

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sharma v. Parmar*,
2024 BCSC 2101

Date: 20241120
Docket: S204296
Registry: New Westminster

Between:

**Rajpal Sharma
Sushma Rani
Estate of Jagit Singh Jaswal, Deceased**

Plaintiffs

And

**Yashpal Parmar
Shree Mata Bhameshwari Durga Devi Society**

Defendants

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Plaintiffs:

R. Mpania

Counsel for the Defendant Shree Mata
Bhameshwari Durga Devi Society:

D.J. Taylor
M. Pendreigh

The Defendant, Yashpal Parmar Appearing
in Person:

Y. Parmar

Place and Dates of Trial:

New Westminster, B.C.
December 11-15, 2023
May 17, 2024

Place and Date of Judgment:

New Westminster, B.C.
November 20, 2024

Introduction

[1] In 2008, Rajpal Sharma was a Hindu priest leading a small community of devotees practicing their faith in a residential building owned by Yashpal Parmar. Mr. Sharma, Mr. Parmar and his wife, and other devotees to their guru and goddess Shree Durga Bhameshwari had been cast out of a different temple in 2006 after a legal battle over governance. By 2008, Mr. Sharma had formed the Shree Mata Bhameshwari Durga Devi Society (the “Society”), and he was looking for a location to set up a temple.

[2] Mr. Sharma identified two lots for sale near the intersection of 80th Avenue and 123rd Street in Surrey (the “Property”) as a potential site for the Society’s temple. He reached out to his friend and brother devotee Jagjit Jaswal (who lived in Houston, BC and followed the same guru) and Mr. and Mrs. Parmar to discuss purchasing the Property. Jagjit Jaswal agreed to contribute approximately \$100,000 (but no more) toward the down payment required for the \$1M purchase price. Mr. Sharma and Mr. Parmar agreed to match Jagjit Jaswal’s financial contribution. On June 30, 2008, Mr. Parmar purchased the Property in his name and secured financing for the balance of the purchase price.

[3] In 2018, Mr. Parmar transferred the Property to the Society (the “Transfer”) but remained responsible for the outstanding mortgage on the Property.

[4] Mr. Sharma and Jagjit Jaswal’s estate now seek to undo the Transfer and ask for a declaration that Mr. Parmar holds a two-thirds interest in the Property in trust for them. Mr. Sharma and Jagjit Jaswal’s estate rely on a trust agreement Mr. Sharma, Mr. Parmar and Jagjit Jaswal (the “Contributors”) signed on or about May 30, 2008 (the “Trust Agreement”).

[5] Despite what the Trust Agreement says, Mr. Parmar says he agreed to purchase the Property in his name to benefit the Society and that the Contributors had always intended to transfer ownership of the Property to the Society when the time was right.

[6] The outcome of the Property claims turns on a factual issue (whether the Contributors intended to buy the Property for the Society's benefit or their own) and a legal issue (whether the Trust Agreement displaces any oral agreement).

[7] As part of this action, Mr. Sharma also seeks damages against the Society for wrongful dismissal. Sushma Rani, Mr. Sharma's wife, claims against the Society for unpaid wages.

[8] The outcome of Mr. Sharma's claims turns in large part on admissions he made against interest in cross-examination at trial and his lack of credibility. I will make some comments on credibility before turning to my analysis of the key issues to be decided, which are as follows:

- a) Did the Contributors intend to buy the Property to benefit the Society or as a personal investment?
- b) Does the Trust Agreement displace any oral agreement between the Contributors?
- c) Did the Society terminate Mr. Sharma's employment, and, if it did, did the Society have just cause to terminate Mr. Sharma's employment?
- d) Was Ms. Rani an employee of the Society or a volunteer?

Credibility and reliability

[9] Credibility refers to the truthfulness of the witness; reliability relates to the accuracy of the testimony: *Ford v. Lin*, 2022 BCCA 179 at para. 104.

[10] In terms of assessing credibility, I have relied in particular on the factors identified as relevant by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013), including whether the witness changes his or her testimony during direct and cross-examination and whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.

[11] Overall, I found both Mr. Parmar and Ms. Parmar to be credible witnesses.

[12] Mr. Parmar's evidence was coherent and 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 v Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.). It made sense that the Property was purchased in Mr. Parmar's name given the circumstances. It made sense that Mr. Sharma and Jagjit Jaswal would want a document to reassure them that Mr. Parmar would not use the Property for his own purposes after what happened at the other temple. Mr. Parmar's conduct since purchasing the Property has (but for one exception) been consistent with what he said was the purpose for buying the Property. Mr. Parmar answered questions directly, and his evidence did not change from direct examination to cross-examination. Significantly, Mr. Parmar's position in this litigation results in no financial benefit to him. He has consistently acted for the benefit of the Society. Over many years, Mr. Parmar helped Mr. Sharma in a variety of ways without any obvious self-interest.

[13] Ms. Parmar is a religious person who trusted and supported the priest, Mr. Sharma, until his sexual misconduct with a devotee came to light in 2018. Ms. Parmar considered Mr. Sharma to be family. She and Mr. Parmar provided years of financial and other support to Mr. Sharma and his family. I accept Ms. Parmar feels sheepish for being so trusting of Mr. Sharma given the claims he is now making. I accept she signed blank checks at Mr. Sharma's request. Her evidence did not change on cross-examination.

[14] Mr. Sharma testified at trial with the assistance of a Hindi interpreter. In that respect, the comments of Justice Griffin in *Fu v. Zhu*, 2018 BCSC 9 are instructive:

[39] Some caution had to be exercised in assessing credibility because the witnesses were from another country and culture and did not speak English. Often cultural and linguistic differences can affect the demeanour of witnesses in ways not necessarily understood by the trier of fact. For this reason, I was hesitant to conclude that a witness was evasive, in case what appeared to be evasiveness could be due to language or cultural differences.

[40] I have approached the evidence aware that nuances might be lost in translation, both in terms of the translation of the question to the witness and

in the answer. Word choice and word order in a sentence might be an interpreter's preference and I have been careful not to form judgment based on the wording of a single answer. Rather, I have considered the whole tenor of the evidence in coming to conclusions as to the facts. In my view it would be a mistake to take a single passage from a witness's evidence as a conclusive admission against interest, given the nuances that might be lost in translation.

[41] As well, I have kept in mind that motives and conduct that might seem improbable to a person raised in a Canadian culture might not be improbable in another cultural context. The very structure of the transactions at issue in this case was unusual in the Canadian context, as it involved large sums of money changing hands over several years, without any written agreements in place or any common accounting practices. I have been mindful that different cultural contexts can affect the court's perspective as to inherent probabilities or improbabilities.

[42] On the other hand, certain characteristics probably cross all cultures, and that includes the instinct and ability to be self-serving in one's memory so as to advance one's own interests, especially when it comes to matters of money.

[15] The Society validly raises concerns about Mr. Sharma's credibility and the reliability of his evidence. Mr. Sharma's testimony was often difficult to follow, both when he testified in direct and under cross-examination. The challenges in following Mr. Sharma's testimony cannot be attributed entirely to the fact his testimony was interpreted. Particularly in cross-examination, Mr. Sharma had difficulty responding to questions directly. His evidence was internally inconsistent. He tried to resile from admissions made on discovery, citing possible misunderstandings arising from interpretation, which he did not identify before the admissions were put to him in cross-examination. I have approached Mr. Sharma's evidence with caution where it is not corroborated by reliable evidence.

[16] With these preliminary comments on credibility and reliability, I will turn to my findings of fact based on the evidence at trial and my analysis of the issues.

Background facts

[17] Mr. Sharma's parents donated him to a Hindu temple in India when he was 11 years old. His regular schooling stopped at grade 6.

[18] Mr. Sharma stayed at the temple until 1988, when he was 25 years old. He studied to become a Hindu priest and earned a Master of Arts in Sanskrit.

[19] Mr. Sharma arrived in Canada in January 2000. He came at the invitation of Vijay Jaswal, who came from the same village and same Hindu temple as Mr. Sharma. Vijay Jaswal brought Mr. Sharma to Canada to be the priest at a Hindu temple in Surrey.

[20] After three or four months, Mr. Sharma had a falling out with Vijay Jaswal. Mr. Parmar arranged for Mr. Sharma to work as priest at a Hindu temple in Abbotsford, where he received \$1000 per month and room and board. Mr. Sharma worked in Abbotsford for three years until Mr. Parmar became the president of the society in charge of the Surrey temple previously run by Vijay Jaswal. At that point, Mr. Parmar invited Mr. Sharma to return to the Surrey temple.

[21] Mr. Parmar served as president of the Surrey temple for approximately two years with Mr. Sharma as priest. Vijay Jaswal successfully brought a lawsuit to regain control of the society in charge of the Surrey temple, and he ejected Mr. Parmar, Mr. Sharma and those affiliated with them in 2006.

[22] After being ejected from the Surrey temple, Mr. Parmar allowed Mr. Sharma to live in and lead prayer services for a group of devotees at a residential property Mr. Parmar owned in Delta, B.C. The Delta property was not zoned for religious services, and Mr. Parmar started receiving inquiries from the municipality. This led to the search for a suitable site to establish a Hindu temple devoted to their guru and goddess Mata Bhameshwari.

[23] On May 23, 2008, Mr. Parmar signed the contract of purchase and sale to buy the Property for \$1,040,000, and he paid the initial deposit of \$50,000. Mr. Parmar retained lawyer Dorwin Cho of Kaminsky & Company to facilitate the purchase. Jagjit Jaswal gave a cheque for \$115,000 to Kaminsky & Company prior to the closing date of June 30, 2008. Mr. Parmar secured financing of \$714,000 toward the purchase price of the Property. Mr. Sharma contributed \$115,000 and

Mr. Parmar contributed \$67,667.46 to pay the balance of the purchase price and closing costs. I will review additional circumstances related to the search for and purchase of the Property later in these reasons.

[24] After the Property was purchased, the Society renovated one of the buildings on the Property for use as a temple. Mr. Sharma lived in a few rooms in the temple building. The other building on the Property was a house, which the Society rented out.

[25] Mr. Sharma was employed by the Society as priest for the temple on the Property. He led religious services and collected donations from devotees.

[26] Ms. Parmar is a very religious person and very dedicated to the guru and goddess Mata Bhameshwari. She was very involved in the Society from the outset, and she continues to sit on its board of directors. Ms. Parmar has motivated Mr. Parmar's involvement in the Society. Together Mr. and Ms. Parmar have volunteered many hours and donated large sums of money to the Society. Mr. Parmar paid the mortgage on the Property for the first few years, until devotee donations and rental income from the second building on the Property were enough to cover the Society's expenses.

[27] Ms. Parmar and her husband provided a great deal of support to Mr. Sharma from the time he first arrived in Canada until he and the Society parted company in 2018. Ms. Parmar helped Mr. Sharma become a permanent resident of Canada. Mr. and Ms. Parmar helped Mr. Sharma with his daily needs, including driving him places. When Mr. Sharma lived in Abbotsford for three years, Mr. Parmar would pick him up and bring him to Surrey for prayer meetings with devotees.

[28] In 2013, Mr. Sharma fell ill and had open heart surgery. Ms. Parmar and her husband worked to bring Ms. Rani (Mr. Sharma's wife) and their son to Canada from India. Ms. Parmar renovated and furnished the residence on the Property to make it into suitable accommodation for Ms. Rani and their son. Mr. Sharma continued to

live in rooms in the temple, though he often shared meals with his wife and son. Ms. Parmar helped Ms. Rani become a permanent resident of Canada.

[29] In 2018, Ms. Parmar learned from a devotee that Mr. Sharma had invited a woman into his office and asked her to open her blouse in order to measure her breasts. Ms. Parmar was told that the woman had complied because she trusted Mr. Sharma as her priest. Ms. Parmar confronted Mr. Sharma with this allegation. He admitted it was true. The Society notified police and suspended Mr. Sharma's work as priest while police investigated. The Society removed Mr. Sharma from his living quarters in the temple building and allowed him to live in the residence on the Property with his wife and son. A few days later, in May 2018, Mr. Sharma and his family left the residence.

Analysis

[30] The key legal issues in this case require consideration of the following:

- a) the enforceability of the oral agreement between the Contributors and the Trust Agreement; and
- b) the existence of employment relationships between the Society and each of Mr. Sharma and Ms. Rani and whether they were wrongfully dismissed.

[31] I will now return to the circumstances surrounding the purchase of the Property and the central issue in this lawsuit.

a) Did the Contributors intend to buy the Property to benefit the Society or as a personal investment?

[32] I am satisfied that the Contributors donated the funds toward the purchase of the Property for the benefit of the Society, with the intention of building a temple and eventually transferring the Property to the Society. When the Property was purchased, the Contributors agreed that Mr. Parmar would determine when the Property would be transferred to the Society. Although the transfer of the Property to the Society would take place at a later date, the Contributors agreed from the outset that the Property would be transferred. Mr. Parmar did not require any additional

consent or permission from Mr. Sharma or Jagjit Jaswal to carry out the Contributors' original intention. In any event, I find that both Mr. Sharma and Jagjit Jaswal encouraged Mr. Parmar to transfer the Property to the Society in 2018.

[33] The events leading up to the purchase of the Property are consistent with a collective intention of establishing a new temple dedicated to the guru and goddess Mata Bhameshwari. During the time Mr. Sharma was leading prayer services at Mr. Parmar's house in Delta, Mr. Sharma and Mr. Parmar considered other options for establishing a temple, including buying existing churches and a school building. Eventually, Mr. Sharma found the Property, which was ideally located in a neighbourhood with other houses of worship and a significant South Asian population. The Property was made up of two adjacent lots, each of which had a building on it. The proposed purchase of the Property was for the purpose of eventually building a Hindu temple.

[34] The Society did not have the financial resources to pay the Property's purchase price of approximately \$1M. Mr. Sharma told Ms. Parmar about the Property, and she spoke to her husband. Mr. Sharma also approached Jagjit Jaswal about possibly contributing to the purchase price. Jagjit Jaswal was prepared to contribute toward the down payment, but he did not want any ongoing obligation. Mr. Sharma said he would come up with his share of the down payment, and Mr. Parmar agreed to match the contributions of the other two. The Contributors intended to buy the Property in order to have a place for the Society to build a Hindu temple. The Contributors' contributions toward the purchase price were in essence donations to the Society.

[35] Mr. Sharma's evidence at trial about the Contributors' initial intention was confusing and sometimes contradictory. Mr. Sharma testified that the Contributors decided to purchase the Property in order to build a Hindu temple. Mr. Sharma and Mr. Parmar wanted to buy land to avoid a recurrence of their previous experience of being expelled from the temple established by Vijay Jaswal; Jagjit Jaswal agreed to contribute on that basis. Later, Mr. Sharma told other Society members that his

contribution to the Property was a donation to the Society. Mr. Sharma confirmed at trial they were buying the Property for a religious purpose. However, in cross-examination, Mr. Sharma declined to confirm as truthful his evidence on discovery that the Contributors discussed that they were prepared to do things to benefit the Society and that the purchase of the Property was not to benefit themselves. In cross-examination, Mr. Sharma declined to confirm as truthful his examination for discovery answer, “[the Property] was purchased for purpose of society for the temple”. When asked in cross-examination about the Contributors’ conversations before going to the lawyer’s office, Mr. Sharma agreed the Contributors wanted to donate the Property to the Society later on. However, at another point in cross-examination, Mr. Sharma claimed he may not have understood the following question and answer from discovery:

- Q. Okay. Do you recall telling Mr. Parmar’s wife that you thought it would be a good idea to purchase these properties for the society?
- A. Yes, I might have said so. That’s why we purchased it.

[36] It is difficult to reconcile Mr. Sharma’s evidence regarding the Contributors’ initial intention; however, I am satisfied Mr. Sharma agreed to contribute to the purchase of the Property to build a temple dedicated to the guru and goddess Mata Bhameshwari where the members of the Society could worship and engage in Society activities and that the Property would be transferred at a later date to the Society. Mr. Sharma likely did not anticipate that he would not be part of the Society ten years after the Property was purchased, which may explain his current equivocation. I accept Mr. Parmar’s evidence that the Contributors’ contribution to the purchase price were donations to the Society and that none of the Contributors expected to have their contribution refunded at a later date.

[37] The Contributors agreed that the Property would be purchased in Mr. Parmar’s name, as he was the only one willing and able to secure financing for the balance of the purchase price. The Society had no assets and no credit; it was ineligible for financing. Mr. Sharma was not a permanent resident, and the bank would not lend money to purchase the Property if he was on title. Jagjit Jaswal was

not prepared to contribute beyond the down payment, and he was unwilling to assume any mortgage obligation for the Property. At his wife's urging, Mr. Parmar agreed to borrow the remaining funds required to complete the purchase of the Property and assume the mortgage obligation. Mr. Parmar received no personal financial benefit in doing so, and taking on this loan reduced his borrowing capacity for his property development business.

[38] The Contributors agreed Mr. Parmar would oversee the development of the Property and the construction of the Hindu temple on the Property, as he had property development experience. As part of that process, the Contributors gave Mr. Parmar authority to determine the best time to transfer the Property to the Society. In cross-examination, Mr. Sharma agreed that it was always his intention (including when he signed the Trust Agreement) that the Property would be donated to the Society whenever Mr. Parmar told him the time was right.

[39] Post-purchase conduct was consistent with the Contributors' original intention for the Property. One of the buildings on the Property was renovated for use as a temple and living quarters for Mr. Sharma. The Society members began worshipping in the temple building. Mr. Parmar took steps and incurred costs to obtain approval from the City of Surrey for building a new temple on the Property. Society membership grew, and members contributed to the Society's costs. Mr. Parmar paid the mortgage on the Property for the first two years, after which contributions from Society members and rental income for the second building on the Property were sufficient to pay the mortgage. Mr. Parmar relied upon the fact that Property had been purchased for the benefit of the Society when he continued to donate money to cover the costs of the Property and when he took steps to develop the Property.

[40] The plan to build a new temple stalled by 2012, as the Society did not have adequate funds to move forward with developing the Property and securing financing to build. The Society continued to worship in the temple building on the Property with Mr. Sharma as priest.

[41] After the falling out between Mr. Sharma and the Society in May 2018, Mr. Sharma and Jagjit Jaswal encouraged Mr. Parmar to transfer the Property to the Society. Rumours that Mr. Parmar had forced Mr. Sharma out in order to use the Property for his own benefit swirled within the community. To quell those rumours and as requested by Mr. Sharma and Jagjit Jaswal, Mr. Parmar effected the Transfer on July 20, 2018, which resulted in the Society owning the Property subject to the outstanding mortgages in Mr. Parmar's name. The Transfer was consistent with the Contributors' intentions.

b) Is the Trust Agreement enforceable?

[42] I find the Trust Agreement is not enforceable. I am satisfied the Trust Agreement does not reflect the agreement between the Contributors regarding their contributions to the purchase of the Property. Neither Mr. Sharma nor Jagjit Jaswal relied upon the Trust Agreement when they contributed to the purchase price of the Property.

[43] At time of the Property was purchased, Mr. Sharma trusted Mr. Parmar. Mr. and Mrs. Parmar had been Mr. Sharma's supporters and friends for eight years. They worshiped the same guru and worked together for her purposes.

[44] Mr. Parmar and Mr. Sharma had had the negative experience of being ejected from Vijay Jaswal's temple. Because the Property would have to be registered in his name, Mr. Parmar wanted to reassure Mr. Sharma and Jagjit Jaswal that he would not take their money and then use the Property for his own purposes. Mr. Parmar understood the Trust Agreement was "some sort of guarantee" that he would not run away with the Property. Mr. Sharma confirmed in his direct examination that the purpose of having a written agreement was so that they would not be suspicious against each other. Significantly, Mr. Sharma did not testify that his payment of his share of the deposit was conditional on the Contributors entering the Trust Agreement.

[45] Mr. Cho prepared the trust agreement after Mr. Parmar contacted him about purchasing the Property. Mr. Cho had done legal work for Mr. Parmar as a property

developer in the past. Mr. Cho understood that the whole purpose of buying the Property was to develop it and build a temple and one day transfer the Property to the temple in some manner. He was not aware the Society existed at that time. Mr. Cho prepared the Trust Agreement because Mr. Parmar would be purchasing the Property in his name but with contributions from the other two. Mr. Parmar asked Mr. Cho to prepare a document to reassure Mr. Parmar and Jagjit Jaswal that Mr. Parmar would not run away with their money.

[46] The Trust Agreement does not reflect the Contributors' intentions with respect to the Property nor their agreement. I am satisfied Mr. Cho prepared the Trust Agreement without a clear understanding of the relationship between the Contributors and their intention to donate their contributions for the benefit of the Society. Further, none of the Contributors read the Trust Agreement before signing it. Mr. Parmar trusted that Mr. Cho had prepared a "guarantee" to reassure the other two Contributors, which is how Mr. Parmar explained the document to Mr. Sharma and Jagjit Jaswal in Punjabi before they signed it. I prefer Mr. Parmar's recollection of the Contributors' meeting with Mr. Cho over Mr. Cho's memory of that meeting. Mr. Cho may choose to believe that he would have explained the Trust Agreement to the Contributors, but I find he did not; if he had done so, Mr. Cho would have discovered significant differences between the Trust Agreement and the Contributors' intentions.

[47] In particular, the Trust Agreement suggests that all three Contributors would be jointly liable for the mortgages, but that was never the intention and that is not what in fact occurred. Jagjit Jaswal was not prepared to contribute to the Property beyond his initial contribution, and he was not prepared to assume a mortgage obligation in respect of the Property. Mr. Parmar was the sole debtor on the mortgages on the Property, and he paid the mortgages and any shortfall until the Society had sufficient funds to pay the mortgage. Further, the parties agreed that Mr. Parmar could transfer the Property to the Society when Mr. Parmar determined the time was right for doing so, without further consultation with Mr. Sharma or Jagjit Jaswal.

[48] The Trust Agreement included the following terms that are inaccurate or incompatible with the Contributors' intentions:

- a) Recital C says the Contributors agreed to acquire the Property by registration of the title in the name of Mr. Sharma and Jagjit Jaswal for financing reasons, when in fact the Property was to be registered in Mr. Parmar's name for financing reasons;
- b) Recital D says the terms and conditions of the loan from Coast Capital had been reviewed and approved by Mr. Sharma and Jagjit Jaswal, but Mr. Parmar dealt with Coast Capital without involving the other two;
- c) Mr. Sharma and Jagjit Jaswal appointed Mr. Parmar as their nominee, agent and bare trustees to hold legal title and to manage and deal with the Property *for the sole benefit and account of* Mr. Sharma and Jagjit Jaswal, all at the direction of Mr. Sharma and Jagjit Jaswal and strictly in accordance with the Trust Agreement, when in fact Mr. Sharma and Jagjit Jaswal authorized Mr. Parmar to deal with the Property for the benefit of the Society;
- d) Section 3 provides that Mr. Parmar would be reimbursed for any payments or disbursements made by Mr. Parmar in respect the Mr. Sharma's and Jagjit Jaswal's interest of the Property, when in fact Mr. Parmar paid the mortgage for two years and paid many of the development costs without seeking or expecting reimbursement from Mr. Sharma or Jagjit Jaswal; and
- e) Section 5 provides that each of Mr. Sharma and Jagjit Jaswal agrees to be responsible for one third of loan payments and indebtedness pursuant to the Coast Capital loan and mortgage, whereas Jagjit Jaswal was not prepared to pay anything beyond his original donation and Mr. Sharma did not pay one third of the loan payments or assume responsibility for one third of the indebtedness.

[49] When Mr. Sharma signed the Trust Agreement, his understanding of the agreement between the Contributors was that all three of them would donate their

shares in the Property to the Society when Mr. Parmar told them it was time to make the donation. This understanding is not reflected in the Trust Agreement.

[50] In short, I am satisfied that the Trust Agreement bore little if any resemblance to the real agreement between the Contributors, which is reflected in their oral agreement to donate funds for the purchase of the Property for the benefit of the Society to build a temple. In these circumstances, it would be unreasonable to enforce a written contract that none of the parties intended to define their relationship: *Brown v. Joswig*, 1991 CanLII 918 (B.C.S.C.).

[51] Alternatively, and in any event, I am satisfied that the Trust Agreement was only part of the arrangement between the Contributors. Both Mr. Sharma and Mr. Parmar understood the Property would be donated to the Society when Mr. Parmar decided the time was right. Both acted upon that understanding when they donated funds toward the purchase price of the Property. Until the lawsuit was filed on July 20, 2018 (coincidentally, the same day the Transfer occurred), none of the Contributors sought to enforce the Trust Agreement. Jagjit Jaswal's estate did not identify an interest in the Property in probate proceedings, consistent with a donation to the Society rather than a personal investment.

[52] In summary, I am satisfied that the Trust Agreement does not reflect the true agreement between the Contributors. The Contributors' intention from the outset was to register title to the Property in Mr. Parmar's name until the time was right to transfer ownership to the Society. The Contributors understood the Trust Agreement was a guarantee that Mr. Parmar would not run away with their donations and use the Property for his own benefit. None of the Contributors relied upon the terms of the Trust Agreement when making their donations. It was only much later, after the falling out between Mr. Sharma and the Society, that one of Mr. Sharma's friends explained to him what the Trust Agreement said, and he filed this action.

c) Was Mr. Sharma wrongfully dismissed?

[53] Mr. Sharma has failed to prove he was wrongfully dismissed. I find that the Society had just cause for terminating Mr. Sharma.

[54] Mr. Sharma was employed as a priest by the Society starting in approximately 2007. There was no written employment agreement. I find the document tendered by Mr. Sharma that purported to be an employment contract was fabricated. I accept Mr. Parmar's evidence that he did not enter into a written employment contract on behalf of the Society with Mr. Sharma. I accept Mr. Parmar's evidence that he did not sign the purported employment contract. That said, I accept that Mr. Sharma was employed by the Society as priest. He was paid a salary and received room and board.

[55] In 2018, Ms. Parmar confronted Mr. Sharma with an allegation that he had sexually assaulted a devotee. To her surprise, Mr. Sharma admitted the circumstances of the complaint and suggested he had assaulted a total of 15 or 20 women. Ms. Parmar convened a meeting of the Society's board of directors. The board agreed that the confirmed incident should be reported to the police. The board also decided that Mr. Sharma should not be permitted to continue living in the temple. The board of directors asked Mr. Sharma to move out of the temple but let him reside with his wife in the second building on the Property. Ms. Parmar testified that Mr. Sharma's employment was terminated when he was asked to leave the temple. A short time later, Mr. Sharma and his family decided of their own accord to leave his wife's residence.

[56] I am satisfied that Mr. Sharma's admitted misconduct – touching the breasts of one devotee and sexual contact with 15 to 20 other women by a priest in a position of trust – was sufficiently egregious to warrant dismissal: *Cho v. Café La Foret Ltd.*, 2022 BCSC 1560 at para. 45, aff'd 2023 BCCA 354. The admitted sexual contact with a devotee was a fundamental breach of the employment contract. Mr. Sharma was in a position of trust as the priest of the community. The courts have recognized that a spiritual leader stands in a fiduciary relationship to congregants and that the power imbalance means there can be no consent to sexual contact: *Anderson v. Molon*, 2020 BCSC 1247 at para. 181; *K.W. v. Pornbacher*, 1997 CanLII 12565 (B.C.S.C.) at para. 45. Mr. Sharma admitted at trial that he had touched the devotee's breasts, though he downplayed the significance of the

conduct and suggested it was mutual. Given the power imbalance, consent by the devotee to such sexual contact was not possible. The Society was reasonably concerned about harm to devotees and the risk of harm to the Society's reputation arising from Mr. Sharma's conduct. Dismissal was warranted.

d) Was Ms. Rani wrongfully dismissed?

[57] Ms. Rani failed to prove on a balance of probabilities that she was employed by the Society, and as a result she could not be wrongfully dismissed. Any services Ms. Rani provided to the Society were done on a volunteer basis, similar to work done by other volunteers for the Society. The Society did not hire Ms. Rani as an employee.

[58] I accept that Ms. Parmar signed an "employment letter" for Ms. Rani to help with her immigration status. Mr. Sharma was like family to Ms. Parmar, and she was trying to help the priest and his family. Ms. Parmar wanted to do whatever was best for the temple, so she signed the letter purporting to offer Ms. Rani a job with the Society.

[59] Further, I accept that the Society did not authorize the pay stub that was issued to Ms. Rani on June 30, 2014 showing net pay of \$1574.33 or the cheque issued to Ms. Rani on April 30, 2015 for \$1574.33. I find that it was likely Mr. Sharma who instructed the Society's accountant to issue the pay stub. I accept that Ms. Parmar signed blank cheques at Mr. Sharma's request (because she trusted him) and that Mr. Sharma likely issued the cheque to Ms. Rani without authority from the Society.

[60] Ms. Rani failed to prove on a balance of probabilities that she was employed by the Society and on what basis. She was vague in her testimony about the terms of her employment with the Society. She claims that she was removed from the Society's payroll in 2016 when she received her permanent residency, which suggests that any "employment" may have been contrived to assist with her application for permanent residency. Ms. Rani says that she continued to work for the Society even after she was removed from the payroll in 2016: this change was

not explained. Ms. Rani was not clear about whether she expected to be paid for any work she did. Strangely, she says she only received one paycheque but she continued to work without complaint. At the same time, she is unable to explain her income tax returns which show she received employment income in 2015 and 2016 but not 2017. Ms. Rani says her husband instructed the accountant to prepare her income tax return. In short, Ms. Rani's evidence about her employment with the Society was not coherent or corroborated by documents or even by her husband, the priest. Ms. Rani fails to meet the requisite standard of proof.

Conclusion

[61] The claim of the plaintiffs Rajpal Sharma and the estate of Jagjit Jaswal for an interest in the Property is dismissed.

[62] Rajpal Sharma's claim for wrongful dismissal is dismissed.

[63] Sushma Rani's claim for wrongful dismissal is dismissed.

[64] The defendants are entitled to their costs, subject to any offers or other matters that may require an adjustment to their costs entitlement. If the parties wish to address costs, they may arrange with court scheduling in the next 30 days to make submissions before me for this purpose.

"Lamb J."