

CITATION: Alsous v. Hadweh et al, 2024 ONSC 5037

COURT FILE NO.: CV-20-74557

DATE: 2024-09-13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

)

)

RANA ALSOUS

) Daniel Mauer for the Plaintiff

Plaintiff

)

- and -

)

)

BISHARA HADWEH and DUAA

) Kenneth Wise for the Defendants

HADWEH

)

Defendants

) **HEARD:** November 27, 28, 29, 30

December 1, 4, 5, 6, 7, 2023 and January

22, 23, 24, 25th, 2024

The Honourable Justice S. Antoniani

REASONS FOR DECISION

OVERVIEW

[1] The plaintiff, Rana Alsous (“Rana”), claims a beneficial interest in the property purchased and sold in the names of the defendants, Duaa Hadweh and Bishara Hadweh (“Duaa” and “Bishara”). Duaa and Bishara are husband and wife. The property is located at 227 Rymal Road, in Hamilton, Ontario (“Rymal Road”). The plaintiff claims that Rymal Road was purchased using her personal money. She seeks a declaration that the defendants held the property in trust for her, or a declaration of a constructive trust in her favour based on the defendants having been unjustly enriched by her payment of the downpayment to purchase Rymal Road.

[2] As of the commencement of trial, Rymal Road has been sold for \$758,000. Pursuant to the order of Skarica J. dated January 21, 2021, 55 percent of the proceeds, or \$416,000, are held in trust pending the outcome of this trial.

[3] The Skarica J. order also confirms that the trust funds shall be deemed to be “land” for the purposes of any limitation period established by the *Real Property Limitations Act*, R.S.O. 1990, c. L.15, such that the sale of the property occurred without prejudice to Rana’s action to recover an interest in the property, and there is no limitation period issue.

[4] There are familial connections between the plaintiff and the defendants. The plaintiff, Rana, was married to Elias Shaheen (“Elias”). Elias is the brother of the defendant, Duaa, making the defendants brother and sister-in-law to Rana. Ibrahim Shaheen (“Ibrahim”) is the father of Elias and Duaa, and father-in-law to Rana.

[5] Ibrahim also had other children. Ibrahim predeceased Elias and Duaa’s mother, to whom all of Ibrahim’s estate passed. The mother has since also passed.

[6] A number of the parties involvedse various spellings of their surname, including Shaheen and Shahin, as per the documents I have seen. Since there were multiple family members from the same family involved in the context of this litigation, I have used their first names throughout these reasons.

Upper Sherman

[7] Although it is the proceeds of Rymal Road that are in issue in this proceeding, the outcome is dependent upon a determination of who held the beneficial interest in a property at 536 Upper Sherman Avenue, in Hamilton, Ontario (“Upper Sherman”).

[8] Upper Sherman was purchased in 2006, and then sold in 2015. It is undisputed that the proceeds of the sale of Upper Sherman were used in the purchase of Rymal Road.

[9] A determination as to who held the beneficial interest in Upper Sherman is necessary to determine the outcome regarding Rymal Road and the outcome of this litigation.

BACKGROUND AND POSITIONS OF THE PARTIES

[10] Rana immigrated to Canada from Palestine in the summer of 2004. She was 21 years old. Rana and Elias were married a few months later, in January 2005. During their marriage, they had three children. Their first child was born in April 2006, and the third in November 2013. At the time of the trial, Rana and Elias are separated, and all three children reside full time with Elias.

[11] Rana and Elias have been involved in particularly acrimonious family law proceedings. There has been litigation, primarily involving the date of separation and its impact on the equalization of net family property. Each of Rana and Elias were examined and cross examined in that proceeding, and again at this trial.

[12] The trial in the family law proceedings was resolved largely in favour of Elias. The separation date (and therefore the valuation date) was hotly contested. I do not find that the separation date is relevant to a determination of the issues here, although the position of the parties on the issue of the separation date did have some impact on their evidence and on their credibility.

[13] With respect to these proceedings, the following facts are not in dispute:

- a) Rana held sole title to Upper Sherman.
- b) When Upper Sherman was sold, the proceeds of that sale were deposited into Rana's bank account.
- c) When Rymal Road was purchased by the defendants, \$200,000 of the proceeds of the sale of Upper Sherman were withdrawn from Rana's account and were used as a downpayment to purchase Rymal Road. The downpayment accounted for 55 percent of the purchase price.

[14] Rana claims a beneficial interest in Rymal Road on the basis that the \$200,000 downpayment for the purchase was made by her using her own money, which she either earned or was gifted from her family. Alternatively, Rana argues that if I do not accept that the funds were her own, I should find that Ibrahim purchased Upper Sherman for Rana, and that he intended to gift it to her.

[15] However, Rana's primary position is that she denies that she received the money for the purchase of Upper Sherman from Ibrahim, and she denies holding the property in trust for him.

[16] In her pleadings, Rana claimed that it was always her intention that she be on title to Rymal Road in a percentage interest equal to the \$200,000 she paid, which was 55 percent of the purchase price. However, Rana purported to expand her claim in the giving of her evidence at trial, at which time she asserted that she believes she is entitled to 100 percent of the proceeds of sale.

[17] Alternatively, Rana argues that she used \$200,000 of her own funds as a down payment on Rymal Road, and that no consideration was paid to her in return. As such, the defendants held the property in a resulting trust in her favour. Or, in the further alternative, the defendants were unjustly enriched and she is entitled to the same amount.

[18] The defendants' position is that Upper Sherman was always beneficially owned by their father, Ibrahim. They maintain that during his lifetime, Ibrahim purchased and sold several pieces of real estate in Hamilton, and that his real estate was held in the names of various family members. The family members held the properties in trust for Ibrahim. While Ibrahim often shared the profits with his children, the properties were beneficially his.

[19] The defendants claim that Ibrahim intended to purchase Upper Sherman himself. He viewed the property with a real estate agent, consulted with a mortgage broker and even retained an environmental company to do a phase one environmental assessment. Ibrahim was not able to qualify for a mortgage. Because of that, he provided the money to Rana to purchase Upper Sherman, and Rana thereafter held Upper Sherman in trust for him. As the proceeds from the sale of Upper Sherman belonged to Ibrahim, after it was sold, he directed that \$200,000 be used toward his purchase of Rymal Road.

[20] The defendants argue that Rana never had any means to purchase Upper Sherman. In the span of nine years, Rana had arrived in Canada, was married, and had three children. Rana was never employed in any capacity which would have enabled her to amass the means to acquire real estate. The defendants argue that Rana's evidence about saving employment income and receiving cash gifts from her family should be rejected.

[21] The defendants maintain that they held the property in trust, not for Rana, but for Ibrahim.

ISSUES

1. a) Did Rana purchase Upper Sherman in 2006 using her own funds, including funds that she had earned or that she had received as gifts from her family? If yes, then Rana has a beneficial interest in 227 Rymal Road.

b) If Rana has a beneficial interest in Rymal Road, what is the quantum of her interest?

OR

2. a) Did Ibrahim provide the funds for the purchase of Upper Sherman?

b) If Ibrahim provided the funds, has Rana rebutted the presumption that she held that property on a trust in Ibrahim's favour?

DECISION

[22] For the reasons that follow, I find that Rana has failed to meet her onus in this action in all respects.

[23] On a balance of probabilities, I find that the money used to purchase Upper Sherman came from Ibrahim. I reject the evidence that Rana had her own money to purchase Upper Sherman or for use in any of the bulk payments made to pay off the mortgage.

[24] Having found that the funds to purchase Upper Sherman were provided by Ibrahim, I find that there was no consideration from Rana to Ibrahim. As such, the presumption is that Rana held the property in trust for Ibrahim. Rana has failed to rebut the presumption, on a balance of probabilities.

[25] I find on a balance of probabilities, that Ibrahim directed Rana to transfer \$200,000 of the proceeds of the sale of Upper Sherman toward his subsequent purchase of Rymal Road, which was thereafter held in trust for him by his daughter and son in law, the defendants Duaa and Bishara.

ANALYSIS

Legal Framework: Resulting Trusts

[26] As mentioned, the outcome of this litigation is primarily driven by a factual determination as to where the funds for the purchase of Upper Sherman originated. If the funds were provided by Ibrahim, then there is a presumption that Upper Sherman was held by Rana in trust for Ibrahim. That presumption may be rebutted by Rana showing evidence that it was Ibrahim's intention to gift the property to her. In contrast, if the funds were Rana's own funds, then when she used her funds to purchase Rymal Road and received no consideration, there would be a presumption that the defendants held Rymal Road in trust for Rana.

[27] When a transfer of an ownership interest is made without consideration, there is a presumption the transferee takes title subject to a resulting trust in favour of the transferor. Said

another way, “[a] resulting trust arises when title to property is in one party’s name, but that party, because he or she is a fiduciary or gave no value for the property, is under an obligation to return it to the original title owner”: *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, at para. 20. The presumption is rebuttable on evidence that the transferor’s intention at the time of the transfer was to make a gift to the transferee.

[28] The onus to rebut the presumption of resulting trust is on the transferee, to be satisfied on a balance of probabilities.

[29] The rationale for the resulting trust is described in *Pecore*, at para. 24 (citations omitted):

The presumption of resulting trust is a rebuttable presumption of law and the general rule that applies to gratuitous transfers. When a transfer is challenged, the presumption allocates the legal burden of proof. Thus, where a transfer is made for no consideration, the onus is placed on the transferee to demonstrate that a gift was intended. This is so because equity presumes bargains, not gifts.

[30] Each party here argues that theirs is a purchase money trust. The argument is that the party who advanced the money to purchase the property, without consideration from the titled party, is the beneficial owner. They rely on the decision in *Andrade v. Andrade*, 2016 ONCA 368, 131 O.R. (3d) 532, at para 58:

A purchase money resulting trust can occur “where a person advances a contribution to the purchase price of property without taking legal title”: *Rascal Trucking Ltd. v. Nishi*, 2013 SCC 33, [2013] 2 S.C.R. 438 (S.C.C.), at para. 21. It is one of the “classic resulting trust situations” and can arise when a party contributes directly to the purchase price or the mortgage.

[31] In *Andrade*, at para. 97, the court found that where the defendant had received money as gift and then used the gifted money to purchase property in her children’s names, the children presumptively held the property in trust for her. Once the money was gifted to the defendant it became *her* money, and the original source of the money was not relevant.

[32] The *Andrade* decision is not directly relevant here. The defendants argue that Rana’s evidence, that she received enough gifts of cash to purchase the property, should be rejected as untrue because the money came from Ibrahim.

[33] Rana’s alternative argument is that Ibrahim intended to gift the money to her, and therefore, as in *Andrade*, the money was hers and she did not hold the property in trust for him.

Legal Framework: Credibility

[34] This trial did not arise from complex and differing interpretations of the law. Rather, it is the facts that are significantly in dispute. The parties and witnesses have provided two completely different versions of events. A determination of the facts, after assessing the credibility of the witnesses and carefully considering all the evidence, will determine the outcome.

[35] In relation to assessing the credibility of the witnesses, I refer to the decision of Chappel J. of this Court, in *McBennett v. Danis*, 2021 ONSC 3610, 57 R.F.L. (8th) 1, at para. 41:

Despite the challenges inherent in the task of assessing reliability and credibility, the caselaw has articulated numerous factors that the courts may consider in weighing and assessing the credibility and reliability of witnesses. Drawing from the decisions in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), 1951 CarswellBC 133 (B.C.C.A.), at para 9; *R. v. Norman*, (1993), 1993 CanLII 3387 (ON CA), 16 O.R. (3d) 295 (C.A.); *R. v. G.(M.)* (1994), 1994 CanLII 8733 (ON CA), 93 C.C.C. (3d) 347 (C.A.), at para. 23; *R. v. Mah*, 2002 NSCA 99 (C.A.), at paragraphs 70-75; *R. v. Jeng*, 2004 BCCA 464 (C.A.); *Bradshaw v. Stenner*, 2010 BCSC 1398 (S.C.), at para 186, aff'd 2012 BCCA 296 (C.A.); *Brar v. Brar*, 2017 ABQB 792 (Q.B.), at paras. 9-16; *R.v. D.A.*, 2018 ONCA 612 (C.A.), at paras. 11-21 and *B.G.M.S. v. J.E.B.*, 2018 CarswellBC 2538 (S.C.), at paras. 34-40, these considerations include the following:

1. Were there inconsistencies in the witness' evidence at trial, or between what the witness stated at trial and what they said on other occasions, whether under oath or not? Inconsistencies on minor matters of detail are normal and generally do not affect the credibility of the witness, but where the inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate carelessness with the truth (*R. v. G.(M.)*; *R. v. D.A.*).
2. Was there a logical flow to the evidence?
3. Were there inconsistencies between the witness' testimony and the documentary evidence?
4. Were there inconsistencies between the witness' evidence and that of other credible witnesses?
5. Is there other independent evidence that confirms or contradicts the witness' testimony?
6. Did the witness have an interest in the outcome, or were they personally connected to either party?
7. Did the witness have a motive to deceive?
8. Did the witness have the opportunity and ability to observe the factual matters about which they testified?
9. Did they have a sufficient power of recollection to provide the court with an accurate account?

10. Were there any external suggestions made at any time that may have altered the witness' memory?

11. Did the evidence appear to be inherently improbable and implausible? In this regard, the question to consider is whether the testimony is in harmony with "the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions?" (*Faryna*, at para. 10).

12. Was the evidence provided in a candid and straightforward manner, or was the witness evasive, strategic, hesitant, or biased?

13. Where appropriate, was the witness capable of making concessions not favourable to their position, or were they self-serving?

14. Consideration may also be given to the demeanor of the witness, including their sincerity and use of language. However, this should be done with caution. As the Ontario Court of Appeal emphasized in *R. v. Norman*, at para. 55, an assessment of credibility based on demeanour alone is insufficient where there are many significant inconsistencies in a witness' evidence (see also *R. v. Mah* at paragraphs 70-75).

Upper Sherman

[33] Neither party produced banking documents from the time of the Upper Sherman purchase, in 2006. Rana indicates that she could no longer obtain the documents because of the number of years that have passed. The defendants indicate that Ibrahim died intestate, and that they have never applied for probate on his estate and are therefore not able to gain access to his bank accounts.

[34] No party has produced documentation memorializing any agreements between the parties in relation to these two properties, nor has anyone suggested that documentation ever existed.

[35] As a result of the lack of direct documentary evidence, all of the evidence as to who's funds were used to purchase Upper Sherman is circumstantial. Upper Sherman was a commercial property and was not the residence of any of the parties to this litigation. A portion of the property was used to operate a used appliance business, which is discussed in some detail below, and there were apartments on the upper floor, which were rented to third parties.

Evidence of Rana Alsous

Cash Gifts

[36] Rana claims that she purchased the Upper Sherman property in July 2006, about two years after her arrival in Canada. She attests she used a down payment of \$60,000 of cash that she had

saved up on her own. The saved funds were a combination of her own income, and cash gifts received by her father, grandfather, and other relatives when they came to Canada from Palestine to visit her. She indicated that the primary source of money for investment in Upper Sherman was regular cash gifts that family members brought, in amounts of \$6,000, \$8,000 or \$10,000 cash at each visit.

[37] I was referred to the transcripts of evidence and to the decision in the family proceedings between Elias and Rana where each of them also testified. The issue in those proceedings was a determination of the date when Rana and Elias were finally separated. Although I have already stated that I do not find the date of separation to be directly relevant to the issues here, I have considered the facts found in the decision of Lafreniere J. and affirmed by the Ontario Court of Appeal. Lafreniere J. reviewed the evidence of each of Rana and Elias on issues upon which they each testified before me. In describing Rana's evidence about the particulars of the Upper Sherman transaction, Lafreniere J. commented that Rana could not recall very much about matters involving the property:

122. The father will say that the Upper Sherman property was in the mother's name but the beneficial owner was the paternal grandfather. The mother disagreed. When asked for her position regarding this property she answered she could not recall.

123. The father will say that net sale proceeds of \$285,848.20 from the sale of the Upper Sherman property were deposited into the mother's account on January 28, 2015, but while the title to the property was in the mother's name it was beneficially owned by the paternal grandfather. The mother disagreed. She was then asked her position on the Upper Sherman property to which she replied: "I can't recall".

124. She was challenged that over the years some of the net sale proceeds were used for family expenses and she again replied: "I can't recall".

[38] I find the comments of Lafreniere J. to be a useful comparison to the evidence I had in this trial. Rana testified before me, in great and specific detail, about her involvement in the purchase and sale of Upper Sherman. In particular, she testified about purchasing the property herself, about acquiring and using her own funds, and about where she kept the funds. Although Rana claimed to have purchased and managed Upper Sherman on her own, and collected rents, she was unable to recall to whom she had rented the unit on the main floor of the property.

[39] Regardless of the inconsistent memory between the earlier trial and this one, Rana's evidence before me as to the source of the cash gifts was both implausible and inconsistent. At the family trial, Rana testified that she received cash funds from various family members but made no reference to her grandfather. Though, she did refer to some of the relatives she said gave her gifts. At this trial proceeding, Rana identified her grandfather as the primary contributor to the cash she amassed.

[40] Rana testified that she kept all her funds in cash, in a safety deposit box, until she had to use them to purchase Upper Sherman, or to make the lump sum payments, at which time she put them into a bank account and wrote cheques. This evidence is contradicted by her evidence in the family law proceedings, where she testified that all the cash she received was either put “in the bank”, “in the account”, or “I don’t know.” On her behalf, counsel argued that there was no distinction between these responses, since safety deposit boxes are in banks. I reject that submission. In any event, Rana’s responses “in the account” and “I don’t know” are clearly contradictory.

[41] Rana’s evidence is further contradicted by that of Elias. He testified that Rana has a strained relationship with her family, historically and until present time. His evidence was that the relationship was strained after Rana married an older man when she was a young teenager and she later divorced. Rana was reluctant to testify about the prior marriage. I understood that her reluctance on this issue was likely due to cultural and familial issues, and that the experience left her emotional. I put no weight on her refusal to testify about that relationship. However, I do not accept Rana’s evidence of her close and loving relationship with her parents.

[42] Elias stated that Rana’s family occasionally gave them gifts of \$100 or so at a time, for the children. Elias testified that he only ever met Rana’s grandfather twice – once at their wedding and once more a year later. His evidence was that Rana’s grandfather resided in Jordan and did not travel to Canada frequently.

[43] Rana’s parents reside in Hamilton and are Canadian citizens. They were not called to corroborate Rana’s evidence as to the very frequent visits she claimed that the grandfather and other family members made to Canada from Palestine, or on the issue of the gifting of money. No member of Rana’s family was called to the trial.

Earned Income

[44] Rana testified that the funds for the purchase of Upper Sherman were funds she saved up, in cash, from a combination of gifts from visiting relatives and savings from her own employment.

[45] On the issue of employment, Rana stated that she worked as a hairstylist upon arrival in Canada, and into early 2005. From what I understand, this lasted about six months and she worked on a commission basis. Thereafter, Rana attests she started a used appliance business, in the spring of 2005. Rana’s evidence was that she started the business using a gift of \$10,000 cash that she received from her father. Rana stated that she was the founder, owner, and operator of the business, and that she hired Elias to work for her.

[46] When asked what Elias did, Rana stated that he fixed the appliances, and that she could not remember what else he did. She also could not remember how much money the business earned.

[47] In cross examination, Rana stated that her business was called “Appliance Store - Used Appliances”. When asked whether the name of the business was “Refrimex”, she indicated that she did not recall. After being shown various documents showing invoices in the name Refrimex, she agreed that Refrimex was also the name of her business. By contrast, during examinations for discovery, Rana referred to her business as Refrimex throughout and without prompting, and indicated that she had registered the business herself.

[48] Rana’s evidence about the appliance business impacted her credibility greatly and showed it to be both unreliable and untruthful. I found this to be especially so in relation to her adamant claim that she was the founder, owner, and primary operator of the business, and that her husband Elias was her employee and her helper. This evidence was intended to persuade me that Rana had the means to earn and save money, to explain her purchase of Upper Sherman.

[49] The documentation and other evidence at this trial is very persuasive of the fact that Elias started a used appliance business before he met Rana. The defendants produced documents showing that the business had a genesis in Honduras, where Elias had lived before he immigrated to Canada and before he married Rana. Elias testified about the business and indicated that he resumed the business when he came to Canada, where he continued to export used appliances to Honduras under the business names “Refrimex” and also “JJJ’s Appliances”.

[50] The trial record includes invoices and bills of lading showing the movement of appliances between Honduras and Canada, and they corroborate the evidence of Elias on this issue. The evidence of other non-party witnesses also corroborated the fact that Elias started, and was the main operator, of the used appliance business.

[51] Although there are a few tax documents which did name Rana in relation to Refrimex/JJJ’s, the bulk of the tax returns and documents produced support the position that it was Elias’ business. From as early as 2006, Elias’ tax returns include a reporting of his used appliance business. In addition, emails directed to Elias, produced in relation to other issues at this trial, are addressed to refri_mex@hotmail.com.

[52] Alan Sada, the real estate agent whose evidence I review in detail later in these reasons, was called as a plaintiff’s witness. Mr. Sada, a friend of Rana’s, testified that the appliance business was Elias’, that he knew Elias to have started the business and that Rana was Elias’ helper.

[53] Khadir Shahin (“Khadir”), Elias’ brother, also testified. He stated that while Elias was residing in Honduras, he helped Elias by cleaning and shipping appliances to Honduras from Canada. Khadir’s evidence is reviewed in detail later in these reasons.

[54] I reject Rana’s evidence on the issue of the appliance business entirely. I accept the evidence of Elias that he started the used appliance business in Honduras in 1999, and that he sold his interest in the Honduras business when he moved to Canada. Elias started an appliance business again on Ottawa Street in Hamilton, before he married Rana, and he continued to do business exporting appliances to his former business in Honduras. I accept Elias’ evidence that Rana helped him in the business.

[55] Rana also testified that she worked part time for a period of time in a restaurant which was owned by her parents. Her evidence as to periods of employment, and amounts earned, was vague at best. However, I accept that she did work there part time, for a period of time.

[56] I conclude from the totality of the evidence I heard and saw, that Rana had little opportunity to earn money during her marriage to Elias, and in particular in the short period between her arrival in Canada and the purchase of Upper Sherman. She was a young person - only 21 years old - when she arrived in Canada in 2004. She married in January 2005, and her first child was born in April 2006. Her youngest child, Joey, was born with significant health issues in November 2013. Joey was two years old at the time of the sale of Upper Sherman and the purchase of Rymal Road.

[57] I accept that Rana worked part time to assist her husband in his used appliance business, and that she later worked part time in a restaurant owned by her parents.

[58] Upper Sherman was purchased via two mortgages. One small mortgage with B2B and a larger one with Effort trust. The mortgage with B2B was paid in full on July 6, 2007, less than one year after the purchase. Then, one year later, on July 25, 2008, another \$50,000 lump sum was paid from the account of Rana toward the Effort Trust mortgage. Finally, \$60,711.89 was paid in a lump sum, to discharge the Effort Trust mortgage, on November 24, 2011.

[59] Based on her evidence as to purchase, payments, and expenses, Rana would have had to amass \$210,000 in cash savings to start her own used appliance business, buy Upper Sherman, and make the lump sum payments to pay off the two mortgages. In addition she would have paid about \$125,000 in carrying expenses, all between 2006 and 2011.

[60] In the family proceedings, Rana’s sworn financial statement states that she had no cash on the date of the marriage (2005) and no cash on the valuation date. At trial, Rana disagreed with her own financial statements, when they were put to her, telling opposing counsel “I disagree with you”.

[61] I do not accept that Rana would have been able to have significant savings from her own employment in 2006, only a year after her arrival in Canada, to use toward the purchase of a property.

[62] I reject Rana's evidence that she received large cash gifts regularly from her grandfather and/or other family who were traveling to visit Canada from Palestine. I do not accept that any gifts Rana did receive were in amounts which would have enabled her to purchase and pay off commercial investment real estate over such a short period of time.

[63] I found Rana to be evasive and contradictory and I do not accept much of her evidence. Overall, I noted that Rana responded often to questions that she *does not recall*, or *does not know*, even when it made no sense in relation to her overall evidence that she would neither recall nor be aware of information asked. Having rejected her evidence in relation to the business and to the receipt of cash gifts, I find that Rana therefore did not have the means to purchase Upper Sherman, or any real estate.

Ibrahim's Money

[64] The record shows that in 2005, one year before the purchase of Upper Sherman, a house in the name of Rima Shaheen (Ibrahim's wife) was sold for \$172,000. Then, in 2011, Ibrahim sold two other properties, 3 Lambert Street and 338 Cumberland Avenue ("Cumberland Avenue"), both in Hamilton. Both properties were sold in the 60-day period before the final payment of \$60,711.89 remaining on Effort Trust's mortgage against Upper Sherman.

[65] Although no evidence was called as to the source of Ibrahim's money, the coincidence in time between the sales of other properties and the purchase of Upper Sherman, and the later payment of two significant lump sums against the mortgage, supports the contention that Ibrahim had the funds to purchase Upper Sherman. There was other evidence, both testamentary and documentary, to support the proposition that Ibrahim was the *de facto* purchaser of Upper Sherman. This evidence is reviewed below.

Non-Party Witnesses

[66] In coming to my conclusion that Rana has not met her burden at this trial, I have also considered the evidence of several non-party witnesses.

Elias Shahin

[67] Although he was not a named party, Elias was the main witness for the defendants. In particular, he gave the bulk of the evidence in relation to the purchase and maintenance of Upper Sherman.

[68] Elias testified that he lived in Honduras in 1998 or 1999. He started an appliance business there with a gift of \$1,000 from Ibrahim. He refurbished and resold used appliances. When he moved to Canada, he continued the business and exported appliances to Honduras.

[69] Elias testified that in the early part of their marriage, Rana was excited to support him in the appliance business. Even after they had their children, Rana was able to continue to work there. Upper Sherman had been built as a hub for ambulances. There was a room for cleaning the ambulance which was perfect for storing and cleaning the appliances, and there was another room where Rana and the kids could spend time.

[70] Prior to their marriage, Rana worked as a hairdresser in Mississauga, and then later in Hamilton and Burlington. She had briefly operated her own business making chocolate baskets, but the business was not successful. In 2012, the marriage started to collapse. Elias admitted that at that time, he was charged with assaulting Rana.

[71] Elias testified that Rana's parents gave them a gift of \$5,000 for their wedding, and his family gave them \$15,000. He testified to recalling these amounts because they were big gifts.

[72] Elias also testified that he only met Rana's grandfather twice. Elias denied that Rana's grandfather or other relatives made frequent trips to visit her in Canada. Elias testified that he came to learn that Rana's relationship to her family was strained. He believes it was related to her marriage and divorce at a young age.

[73] Elias attests that he was present for events surrounding what he referred to as his father's purchase of Upper Sherman. Elias and Ibrahim went to view Upper Sherman together, with the real estate agent Mohammad Hamzehian. The intention was that it would be an investment for Ibrahim, and Elias would be using part of the property to operate his appliance business. Elias had previously operated his business out of Ibrahim's Cumberland Avenue property.

[74] After it was decided that the purchase would occur, Elias assisted his father with completing mortgage application documents and they attended the mortgage broker's office together for Ibrahim to apply for the mortgage. Elias arranged the environmental assessment for Upper Sherman on behalf of Ibrahim. Elias' evidence on these issues is corroborated by the evidence of the mortgage broker - Angela Coyne, by the agent - Mr. Hamzehian, by the documentation of the mortgage application, by the evidence of Elias' siblings, and by the invoices

and report from the environmental assessment directed to Ibrahim. Moreover, Ms. Coyne's email communications were produced, and they were all directed to Elias.

[75] After Ibrahim was turned down for the first mortgage, Elias and Ibrahim went together to see their lawyer, Anthony Dereubis. Elias' evidence is that Mr. Dereubis directed him and Ibrahim to Titan Mortgages and Joe Trombetta. Elias and Ibrahim attended to Mr. Trombetta's office for a mortgage. Ibrahim was not able to purchase Upper Sherman in his own name.

[76] Elias testified that the funds for the purchase of Upper Sherman came from Ibrahim. He testified that he was the person who attended the bank for his father and deposited funds, and that he was present for all the banking related to the transaction.

[77] After his father was declined for a mortgage from Titan Mortgages, Elias attended with Rana to Titan's office, and he cosigned for Rana's name to be on the mortgage.

[78] Elias testified that he did all the banking for his father and he has first-hand knowledge of the transactions. Elias testified that when his father sold a property at Cumberland Avenue, the proceeds were used to pay off the remaining mortgage at Upper Sherman.

[79] When it was decided that his father would sell Upper Sherman, Elias contacted Mr. Sada, a family friend and real estate agent. According to Elias, only he and Ibrahim met with and instructed Mr. Sada.

[80] Elias was also present in meetings involving his parents' intended purchase of Rymal Road. Elias attended at the bank with Rana to obtain the \$200,000 draft for the downpayment on Rymal Road. This was from the proceeds of Upper Sherman. Elias testified that Ibrahim gave them a \$30,000 gift from the Upper Sherman proceeds as well. He and Rana purchased an investment with the gift they received from Ibrahim.

[81] It is uncontested that, upon the completion of the purchase of Rymal Road, Ibrahim and his wife resided in one of the apartments at the property, from the time of purchase until Ibrahim's death.

[82] The credibility of Elias' testimony was shaken on the issue of his dealings with the money in the bank account which was in Rana's name. In his examination in chief, he was clear that he had done some of the banking and that he had access to her account. In cross examination, he repeatedly stated that he did not have access to her accounts. Rana's evidence was that Elias had access to her accounts via a debit card.

[83] When I consider the evidence of the parties regarding the banking arrangements and the account for Rymal Road, there are obvious issues with the evidence of each of Rana and Elias. After hearing everyone's evidence, I am left with substantial uncertainty as to the source of significant funds that went into the various bank accounts, and in particular the many deposits that went into the Rymal Road account. Rana did not suggest that she ever deposited money into that account. Elias was contradictory and uncertain about a number of the entries, of which there were many.

[84] I accept much of Elias' evidence. Elias and his family, and Rana, all made some misrepresentations on financing applications and perhaps on their tax returns. However, I found Elias' evidence on some of the significant issues to be consistent, both internally and in relation to much of the documentation that was produced. Elias was cross examined in relation to his evidence in cross examinations and in previous proceedings, and I did not find that there were substantial inconsistencies, other than the issue of his access to Rana's accounts. His evidence regarding his father's purchase of Upper Sherman was significantly corroborated and I accept it.

Alan Sada

[85] Mr. Sada testified that he had no business dealings with Ibrahim, but that he was involved in several real estate transactions where he acted for Rana. Mr. Sada testified that he became involved in matters relevant to this trial when he received a call from Elias, who advised that Rana wished to sell Upper Sherman. Mr. Sada indicated that he took on the sale of Upper Sherman and that he was exclusively instructed by Rana.

[86] Although he testified that his instructions came from Rana, Mr. Sada did not recall whether he had any written communications from her. He testified that he believed all instructions were verbal and were provided when he would stop by her house or when they would have phone calls. In cross examination he was asked whether anyone else communicated with him about Upper Sherman. Mr. Sada indicated that he could not recall. He was then shown an email written by himself and sent to Elias. The email asks Elias to have Rana sign certain documents relating to the sale of Upper Sherman. The sign off is personal and affectionate toward Elias.

[87] It became evident through the trial that Mr. Sada and Rana developed a close relationship. However, each of them downplayed it during their testimony. For example, in cross examination Rana suggested that she and Mr. Sada had a distant social relationship. She suggested that she only recalled one or two occasions when he had visited her. Later, she agreed that their friendship was close enough that she had registered Mr. Sada's vehicle in her own name and insured it under her policy, apparently because he could not obtain insurance. She also agreed that she went and stayed at Mr. Sada's home overnight when she was having marital issues.

[88] Mr. Sada was the agent who acted for Rana on her sale of the home at 209 Magnificent Way ("Magnificent Way"). He charged her eight percent commission. He agreed that he has never charged another client an eight percent commission on the sale of a house. Rana testified that the large commission was intended to compensate Mr. Sada for extra work he had done assisting her in preparing the house for sale. In his evidence, Mr. Sada insisted that the charging of commissions is a discretionary exercise and did not testify that he was being paid for other work.

[89] Mr. Sada claimed that he could not recall whether he helped Rana move into the house at Magnificent Way. According to Rana, she and Elias were separated at this time. Mr. Sada claimed that he could not recall when they separated, though he testified that he believed that they were divorced, and he did not have to obtain Elias' spousal consent to sell Magnificent Way.

[90] I reject this evidence. It was obvious that both Rana and Mr. Sada were trying to downplay their relationship. The move to a new house is a significant undertaking and I do not believe that Mr. Sada could not recall whether he participated. The fact is that the timing of the purchase and sale of Magnificent Way was important to the family proceedings, where I understand Rana was claiming that she purchased, owned, and resided in Magnificent Way post-separation. I believe that the evidence was tailored so as not to conflict with the family law proceedings, and the position that Rana and Elias were already separated at the time of her purchase and sale of Magnificent Way.

[91] After the trial, the parties called to my attention the Court of Appeal decision in the family law proceedings wherein the court affirmed the trial judge's finding that the couple was not separated until after the purchase of Magnificent Way, and that Magnificent Way was their matrimonial home.

[92] The particulars of the relationship between Rana and Mr. Sada are not in issue in this trial, but the credibility of each of them was impacted by their contradictory evidence about the nature of it. I find that their close relationship motivated Mr. Sada to give evidence that was not reliable or credible.

Khadir Shahin

[93] Khadir is the brother of Elias and Duaa. Khadir testified that, prior to the transactions that are in issue in this trial, Ibrahim had purchased a property on Cumberland Avenue. There were apartments upstairs and Khadir used the area on the main floor for his business. He also used it as a place from which he shipped appliances to his brother Elias, who was at that time in Honduras running a used appliance business.

[94] Khadir picked up, cleaned, and stored appliances for Elias. He recalled the business was named (three Js) JJJ's. After Elias came to Canada he resumed the appliance business, operating first from Ottawa Street and later from Upper Sherman. Khadir attested that Rana had no role in the appliance business. He said that she sometimes cleaned the appliances. Ibrahim was not involved in the appliance business, but he would attend sometimes and made observations.

[95] Khadir testified that he was involved with Ibrahim in the purchase and the sale of Cumberland Avenue. He helped find the agent and he helped list the property. He knew the purchasers personally. To Khadir's recollection, Ibrahim received an up-front payment of \$80,000 when he sold Cumberland, and took a vendor take back mortgage on the balance. Khadir had personal knowledge of these facts, as he was with Ibrahim in the lawyer's office and he saw the documents.

[96] After the sale of Cumberland Avenue, Khadir went to the lawyer's office with his father, mother, and Elias. He was present when Ibrahim directed the lawyer that he wished to use the proceeds from the sale of Cumberland Avenue toward payment of Upper Sherman. This evidence is corroborated by the evidence of the lawyer, Mr. Dereubis, who also testified at this trial.

[97] Khadir was also involved in the purchase of Rymal Road, though he was not able to give evidence as to how much money his father paid for that property. He recalled that the agent they used was a friend of his, named Mr. Sada. Khadir attended to view the property with Ibrahim and Mr. Sada. Khadir testified that his parents lived at Rymal Road and Elias ran his appliance business there. Ibrahim lived at Rymal Road until he passed away.

[98] I accept the evidence of Khadir. Although he struggled with the rule and concept of hearsay, once he understood he managed better. Khadir admitted to not having personal information of some things, and he did not appear to embellish his knowledge. His evidence was corroborated by other evidence from Elias and the documentation produced.

Angela Coyne

[99] Ms. Coyne is a mortgage broker and was called by the defendants. Ms. Coyne did not appear to be aligned with the interests of either party.

[100] She testified that she worked as a mortgage broker for 40 years. She dealt with Ibrahim and Elias in trying to assist Ibrahim to obtain a mortgage for his intended purchase of Upper Sherman. Ms. Coyne produced a copy of a completed mortgage application that she received from Ibrahim. She did not recall dealing with anyone other than Elias and Ibrahim in relation to Upper Sherman.

[101] Ms. Coyne had obviously reviewed as many documents as she could prior to testifying. Based on her review, she recalled that Ibrahim's income at the time was purely pension and that he relied on rental income. She believed that this was why she could not get him a mortgage.

[102] Documentary evidence corroborated the evidence of Ms. Coyne. In addition to the mortgage application, documents were produced to show that a phase one environmental assessment was completed in relation to Upper Sherman prior to the purchase. Both the assessment report and the invoice for the assessment were addressed to Ibrahim.

[103] The evidence of Ms. Coyne and the documentary evidence is further corroborated by Elias, who testified that he went with his father to complete the mortgage application for Ms. Coyne. Elias also confirmed that he was involved in retaining the firm to conduct the environmental assessment.

[104] Finally, I note that in an email dated April 10, 2006, Ms. Coyne wrote to Elias about the purchase of Upper Sherman, stating: "property can still be in just your dad's name but you as guarantor." The email was directed to Elias and was sent to refri_mex@hotmail.com. This email corroborates Elias' evidence that he had assisted Ibrahim with an intended purchase of Upper Sherman, but that in the end Ibrahim did not qualify for the mortgage, and the property was put into Rana's name.

Mohammad Hamzehian

[105] I also heard the evidence of Mr. Hamzehian. This witness was the real estate agent who acted on the purchase of Upper Sherman. Like Ms. Coyne, Mr. Hamzehian did not appear to be aligned with either party. I accept his evidence as being both credible and reliable. He did not have records or documents to rely on when he attended by videoconference to testify at this trial, but he was able to recall some aspects of his involvement in the purchase of Upper Sherman and of his interactions with the Shahins.

[106] Mr. Hamzehian's evidence was not smooth or prepared. He had some recollection of the events he was called to testify about, but it did not appear that he had gone to great lengths to review anything in preparation for the trial.

[107] Mr. Hamzehian recalled that he was introduced to Ibrahim, who became his client. He recalled that Ibrahim was interested in buying more than one property. Mr. Hamzehian showed Ibrahim and Elias Upper Sherman.

[108] Rana testified that Mr. Hamzehian showed her Upper Sherman. Mr. Hamzehian did not have any recollection of meeting Rana nor of having any reason to believe that she was involved

in the purchases. Mr. Hamzehian attested that he had no idea about the legal arrangements, the financing or how title was taken.

[109] During the time of his relationship with the Shahin family, Mr. Hamzehian also attended at the appliance business on Ottawa Street and then on Upper Sherman. From those visits, he understood that the business was operated by Elias, and that Elias' wife Rana occasionally assisted him.

Anthony Dereubis

[110] Finally, I heard from the lawyer, Mr. Dereubis. Mr. Dereubis indicated that he acted for Ibrahim Shahin beginning in the 1990's. Mr. Dereubis no longer had his files in relation to the transactions in issue in these proceedings, but he generally recalled acting on a number of purchases and sales.

[111] Specifically, he recalled that he acted for the family on the purchase of Upper Sherman, and on the sale of Cumberland Avenue.

[112] Mr. Dereubis recalled that Ibrahim was going to purchase Upper Sherman. He was told that Ibrahim had applied for a mortgage and had been denied. After being denied the mortgage, Mr. Dereubis suggested to Ibrahim that perhaps they could make alternate arrangements.

[113] Mr. Dereubis recalled that the downpayment for Upper Sherman came from Rana and stated that she would have been his client. Upon the sale of Cumberland Avenue, Mr. Dereubis was directed to use the proceeds of that sale to pay out the mortgage at Upper Sherman. Mr. Dereubis testified that he registered the discharge on title at Upper Sherman.

[114] The letter from the mortgagor confirming the discharge shows that the funds for the payment came from Rana's account. The parties agree that the payments to purchase Upper Sherman and the lump sum payments all came from funds that had been deposited into Rana's account.

[115] Although with the passage of time, and without his files, Mr. Dereubis was unclear or mistaken about some of the details, he remembered much about his relationship with the Shahin family. It was clear on the real estate documents that Mr. Dereubis had acted for the family on many transactions since the late 1990s. I found Mr. Dereubis to be a neutral witness. He recalled the funds for the downpayment of Upper Sherman to have come from Rana and he indicated when he did not recall things.

Conclusion on Upper Sherman

[116] On the subject of Upper Sherman, I reject the evidence of Mr. Sada. I accept the evidence of Elias, Ms. Coyne, Mr. Hamzehian, and Mr. Dereubis and I find that the true beneficial purchaser of Upper Sherman was Ibrahim. In consideration of all the evidence at trial, I find on a balance of probabilities that Upper Sherman was purchased using funds provided by Ibrahim.

227 Rymal Road

[117] Having found that Upper Sherman was held in trust for Ibrahim, who was the beneficial owner, it follows that the proceeds of sale of Upper Sherman belonged to Ibrahim.

[118] Upper Sherman was sold on January 16, 2015. All parties agree that the proceeds of the sale from Upper Sherman were deposited into Rana's bank account. The agreement to purchase Rymal Road was signed four months later, on April 29, 2015. \$200,000 of proceeds from the sale of Upper Sherman were used as the down payment on Rymal Road.

[119] Rymal Road was held until February 2021, when it sold for \$758,000. Currently, 55 percent of the proceeds of the sale (equivalent to the 55 percent down payment of \$200,000), are held in trust by Rana's counsel, pending the outcome of this litigation.

[120] During the time that Rymal Road was held by the defendants, Ibrahim and his wife made Rymal Road their principal residence. Elias used a portion of it for his used appliance business, and a portion of it was rented. The fact that Rymal Road was Ibrahim's principal residence corroborates my finding that the defendants held the property in trust for him and that it was purchased using funds that were *de facto* his. In contrast, Rana had no involvement whatsoever in relation to Rymal Road after providing the funds from her account. The bank accounts were not in her name, the building was neither occupied nor tenanted by her, and she did not collect rents or pay bills.

[121] Funds from Rana's bank account were used as the down payment for the purchase of Rymal Road. The defendants took title, and they took a mortgage for the balance of the purchase price. An account was opened in the name of Duaa and Elias, and that account was used for depositing rental income from the property and for paying expenses, such as mortgage payments, utility payments, and so on. Sums of cash were regularly deposited into that account.

Rana Alsous

[122] Although I have already made a finding that the proceeds from the sale of Upper Sherman belonged to Ibrahim, in coming to this determination I also reviewed the evidence specific to the acquisition of Rymal Road.

[123] Banking records were produced at trial. They show an account in the names of Elias and Duaa jointly. Rana maintains that the bank account used for all Rymal Road expenses was an account she opened and one that she should have controlled, but did not. According to Rana, she took Duaa to the bank, opened the account, and provided \$5,000 for the initial deposit into the account. Rana's evidence is that Elias and Duaa took the account over and shut her out of it.

[124] If Rana went to the bank with her sister-in-law and provided the \$5,000 of her personal funds to open the account, her name likely would have been added to the account at that time. She provides no reason why she was not included on the account at the time it was opened, while she was present and funding the account herself. Rana also provided no explanation as to why the account was opened in the names of Duaa and Elias.

[125] Further, Rana claims that she wrote cheques to pay off two of Duaa's credit cards in amounts totaling over \$11,000, so that Duaa could qualify for the Rymal Road mortgage. On Rana's evidence, she had little relationship with Duaa, as they did not even reside in the same city. Rana herself had just sold a property after having paid off the mortgage in full. On Rana's evidence she had the means to purchase the property and would have been a better mortgage candidate. She asks me to accept that she chose not to put Rymal Road or the related bank account in her own name, but chose instead to pay off the outstanding debts of her estranged sister-in-law, open a bank account in her sister-in-law's name, and provide the funds to enable that sister-in-law to take title.

[126] On Rana's evidence, when putting the property in Duaa's name, Rana was separated from Elias for four years and the separation was acrimonious. Despite this, Rana maintains the evidence about putting the property in Duaa's name, and states that Elias managed Rymal Road for her from 2015 until 2020.

[127] Rana testified that she personally rented the back unit at Rymal Road to a third-party tenant. To contradict her, the defendants produced several tenant leases for Rymal Road, which showed the name and signature of Elias as landlord. Elias testified that he found the tenants and signed those leases. Other than her bald testimony that she did it, there was nothing else produced to show Rana was even involved in securing the tenants for Rymal Road, or in any other aspect of the upkeep or management of that property. I accept the evidence of Elias on this issue.

[128] Further, Rana described the Rymal Road down payment variously as a loan or an investment and even as a gift to Elias. In the family proceedings Rana swore that she gave \$150,000 to Elias to buy *himself* Rymal Road after their separation, stating: "I even gave him approximately \$150,000 to buy a property on Rymal Road which is registered in the name of his sister, Duaa. That is where he has lived since I moved back from Bowmanville."

[129] In explaining that she *gave* the funds to her husband, post separation, to purchase his own residence, Rana was attempting (to advance her position in the family litigation) to distance Elias from a property at Magnificent Way. Rana's position at this trial, and in the family proceedings, was that her marriage to Elias was already over by the time *she* purchased Magnificent Way. She maintains that they were separated in 2011. Rana alleged an assault by Elias in June 2011, and it is agreed by the parties that he was subject to a non-communication bail after he was charged criminally for the assault. Elias signed a peace bond and was required to have no contact with Rana until November 2012. In the family proceedings, this position was intended to support her argument that when Magnificent Way was purchased in her name in 2014, it was not a matrimonial home and therefore is not relevant to an equalization of net family property.

[130] The trial decision in the family proceedings, later affirmed by the Court of Appeal in *Alsous v. Shahin*, 2024 ONCA 358, concluded that the date of separation was in 2019. The sale of Upper Sherman and purchase of Rymal Road both occurred in 2015, additionally the purchase of Magnificent Way occurred in 2014, all such events were prior to the 2019 separation date.

[131] In light of this, I reject Rana's evidence in relation to her involvement in Rymal Road. Rana's evidence is fraught with inconsistencies, both internally and in relation to her sworn evidence, and is generally implausible. By contrast, the evidence of Elias and Duaa are supported by the bank accounts in their names, the leases signed by Elias, by the fact that their parents resided at the property, and by the fact that Elias ran his business there.

Alan Sada

[132] In relation to Rymal Road, Mr. Sada testified that he was acting as agent for Elias, who intended to purchase the property, but that title went to Duaa in the end. Mr. Sada understood that the funding was going to come from someone in Israel to enable Elias to purchase the property, but the funds never arrived. Mr. Sada and Elias went to see Rana and convinced her to provide the downpayment. Mr. Sada stated that he did not have any discussions with Duaa about the purchase of Rymal Road.

[133] According to Mr. Sada, Rana wished to be added to title as security for the transaction. Mr. Sada and Elias convinced Rana to provide the money by promising that she would receive the rental money from the tenants and from Elias' rental of the garage for his appliance business.

[134] The evidence of Mr. Sada contradicted the evidence of Rana in some respects. No other witness testified that Elias was the original intended purchaser of Rymal Road.

[135] Mr. Sada said that Elias ran a used appliance business, and that Rana was his helper. He said that he and Elias convinced Rana to put up the down payment for Rymal Road by promising that Elias would rent the garage for *his* appliance business.

[136] I find that Mr. Sada was not credible in relation to some important facts, particularly in relation to the family's interactions regarding Rymal Road. In my view, he amended his recollection of the facts to corroborate Rana's position at trial.

Duaa Hadweh

[137] I accept some, but not all, of Duaa's evidence. Generally, she corroborated the detailed evidence of Elias in relation to the purchase and sale of Rymal Road. Duaa states that she and Bishara held title in Rymal Road as trustees for her father Ibrahim, who was the beneficial owner of the house. Her father asked that they put Rymal Road in their names, and they did.

[138] Duaa testified that she opened a bank account and gave the debit cards related to the account to Ibrahim and Elias for their use in managing the property. Elias managed the property and she had little to do with it, other than holding title.

[139] Duaa stated that her dealings in relation to Rymal Road were limited to discussions with Elias and her father. She did not have any discussions with Rana about the purchase of Rymal Road. She did not have much detail to offer about the financing of Rymal Road, other than that it was her understanding that the property was purchased by her father, using his own funds. Duaa testified that she was aware that her parents had put other properties in the names of other family members.

[140] I accept Duaa's evidence about her purchase of Rymal Road, as well as her evidence that Ibrahim and his wife made Rymal Road their principal residence.

[141] Duaa confirmed that Elias was in the appliance business, and that he started his business in Honduras before he married Rana. She also confirmed that Elias used Rymal Road to operate his business, and that her parents lived at Rymal Road.

[142] I did not accept all of Duaa's explanations about the particulars of the bank account held by her and Elias, which was used to pay the mortgage and other expenses in relation to Rymal Road. I believe the Court only heard a portion of the evidence in relation to where the various funds coming into that account originated from. However, notwithstanding that there may be some unexplained sources of income into the account, Rana did not suggest that she deposited any funds of her own in after the opening of the account, and I do not find otherwise that the source of those funds bears on the issues for my consideration.

[143] Duaa provided some contradictory evidence as to what she knew about Rana's parents. She indicated at trial that she knew nothing about them, however, she was reminded by her evidence in discovery that she had previously stated them to be restaurant owners. Duaa only met Rana's grandfather once, when he visited from Palestine one year after Rana and Elias married.

[144] Duaa confirmed Elias' evidence that their parents both died intestate.

[145] Duaa had no evidence to give regarding the financial arrangements between her father and Rana in relation to Upper Sherman.

[146] Overall, in relation to the matters at issue in this trial, Duaa's evidence supports and corroborates the evidence of Elias, and is corroborated by the available documentation, including the leases on Rymal Road and the bank records.

Has the Presumption of Trust Been Rebutted?

[147] Rana argues – in the alternative – that if I find that the funds to purchase Upper Sherman were Ibrahim's funds, then I should find that Ibrahim intended to gift Upper Sherman to Rana. In such a case Rana would have rebutted the presumption of trust and shown that the proceeds of sale were intended for her own use.

[148] Rana relies on the fact that the funds were provided to her, that she had sole title to Upper Sherman, and that her banking records after the sale of Upper Sherman show that she and Elias spent some of the funds from the sale of Upper Sherman for their own personal use.

[149] Elias explained that his father was a generous man who made gifts to his children. Ibrahim wanted to maintain his capital, but he shared the profits from his investments with his family. On the sale of Upper Sherman, his father only recovered his original investment, and much of the profit was gifted to Elias and Rana. This evidence was corroborated by the evidence of Khadir, who testified to a similar arrangement with his father regarding Cumberland Avenue.

[150] Ibrahim had seven children. It is not a realistic or credible proposition, based on the evidence before me, that Ibrahim would have preferred to make such a substantial gift to his daughter-in-law over his two sons or five daughters. Although the evidence shows that Ibrahim did well enough to purchase a few properties, there is no evidence to support an intention to make such a disproportionate gift to his daughter-in-law.

[151] Having found that Ibrahim's funds were used to purchase Upper Sherman, I find that Rana has not rebutted the presumption that she held the property in trust for him, on a balance of probabilities.

The Dedication Instrument

[152] In November 2011, on or about the date of Rana’s birthday, Elias hand wrote and signed a document titled a “Dedication instrument”. In it, he declared that he gave all his possessions over to Rana, and that Rymal Road belonged to her. I have not taken this document into account as having any persuasive value in this proceeding.

[153] I accept the evidence of Elias that the dedication instrument was written at a time when he and Rana were engaged in one of many disputes, and it was his effort to gain peace. He testified that Rana was interested in money, and he wanted to appease her. I have no evidence that he otherwise took any steps after signing that document on Rana’s birthday, to actually transfer anything to her. In any event, he lacked the capacity to transfer Rymal Road to her, since title was in the name of his sister and brother-in-law.

[154] The couple’s relationship was tumultuous, and money appears to have been a source of contention. This document, signed by a distraught husband who had no authority in law to bind Rymal Road, although contradictory and confusing, does not vary my assessment of the evidence that, on a balance of probabilities, Ibrahim was the source of the funds and the beneficial owner of them.

Ibrahim’s Estate

[155] The defendants argue that if I agree that Rana does not have any interest in Rymal Road then the property is theirs. I am advised that Ibrahim died intestate. If that is that case, the distribution of his estate would be pursuant to Part II of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26.

[156] I understand Ibrahim’s wife survived him. I have no evidence as to the distribution of her estate (assuming she had an interest in Ibrahim’s estate). The issue of these distributions in not before me.

CONCLUSION

[157] All aspects of the plaintiff’s claim are dismissed.

[158] On a balance of probabilities, I find that Ibrahim provided the funds for the purchase of Upper Sherman and that Upper Sherman was held in trust by Rana, for Ibrahim. Rana has not rebutted the presumption of trust, on a balance of probabilities. Further, I find that Ibrahim directed that \$200,000 from the sale of Upper Sherman be used to facilitate his purchase of Rymal Road. Finally, I find on a balance of probabilities that Rymal Road was held in trust by the defendants

Duaa and Bishara for Ibrahim, and not for Rana, and that Rana has neither a beneficial interest, nor a trust interest in the property.

[159] In relation to the distribution of the remaining proceeds of the sale of Rymal Road, which are currently held in trust by Graydon Sheppard Professional Corporation, I direct that they be paid to the estate trustee for Ibrahim, or, if nobody has been appointed, the proceeds shall be paid into court to credit of Ibrahim's estate.

[160] I direct that a copy of these reasons be provided to anyone authorizing the distribution of Ibrahim's estate.

COSTS

[161] I would urge the parties to agree on costs. As per the order of January 21, 2021, the costs of attendances of December 3, December 10, and December 17, 2020, were reserved to be determined at the conclusion of the trial. The costs of December 10, 2020, were fixed at \$300 plus HST, payable as per my final order.

[162] If the parties are unable to agree, then costs submissions may be made as follows.

- a. Within 15 calendar days of the distribution of these reasons to counsel, the defendants shall serve and file their written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers;
- b. The plaintiff shall serve and file its responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 25 calendar days of the distribution of these reasons;
- c. The defendant's reply submissions, if any, are to be served and filed within 30 calendar days of the distribution of these reasons, and are not to exceed two pages;
- d. If no submissions are received within times allocated by either party, said party shall be deemed to have no submission; and
- e. If no submissions are received by either party, the parties will be deemed to have resolved the issue of the costs, and costs will not be determined by me.

Antoniani J.

Released: September 13th, 2024

CITATION: Alsous v. Hadweh et al, 2024 ONSC 5037

COURT FILE NO.: CV-20-74557

DATE: 2024-09-13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Rana Alsous

Plaintiff

- and -

Bishara Hadweh and Duaa Hadweh

Defendants

REASONS FOR DECISION

Antoniani, J

Released: September 13th, 2024