[19] If the promissory note is authentic and binding on Ms. Hart, it will be largely dipositive of the action.

Is the promissory note authentic?

[20] The note appears to be signed by both Ms. Hart and Ms. Yang, but Ms. Hart denies signing it. Mr. Yang takes the position that it was signed by Ms. Yang using her POA, but Ms. Hart denies that she authorized Ms. Yang to apply her signature.

[21] Ms. Hart has raised various concerns regarding the authenticity of the promissory note.

[22] First, the signature of Ms. Yang on the document looks nothing like her signature on other documents, and the note uses the name "Shaelyn," whereas her legal name "Tzu-Hsin" is typically used on legal documents such as her will and the POA.

[23] Further, Ms. Hart testified at length about discussions that she had with Ms. Yang and the notary who prepared the POAs that the POAs would be used if one of

them were incapacitated. She submits that it is unlikely that Ms. Yang would have used the POA to sign the promissory note without consulting with Ms. Hart, although legally she would have been entitled to do so.

[24] On the other hand, it is uncontroverted that the promissory note was sent to Mr. Yang by Ms. Yang by text message, using the computer application "LINE," on May 14, 2021. A screenshot of text messages between Mr. Yang and his daughter show an image of the promissory note being sent to him that day. In response, he sent to her an emoji of a cartoon figure making a "thumbs up" gesture.

[25] Moreover, during the course of the litigation, a copy of the promissory note was found on Ms. Yang's computer. The report of a digital forensics' expert, Tyler Hatch, states that the PDF document was first saved on May 13, 2021, that the file was named "IOU.pdf," and that it was created on an Apple program called "Pages."

[26] Mr. Yang gave evidence that he asked his daughter to provide him with something in writing to document the loans that he had made. When asked if he told his daughter that the $316,000 was a gift, he testified:

> No, never… I asked them to write in black and white to show they owe me money … They are married couple now. So they had to know they borrowed money from me… When I write – I ask them to write things in black and white – I want her to know that they all know this money is borrowed for both of them because they responsible for that and they live in there. And also because most of the problem is they are young couple. I don't know how strong is their relationship and if their relationship has any change then my money - I want get my money back from them… I never tell them it is a gift… [*sic*]

[27] Ms. Hart testified that no one else had access to Ms. Yang's computer. It appears that even Ms. Hart did not have the password to access it.

[28] At the end of the day, while the submissions advanced by Ms. Hart raise legitimate concerns about the authenticity and providence of the promissory note, there is only one reasonable inference that can be drawn from the fact that the note was sent by Ms. Yang to Mr. Yang by way of the LINE app system and the fact that

it was found on her computer: it must be authentic and it must have been agreed to by Ms. Yang.

[29] Further, given my finding that the promissory note must have been agreed to by Ms. Yang, I find that Ms. Hart's signature must have been placed on the document by Ms. Yang.

Assuming the promissory note is authentic, is it binding on Ms. Hart?

[30] The next question to be determined by this Court is whether Ms. Hart is bound to the obligations in the note.

[31] As discussed above, Ms. Hart testified that she and Ms. Yang wanted the POAs for use if one of them were incapacitated. She testified that she never authorized Ms. Yang to sign a promissory note on her behalf, and she had no expectation that either of them would use the POAs while the other was still capable of managing her own affairs.

[32] Further, Ms. Hart submits that Mr. Yang was not advised by Ms. Yang that she had exercised her powers under the POA when signing the promissory note.

[33] These factual assertions give rise to legal issues which are governed by the *Bills of Exchange Act*, R.S.C. 1985, c. B-4 [*BEA*], and the *Power of Attorney Act*, R.S.B.C. 1996, c. 370 [*PAA*].

[34] Section 4 of the *BEA* states:

> [4] Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

[35] In my view, this provision is not of particular assistance to either party. It requires Ms. Hart's signature to have been affixed to the document by Ms. Yang *under Ms. Hart's authority*. As Mr. Yang argues that this authority was granted under the POA, the issue remains: whether Ms. Yang was authorized to affix Ms. Hart's signature to the document under the terms of the POA.

[36] Ms. Hart relies on a 1927 decision of the Saskatchewan Court of Appeal in *Bank of Toronto v. Matheson,* [1927] 4 D.L.R. 328, 1927 CanLII 174 (SKCA) for the proposition that powers of attorney must be read strictly. In this case, however, the POA is general and broadly worded. It appointed Ms. Yang to be Ms. Hart's attorney in accordance with the *PAA*, "to make decisions on my behalf and to do anything that I may lawfully do by an agent."

[37] Paragraph 7 of the POA states:

> The Attorney and Alternate Attorney authority may be exercised while I am capable of making decisions about my financial and legal affairs and will continue if I become incapable of making decisions about my financial and legal affairs.

[38] Further, paragraph 9 states:

> This Enduring Power of Attorney is not subject to any conditions or restrictions.

[39] Further, Ms. Hart relies on s. 20 of the *PAA* which states in part as follows:

> 20 (1) An attorney may make a gift or loan, or charitable gift, from the adult's property if the enduring power of attorney permits the attorney to do so or if
>
> (a) the adult will have sufficient property remaining to meet the personal care and health care needs of the adult and the adult's dependants, and to satisfy the adult's other legal obligations, if any,
>
> (b) the adult, when capable, made gifts or loans, or charitable gifts, of that nature, and
>
> (c) the total value of all gifts, loans and charitable gifts in a year is equal to or less than a prescribed value.
>
> (2) An attorney may receive a gift or loan under subsection (1) if the enduring power of attorney permits.
>
> (3) Permissions under subsections (1) and (2)
>
> (a) must be express, and
>
> (b) may be in relation to a specific gift or loan, or charitable gift, or to gifts or loans, or charitable gifts, generally.
>
> …

[40] The *PAA* refers to the person who gave the POA as the "adult" and I will use that term in these reasons. Ms. Hart submits that s. 20(3) applies to any loans made in favour of the adult and that the *PAA* required Ms. Yang to obtain Ms. Hart's

express permission before committing Ms. Hart to repay the funds provided by Mr. Yang.

[41] In response, Mr. Yang argues that s. 20 concerns funds lent or gifted *from* the adult's property. He submits that subsection (1) applies to loans or gifts to anyone from the adult's property, and subsection (2) applies specifically to funds lent or gifted to the attorney by the adult. In my view, his interpretation must be correct. I reach that conclusion primarily based on the words of the section: subsection (1) refers to a gift or loan, or charitable gift, *from the adult's property,* and subsection (2) refers to a gift or loan received by the attorney *under subsection (1).*

[42] In *Derreth (Re)*, 2024 BCSC 1033, Justice Gomery discussed s. 20 of the *PAA*. The facts of the case before him were distinguishable from those in this case, but his general pronouncements regarding the meaning and application of s. 20 are helpful. At para 13, he held:

> [13] The intention is clear. The sections are concerned with gratuitous transfers – gifts or loans – from the property of an adult person under disability. They establish that such transfers are permissible, but only in specified circumstances.
>
> …
>
> [15] Subsection 20(2) deals with the special case of a gratuitous transfer (a gift or loan) to the attorney. Such a transfer is only permitted if the enduring power of attorney expressly permits.
>
> [Emphasis added]

[43] Mr. Yang's interpretation of this section is also consistent with the purpose of s. 20 which, in my view, is to protect the adult against attorneys who abuse their powers. The making of loans or gifts from the adult's property to third parties clearly may be prejudicial to the adult. Loans or gifts from the adult's property to an attorney may be even more so. However, Ms. Hart's position, if accepted, would mean that an attorney would be restricted from receiving gifts made to the adult, on behalf of the adult, which would make no commercial sense.

[44] Finally, in support of her argument that the promissory note is not binding upon her, Ms. Hart relies on s. 19(2) and (3)(c) of the *PAA*. The first of these two subsections states:

> 19 (2) When managing and making decisions about the adult's financial affairs, an attorney must act in the adult's best interests, taking into account the adult's current wishes, known beliefs and values, and any directions to the attorney set out in the enduring power of attorney.

[45] Further, s. 19(3)(c) provides that an attorney must "to the extent reasonable, foster the independence of the adult and encourage the adult's involvement in any decision-making that affects the adult."

[46] Ms. Hart argues that the promissory note was not in her best interests and therefore, if Ms. Yang signed the promissory note on Ms. Hart's behalf, her decision to do so was contrary to s. 19(2).

[47] However, in my view, while Ms. Yang's decision to sign the promissory note may have been detrimental to Ms. Hart when viewed in isolation, it is necessary to assess the entire arrangement made between Ms. Yang and her father. The promissory note was made in exchange for the funds received from Mr. Yang, which allowed Ms. Yang and Ms. Hart to buy the McKim townhouse. It was a significant benefit to Ms. Yang and Ms. Hart to have funds loaned to them by Mr. Yang without interest and without a specified repayment plan.

[48] Relying on s. 19(3), Ms. Hart argues that Ms. Yang failed to encourage her involvement in decision-making regarding the promissory note and the loan from Mr. Yang. I note, however, that this subsection is not an unqualified prescription, as it does not unconditionally require the adult's involvement; rather, it requires the attorney to "encourage" the adult's involvement "to the extent reasonable."

[49] In any event, regarding both of Ms. Hart's arguments under s. 19, no law or provision of the *PPA* has been brought to my attention which authorizes the Court to set aside a transaction on the basis that the attorney acted in violation of that section. Ms. Hart referred to two decisions in which s. 19 was applied: *Meng Estate*

v. Liem, 2019 BCCA 127; *Virk v. Singh,* 2020 BCSC 225. However, these decisions involve claims for breach of fiduciary duty or breach of trust against attorneys.

[50] In summary, I find that the promissory note is binding on Ms. Hart. Ms. Yang was authorized by the POA to sign the promissory note on Ms. Hart's behalf, and, on the evidence, she must have done so. None of the arguments raised on behalf of Ms. Hart under the *PPA* results in the promissory note being unenforceable.

Alternative claims

[51] In case I am incorrect about the enforceability of the promissory note against Ms. Hart, I will consider the other two arguments advanced by Mr. Yang: that there was, apart from the promissory note, an enforceable loan agreement among Mr. Yang, Ms. Yang, and Ms. Hart, and that Ms. Hart was unjustly enriched by his contribution of funds.

If the promissory note is not enforceable, was the provision of funds by Mr. Yang the subject of an enforceable loan agreement?

[52] Mr. Yang did not seriously contend that, if the promissory note is unenforceable, there could still be an enforceable loan agreement among Mr. Yang, Ms. Yang, and Ms. Hart. The plaintiff must prove that a contract was formed and the terms must have sufficient certainty. I am unable to find such an agreement.

[53] In particular, there is insufficient evidence apart from the promissory note that Ms. Yang accepted a loan on behalf of Ms. Hart, and insufficient evidence that Ms. Hart even knew about the loan arrangement made between Ms. Yang and Mr. Yang. There is no evidence apart from the promissory note that specific terms of a loan were agreed to.

Was there unjust enrichment?

Legal principles

[54] As is well known, there are three criteria that a plaintiff must prove to establish unjust enrichment: the defendant was enriched; the plaintiff suffered a

corresponding deprivation; and there was no juristic reason for the enrichment and deprivation: *Kerr v. Baranow,* 2011 SCC 10.

[55] In this case, it appears clear that Ms. Hart was enriched by the funds provided by Mr. Yang (although by precisely how much is a matter of dispute and will be addressed below) and that Mr. Yang suffered a corresponding deprivation. The primary question to be determined by this Court is whether there is a juristic reason. That question will turn on whether the funds were a gift.

[56] The law in relation to gifts is set out by the Court of Appeal in *Beaverstock v. Beaverstock*, 2011 BCCA 413. In that case, the Court held (at para 9):

> Whether the transfer was a loan or a gift depends on the actual intention of the appellant when she made the advance, which is a question of fact. As the advance was gratuitous, the onus was on the respondent to demonstrate that the appellant intended a gift, since equity presumes bargains, not gifts ... This equitable principle gives rise to a presumption the son received the money on a resulting trust, which is a rebuttable presumption of law. The trial judge was therefore required to presume the advance was not a gift and to determine whether the respondent had satisfied the burden of rebutting the presumption of resulting trust on a balance of probabilities.

[57] Therefore, this Court must begin its analysis by presuming a resulting trust — meaning that the funds were not a gift and that the funds ought to be returned to Mr. Yang.

[58] Further, the Court must make a finding regarding Mr. Yang's subjective intention. I note that in this part of the analysis, although it is Mr. Yang's position that the funds were loaned to Ms. Hart and Mr. Yang, it is not necessary to determine whether there was a loan agreement. Rather, the focus is on Mr. Yang's actual intention.

[59] Unless Ms. Hart can overcome the presumption by persuading this Court that the funds were a gift, a finding of unjust enrichment will follow.

Evidentiary analysis and factual findings

[60] In their submissions regarding whether the funds were a gift, the parties referred to two significant telephone communications between Mr. Yang and Ms. Yang, and to some extent Ms. Hart; and to two meetings among Ms. Yang, Ms. Hart, and a notary, at which Ms. Yang and Ms. Hart discussed and ultimately signed wills and POAs.

Telephone call regarding funds for the McKim purchase

[61] As discussed above, Ms. Hart and Ms. Yang entered into the purchase agreement for the McKim property in March 2020. Ms. Hart testified that she and Ms. Yang intended that the purchase of the McKim property would be funded by a mortgage from the Bank of Montreal, their savings, and the proceeds from the sale of the Ackroyd property.

[62] However, the Ackroyd property did not sell as quickly as they had hoped. Ms. Hart testified that sometime between March and June 2020, there was a telephone call between Ms. Yang and her father, relayed subsequently to Ms. Hart, during which Mr. Yang was told that Ackroyd had not been sold, and Mr. Yang offered to contribute funds to the purchase of McKim. According to Ms. Hart, Ms. Yang advised her that “my father is going to send us $300,000 for the rest of the down payment on the mortgage.” Later in her testimony, she stated that Ms. Yang told her that her “father would be giving us $300,000.”

[63] In his testimony, Mr. Yang did link his offer to contribute funds to the McKim purchase to the fact that the Ackroyd property had not sold, and the parties are on common ground that Mr. Yang offered to, and did, transfer $316,000 to Ms. Yang. Mr. Yang testified that $100,000 of this sum was borrowed from his father, and the balance came from Mr. Yang’s savings. Some, but not all of those funds were used for the McKim property. Mr. Yang testified that he and Ms. Yang discussed that the funds were being borrowed by Ms. Yang and Ms. Hart from him. Mr. Yang’s objective was to reduce the monthly mortgage amount that Ms. Yang and Ms. Hart were required to pay.

[64] In July 2020, Ms. Hart and Ms. Yang completed the purchase of the McKim property.

Telephone discussion regarding the funds from the Ackroyd sale

[65] In April 2021, the Ackroyd condominium was sold. In a text message, Ms. Yang wrote to her father, stating: “Dad, Ackroyd has an offer for 585,000. I plan on taking that …offer. It has no subjects. Can I have your bank details and grandpas bank details. I will send the money back.” This note suggests that Ms. Yang believed that the $316,000 was not a gift.

[66] It is common ground that, subsequent to this text message, there was a telephone call between Mr. Yang, Ms. Yang, and Ms. Hart. The discussion started in Mandarin between Ms. Yang and her father. Ms. Hart does not speak or understand Mandarin.

[67] According to Ms. Hart, at some point in the discussion, Ms. Yang turned to her and said, “he doesn’t want the money back. He said, you guys keep it.” At that point Ms. Yang joined the call in English and said “thank you very much, we’re so grateful.” Ms. Hart testified that Ms. Yang then asked her father again, “you don’t want it back,” and he said, “no, no, you keep it, you need it more than I do.”

[68] Ms. Hart testified that after the call was ended, Ms. Yang jumped in celebration with her hands in the air.

[69] Mr. Yang acknowledged that this call took place, but testified that the discussion was not in the context of a gift. He testified that he did not say that he never wanted the funds back, but rather that he agreed to defer the repayment. He testified that Ms. Yang said that she was feeling the pressure of the mortgage and she asked if they could pay back the bank first. He agreed, saying that he would not collect interest but the bank would. He said that she should not worry about giving back the money at that moment. He said that he wanted them not to be under “this big pressure or stress.” Therefore, if she felt stressed by the mortgage, she should pay the bank first.

[70] He denied ever saying anything about gifting these funds to Ms. Hart and Ms. Yang, and testified that his practice was not to use money as a gift to his children.

Meetings with the notary

[71] In November 2021, Ms. Hart and Ms. Yang attended at the office of a notary, Daniel Jung-Eun Park, to arrange for the preparation of wills, POAs, and representation agreements. It was intended that the documents would be reciprocal and their terms would mirror each other.

[72] After the first meeting with Mr. Park in November 2021, Ms. Hart sent an email to Mr. Park stating that, if both Ms. Hart and Ms. Yang were to pass away within 30 days of each other:

> … we would like to make one change. $300,000 Canadian will go to Robin [Yang] … (This is because Robin lent us $300,000 and we want to make sure he gets that amount paid back.)

[73] This message suggests that Ms. Hart believed at the time that the amount received from Mr. Yang was a loan. Ms. Hart could not explain why she had typed the word “lent” rather than “gave.”

[74] By the time Ms. Hart and Ms. Yang met with Mr. Park for a second time, it appears that Ms. Yang had told Mr. Park that the amount received from Mr. Yang was a gift. The wills prepared by Mr. Park reflected that the amount was a gift, and the wills were finalized and signed on that basis at a second meeting with Mr. Park in January 2021.

Discussion and conclusion regarding the gift issue

[75] As is evident, much of this evidence is conflicting, even as between Ms. Yang and Ms. Hart. In my view, Ms. Hart’s testimony was genuine, but it must be emphasized that she was able to testify only about what she understood, as she had no direct substantive discussions with Mr. Yang regarding his provision of funds to the couple.

[76] Almost all of the evidence given by Ms. Hart is subject to some ambiguity: her testimony that Ms. Yang told her that Mr. Yang would be "giving them $300,000" could have referred to a loan or a gift; similarly, the celebration recounted by Ms. Hart at the end of the call regarding the Ackroyd funds, and Ms. Hart's testimony that Mr. Yang did not want the funds back are potentially consistent both with Mr. Yang saying that he never wanted any of the funds back, or that he did not want them back at that time.

[77] On the other hand, Mr. Yang's testimony regarding his actual intention was unambiguous and unshaken on cross examination. As discussed, that intention was to relieve the financial pressure being felt by Ms. Yang and Ms. Hart, and to do that by deferring repayment of the funds he had loaned to his daughter for the Ackroyd property, without interest and without specific repayment terms, so that they could pay the bank back "first" with respect to the McKim townhouse.

[78] Importantly, Mr. Yang's evidence that he requested a record of the loan in "black and white" is corroborated by the fact that Ms. Yang actually sent him the promissory note. As the plaintiff points out, the discussion regarding the Ackroyd funds may well have been unclear to Ms. Hart, but its meaning must have been clear to Ms. Yang since she made and delivered the promissory note less than three weeks later.

[79] I find that Mr. Yang's actual intention, although not communicated to Ms. Hart, was to loan the funds to the couple. The legal presumption that the funds were not a gift has not been rebutted by Ms. Hart. Accordingly, I find that there was no juristic reason for the enrichment and Ms. Hart and Ms. Yang were both unjustly enriched. In this regard, I note that Ms. Yang and Ms. Hart were joint owners and had an equal undivided right to the whole of the value of the McKim property. Therefore, they both benefitted from the funds provided by Mr. Yang.

Quantum of the unjust enrichment claim

[80] The evidence is clear that at least $316,000 was provided to Ms. Yang and Ms. Hart by Mr. Yang. The parties led some evidence and advanced some

arguments regarding whether this entire amount was needed for the purchase of the McKim townhouse or whether some of it was used for other purposes.

[81] Ms. Hart testified that while most of these funds went towards the purchase of the McKim townhouse, some were used for other purposes. In particular, some of these funds were used towards the purchase of a Volkswagen Tiguan for Ms. Yang to drive; furniture for the townhouse; paying down the couple's credit card; and minor renovations to the townhouse.

[82] The documents show that at least $298,000 was used for the purchase of the townhouse. In addition, the payments towards furniture, the credit card, and the renovations benefitted both Ms. Yang and Ms. Hart.

[83] I find that Ms. Hart was not enriched by the relatively small amount that went towards the purchase of the Volkswagen.

[84] Taking this all into account, in respect of Mr. Yang's alternative unjust enrichment argument, I find Ms. Hart is liable to Mr. Yang in the amount of $310,000. I emphasize that this part of these reasons will be operative only in the event that my decision with regard to the promissory note is determined on appeal to be incorrect.

[85] Finally, I should address two arguments advanced by Ms. Hart alleging defects in Mr. Yang's pleadings in relation to unjust enrichment. Those arguments are, in my view, without merit.

[86] First, the fact that Mr. Yang pleaded that funds provided to the couple were used for the McKim townhouse does not mean that he can only recover funds that went to the McKim purchase, assuming other funds were used to the benefit of both Ms. Hart and Ms. Yang.

[87] Second, the fact that Mr. Yang advanced a claim for unjust enrichment in the amount of $316,000 does not mean that he is precluded from succeeding in respect of a lesser amount.

Conclusions and costs

[88] For the reasons stated above, Ms. Hart is liable to Mr. Yang under the promissory note in the amount of $330,000, together with interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

[89] Unless there are settlement offers of which I am not aware, in which case the parties shall arrange through the registry to make brief written submissions, costs of this action shall be payable by Ms. Hart to Mr. Yang at Scale B.

"The Honourable Justice K. Loo"