IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Avis Homes Limited v. Sidhu,*
2025 BCSC 1282

Date: 20250710
Docket: S234346
Registry: New Westminster

Between:

Avis Homes Limited

Plaintiff

And

Karamjeet Kaur Sidhu

Defendant

-and-

Docket: S245646
Registry: New Westminster

Between:

Real Deal Homes Limited

Plaintiff

And

Avis Homes Limited

Defendant

Before: The Honourable Justice K. Loo

Reasons for Judgment

Counsel for Avis Homes Limited:	M.L. Drouillard
Counsel for Real Deal Homes Limited and Karamjeet Kaur Sidhu:	J. Shragge
Place and Date of Trial:	New Westminster, B.C. March 24 – April 2, April 7-8, 2025
Place and Date of Judgment:	New Westminster, B.C. July 10, 2025

Table of Contents

Introduction

[1] This proceeding arises from a dispute over the purchase and redevelopment of a residential property located on Woodwards Road in Richmond (the "Property").

[2] The individuals involved in the dispute are Kuljit Dhillon, the principal of Avis Homes Ltd., on the one hand, and his brother-in-law, Balraj Sidhu, the principal of Real Deal Homes Ltd., and Karamjeet Sidhu, who is Mr. Dhillon's sister and Mr. Sidhu's spouse, on the other. Ms. Sidhu, who played a large part in the events giving rise to this action, acknowledged that she was an "agent" for Real Deal despite not having any official role in that company.

Background facts

[3] Prior to 2016, Real Deal and Avis successfully developed five or six residential properties together, without other parties. They were also involved in developments of other properties together with third parties.

[4] In early 2016, Real Deal and Avis decided to redevelop the Property. Avis and Real Deal entered into an agreement regarding the purchase and development of the Property, but the exact terms of that agreement are in dispute. Avis claims that it had a 50% beneficial ownership interest from the outset, while Real Deal characterizes the arrangement as a "50-50 partnership" or a profit-sharing venture. Both parties agree that they were required to contribute funds for the purchase and the redevelopment.

[5] On March 11, 2016, Ms. Sidhu purchased a bank draft in the amount of $120,000, with which she paid the deposit to purchase the Property.

[6] On April 28, 2016, Avis deposited $465,000 into Ms. Sidhu's account.

[7] On April 29, 2016, the Property was purchased in Ms. Sidhu's name. The Property was paid for using the $465,000 contributed by Avis, $304,958.84 from Ms. Sidhu, the earlier deposit of $120,000 made by Ms. Sidhu, and mortgage proceeds in the amount of $1,560,000. Khalsa Credit Union granted a mortgage to Ms. Sidhu

with respect to the Property. I note that the Registrar has certified that the total purchase price was $2,448,892.55, although the figures set out in this paragraph total $2,449,958.84. This minor discrepancy is not explained on the evidence, and I will use the total certified by the Registrar subsequently in these reasons.

[8] Starting in about September 2016, Avis and Real Deal caused a new house to be built on the Property. The parties agreed that Real Deal would be primarily responsible for the redevelopment.

[9] In December 2016, the Canada Revenue Agency (CRA) notified Mr. Sidhu that it intended to conduct a tax audit with respect to Goods and Services Tax and income tax payable on two properties referred to by the parties as the Lancing Road Property and the West 38th Ave Property (the "Other Properties"). The Lancing Road Property was developed by Avis and/or Mr. Dhillon and Real Deal and/or Mr. Sidhu. The West 38th Ave Property was developed by Avis and/or Mr. Dhillon, Real Deal and/or Mr. Sidhu, and a realtor, Caroline Hong, and/or her personal real estate corporation.

[10] The construction and other redevelopment expenses incurred in relation to the new house on the Property totalled $1,024,283.09. Avis did not contribute any funds during the course of the redevelopment, but Mr. Dhillon testified that he provided expertise and services in relation to the building of the house.

[11] In February 2018, the redevelopment of the Property was completed and it was listed for sale at $4,480,000.

[12] On December 20, 2018, Mr. Dhillon paid $300,000 to Ms. Sidhu by way of cheque. On May 5, 2019, he paid $250,000 to Ms. Sidhu by way of a second cheque. In these reasons, I will refer to these cheques, totalling $550,000, as the "Cheques."

[13] The parties do not agree about the purpose of the Cheques. Avis submits that they were for redevelopment expenses in respect of the Property, while Real Deal and Ms. Sidhu submit that they were payments related to the tax audit.

[14] In respect of the second Cheque, the parties signed a loan agreement in May 2019, which purported to show a loan in the amount of $250,000 by Mr. Dhillon to Ms. Sidhu.

[15] By letter dated April 2, 2019, the CRA advised Real Deal that it owed $578,290 in GST in respect of the Other Properties.

[16] The parties did not receive any offers for the Property between February 2018 and March 2020, despite several price reductions.

[17] In March 2020 and subsequently, the parties received a few offers for the Property, but those offers were, in the parties' view, insufficient.

[18] During 2020, Ms. Sidhu and Mr. Dhillon attempted to negotiate an agreement by which Ms. Sidhu or Real Deal would buy out the interests of Mr. Dhillon and Avis in the Property, but the parties did not reach an agreement.

[19] In May 2020, Mr. Sidhu received a notice of assessment from CRA stating that he owed the CRA $1,116,000 in income tax as a result of gains realized on the Other Properties. This sum was payable by September 1, 2020.

[20] In June 2020, the Property was taken off the market.

[21] On September 9, 2020, Real Deal, with the consent of Avis, purported to convey the beneficial interest in the Property to Ms. Sidhu for $2,700,000. Ms. Sidhu now says that this sale price was chosen to minimize GST and not because it represented an agreed-upon price for the Property. Mr. Dhillon says that he did not consent to this transfer and that he was not aware of the transfer document until it was attached to an affidavit in this proceeding in 2021.

[22] In October 2020, there was a meeting attended by the parties and Tarsem Bhangle, a family friend, who sought to facilitate or mediate the dispute between the parties. At around this time, Mr. Dhillon told Ms. Sidhu that she should not move into the Property until an agreement between them had been documented and signed.

[23] Mr. Sidhu and Ms. Sidhu moved into and have resided in the Property since November 2020.

[24] In December 2020, Mr. and Ms. Sidhu listed both their family home, referred to as “Berry Road,” and the Property for sale. Berry Road sold almost immediately, and the sale proceeds were used, in part, to satisfy the outstanding debt to CRA arising from the tax audit and to pay down the mortgage on the Property.

Issues

[25] The parties characterize the issues differently. In my view, the following issues are to be determined in this action:

a) What was the total cost of the purchase and redevelopment of the Property, and what amount did each party contribute to that total cost? In this regard, the following sub-issues will be considered:

   i. Is $18,000 paid by Real Deal for furniture to stage the Property properly characterized as a redevelopment cost?

   ii. Is Ms. Sidhu or Real Deal entitled to recover as a redevelopment cost all or some of the interest incurred on two lines of credit used to finance the redevelopment?

   iii. Was the mortgage in the amount of $1,560,000 a contribution to the redevelopment cost by Ms. Sidhu?

   iv. Were the Cheques contributions by Mr. Dhillon or Avis to the redevelopment cost?

b) What remedies are appropriate to separate the interests of the parties? In this regard, the following sub-issues must be considered:

   i. Was the sale of the beneficial interest in the property to Ms. Sidhu valid such that it ended the joint venture?

ii. Was there an agreement between the parties that their interests in the Property would be divided based on its value in 2020?

iii. What agreement did the parties make with respect to the Property, at the outset?

iv. In view of the foregoing, does the *Partition of Property Act*, R.S.B.C. 1996, c. 347 [*PPA*] apply, and if so, how?

v. Is Ms. Sidhu or Real Deal liable to Avis in unjust enrichment?

Credibility issues and the drawing of an adverse inference

[26] Both parties sought to impugn the credibility of the other. In my view, although I have significant concerns about the reliability and credibility of the witnesses who testified at this trial, it is not necessary to make any general pronouncements in this regard.

[27] There are only a few issues that require the Court to decide whether the evidence of one witness or another ought to be preferred. The most important of these issues relates to the purpose of the Cheques. As will be seen below, I have addressed the credibility of the parties in the course of that analysis, but I have also resolved that issue based in large part on the contemporaneous correspondence.

[28] Broadly speaking, it is preferable to make factual findings without relying solely on findings of credibility. In that regard, it is important to recall the words of Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.), wherein he held:

> … In short, the real test of the truth of the story of a witness in such a case must be its 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.

[29] Avis submits that the Court ought to draw an adverse inference as the result of Real Deal and Ms. Sidhu's decision not to call Mr. Sidhu as a witness. Avis argues that Mr. Sidhu was the only witness who might provide an explanation of the

position taken by him in the tax action, described below in these reasons. It argues that it is significant that Real Deal and Ms. Sidhu did not make this decision until all of the other witnesses in the trial had completed their testimony.

[30] In my view, it would not be appropriate for this Court to draw an adverse interest against Real Deal and Ms. Sidhu in these circumstances. There was no undertaking given by Real Deal or Ms. Sidhu to call Mr. Sidhu. Mr. Sidhu was in the courtroom for most or all of the trial. If Avis suspected that Mr. Sidhu would give evidence unfavorable to himself and/or Real Deal, it was open to Avis to call him as an adverse witness. Further, Mr. Sidhu gave evidence on an examination for discovery, and Avis read in significant portions of that evidence. This was not a situation where Avis was unable to obtain the potentially unfavorable evidence itself.

Discussion

What was the total cost of the purchase and redevelopment of the Property, and what amount did each party contribute to that total cost?

[31] The issues between the parties regarding the cost of the redevelopment and the contributions by each party were partly resolved before trial by a reference to the Registrar of the B.C. Supreme Court.

[32] The Registrar certified that the costs (the “Total Costs”) incurred to purchase and redevelop the Property up to September 8, 2020, totalled $3,762,120.62 and consisted of the following:

a) $2,448,892.55 for the purchase of the Property;

b) $1,024,283.09 in construction and other redevelopment expenses; and

c) $288,944.97 in mortgage interest.

[33] The Registrar has also certified that the amount paid for or incurred by Ms. Sidhu and Real Deal to purchase and redevelop the Property (the “Real Deal Costs”) totalled $1,734,243.70 and consisted of the following:

a) $424,958.84 for the purchase of the Property, comprised of:

   i. the $120,000 deposit paid in March 2016, and

   ii. $304,958.84 paid towards the cost to complete on April 28, 2016;

b) $1,020,339.89 in construction and other redevelopment expenses; and

c) $288,944.97 in mortgage interest.

[34] Further, it is uncontested that Avis or Mr. Dhillon initially contributed $469,140.37 towards the purchase of the property: $465,000 to complete the initial property purchase in April 2016, and $4,140.37 towards the purchase of appliances in May 2017.

[35] There are four issues that were intentionally excluded from the Registrar's certification and must be addressed in order to reach a final figure regarding the redevelopment's total cost and to determine each parties' contribution:

a) Is $18,000 paid by Real Deal for furniture to stage the Property properly characterized as a redevelopment cost?

b) Is Ms. Sidhu or Real Deal entitled to recover as a redevelopment cost all or some of the interest incurred on two lines of credit used to finance the redevelopment?

c) Was the mortgage in the amount of $1,560,000 a contribution to the redevelopment cost by Ms. Sidhu?

d) Were the Cheques totalling $550,000, paid to Ms. Sidhu in December 2018 and May 2019, respectively, contributions by Mr. Dhillon or Avis to the redevelopment cost?

[36] I will address these issues in turn.

Is $18,000 paid by Real Deal for furniture to stage the Property properly characterized as a redevelopment cost?

[37] Beginning in or about February 2018, Real Deal leased furniture for the purpose of staging the Property for sale. The monthly fee was initially $1,800 plus GST, but was reduced in April 2019 to $1,600 plus GST.

[38] In July 2019, the parties agreed that Real Deal should buy out the furniture lease in order to avoid paying the monthly amount indefinitely. To do so, Real Deal paid $18,000, including GST, to the staging company. In November 2020, the Sidhus moved into the house and have used the furniture since then.

[39] Real Deal claims the $18,000 payment as a redevelopment cost to be apportioned between the parties. Avis argues that the Sidhus have had the benefit of the furniture since November 2020 and that the $18,000 cost ought to be borne entirely by Real Deal and the Sidhus.

[40] Since it appears that there was no contract or any contemporaneous discussion regarding this issue, this issue falls to be decided, in my view, on the basis of unjust enrichment. If the $18,000 payment is characterized as a redevelopment cost, would Real Deal and the Sidhus be unjustly enriched?

[41] To establish unjust enrichment, the plaintiff must prove on a balance of probabilities that the defendant was enriched, the plaintiff suffered a corresponding deprivation, and the defendant's enrichment occurred in the absence of a juristic reason: *Kerr v. Baranow*, 2011 SCC 10 at para. 32. In this case, while it appears clear that the Sidhus were enriched by being able to possess and use furniture they did not pay for, the question is whether the redevelopment project suffered a corresponding deprivation and, if so, whether there was a juridical reason for it.

[42] I note that this is not a case in which the furniture was purchased for staging and then immediately appropriated by the Sidhus for their own use. In those circumstances, it is likely that the Sidhus would be found to have been unjustly enriched. However, on the facts of this case, by the time the Sidhus moved into the

house, the savings on the monthly lease had exceeded $18,000. In other words, had the parties maintained the monthly lease from July 2019 to November 2020, they would have paid approximately $27,000 to the staging company during that period.

[43] The result, in my view, is that the parties to the redevelopment project received the benefit that they sought when they decided to pay out the lease: they saved thousands of dollars that they otherwise would have spent on the monthly lease. Therefore, in my view, there was no corresponding deprivation to the project (and by extension to Avis) and no unjust enrichment.

[44] Theoretically, it is possible that the parties to the redevelopment project (Avis and Real Deal) ought to receive compensation from the Sidhus for the market value of the used furniture as of November 2020, on the basis that the used furniture could otherwise have been sold to a third party. However, no evidence was led regarding the value of the furniture at that time, and no claim was made in this regard.

[45] For these reasons, in my view, the $18,000 paid for the furniture in July 2019 is properly characterized as a redevelopment cost of the Property to be shared between Avis and Real Deal. This sum was paid by Real Deal.

Is Ms. Sidhu or Real Deal entitled to recover as a redevelopment cost all or some of the interest incurred on two lines of credit used to finance the redevelopment?

[46] Ms. Sidhu claims as a redevelopment cost, to be apportioned between the parties, approximately $69,000 that she claims to have paid on a Manulife line of credit and approximately $63,000 on an RBC line of credit, both of which were used to finance the redevelopment of the Property. Avis argues that these costs are not redevelopment costs and ought to be borne solely by Ms. Sidhu or Real Deal.

[47] There are two potential ways in which Ms. Sidhu's use of the lines of credit to finance the redevelopment costs might be characterized.

[48] The first possibility is that each party was obligated to contribute its share of the redevelopment costs at the time that those costs had to be paid to third parties,

and the lines of credit were used to enable each party to meet its obligations. In those circumstances, the fact that a party had to borrow and incur interest in order to make its contribution would not be a shared responsibility of the parties. Rather, the cost of borrowing ought to be charged to each party in respect of the amount borrowed to meet that party's obligation.

[49] In that scenario, Real Deal would not be entitled to claim the interest on its portion, but it would be entitled to claim the interest on the portion that it advanced on Avis' behalf. In those circumstances, however, the interest cost would not be a redevelopment cost. It would be a cost incurred by Ms. Sidhu to fulfill Avis' obligations, and therefore it would be repayable to Ms. Sidhu.

[50] The second possibility is that the borrowing was done not for the parties individually but to finance the construction generally. In those circumstances, all of the borrowing costs would be characterized as redevelopment costs.

[51] Although the answer is not obvious, and it does not appear that the parties discussed this issue at the time, it is my view that both parties had a reasonable expectation that the redevelopment would be financed externally, and not only by the mortgage on the Property. In this regard, it was clear on the evidence of both Mr. Dhillon and Ms. Sidhu that Mr. Dhillon had advised Ms. Sidhu from the outset that Avis would not be able to make its contribution immediately. There is no indication that Real Deal or Ms. Sidhu demanded payment of Avis' share during the course of the redevelopment.

[52] In these circumstances, it is my view that Ms. Sidhu was using the lines of credit to finance redevelopment costs for the benefit of the project, and for the benefit of the parties collectively. The interest on those lines of credit was paid by Ms. Sidhu or Real Deal.

[53] The parties do not agree about the extent to which the funds borrowed on the lines of credit related to the redevelopment, and therefore the extent to which the interest charges must be included in the redevelopment costs to be apportioned

between Avis and Real Deal. Ms. Sidhu initially testified that all of the funds borrowed on the lines of credit between September 2016 and February 2018 were for the redevelopment, but her testimony in this regard was shown on cross-examination to be incorrect. There are entries on the line of credit account statements showing amounts paid to restaurants and other vendors that could not have been for the redevelopment.

[54] Unless the parties can resolve this issue on their own, the precise amount of the line of credit interest attributable to the financing of redevelopment costs shall be referred to the Registrar for determination, pursuant to R. 18-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. Pursuant to R. 18-1(3), I direct that the result of the assessment or accounting be certified by the Registrar.

Was the mortgage in the amount of $1,560,000 a contribution to the redevelopment cost by Ms. Sidhu?

[55] There was some suggestion in submissions, although not vigorously pursued, that the mortgage obtained by Ms. Sidhu from Khalsa Credit Union for the payment of redevelopment expenses was a contribution to those redevelopment expenses by Ms. Sidhu or Real Deal. However, that suggestion is not persuasive.

[56] In my view, like the lines of credit discussed above, the mortgage was financing obtained for the benefit of the project. The evidence is clear that the mortgage was obtained in Ms. Sidhu's name because she was employed, had an income that could support the mortgage, and did not have any other encumbrances against her name. To the extent that she paid mortgage interest, she did so for the project's benefit. She or Real Deal have received credit for those payments in the Registrar's assessment of the redevelopment costs contributed by Ms. Sidhu or Real Deal.

Were the Cheques totalling $550,000, paid to Ms. Sidhu in December 2018 and May 2019, contributions by Mr. Dhillon or Avis to the redevelopment cost?

[57] This issue, regarding the purpose of the Cheques, occupied much of the trial, both in respect of the evidence led and the submissions made by the parties. The positions of Avis and Real Deal with regard to the purpose of the Cheques are problematic for different reasons.

The positions of the parties

[58] Avis' position is that the Cheques represented contributions by it to the expenses incurred by Real Deal for the redevelopment of the Property.

[59] The position taken by Ms. Sidhu and Real Deal is that Avis or Mr. Dhillon provided the Cheques in order to contribute to the tax liability that had arisen in relation to the Other Properties. Ms. Sidhu and Real Deal submit that since the Other Properties were developed together by Avis and Real Deal, Avis or Mr. Dhillon were obliged, and understood that they were obliged, to contribute to the taxes owing.

[60] Real Deal submits that Mr. Dhillon labelled the Cheques as "loans" because, in reality, they were on account of the taxes owed to CRA. Real Deal argues that Mr. Dhillon did not want to create any documentary evidence indicating a connection between him and those taxes because he did not want the CRA to start pursuing him.

Discussion

[61] Mr. Dhillon's position that he provided the Cheques on account of redevelopment expenses is not corroborated by any contemporaneous documentary evidence, despite many text messages and other documents having been entered into evidence at the trial. Indeed, there was virtually no evidence at all adduced in support of Mr. Dhillon's position, apart from Mr. Dhillon's bare and repeated assertions that the Cheques were for the repayment of redevelopment expenses.

[62] The Cheques themselves refer to loans. The memo line on the first Cheque states “loan + interest.” The memo line on the second Cheque states “loan from Kuljit Dhillon.”

[63] Mr. Dhillon testified that these memo lines were meant to indicate that the payments were to be recorded as shareholder loans from himself to Avis. However, he could not explain the reference to interest on the first Cheque. He testified that his accountant told him to write these words on the Cheque, but the accountant was not called to testify.

[64] The parties entered into a written agreement dated May 7, 2019, in relation to the second Cheque. It states that Mr. Dhillon promises to loan $250,000 to Ms. Sidhu and that Ms. Sidhu promises to repay the loan within seven days after a written demand.

[65] Mr. Dhillon sought to explain this agreement by saying that his daughter downloaded the form of agreement from the internet, and that all he wanted to do was to “protect his money.” However, there was no real explanation as to why a loan agreement was used rather than a document showing what the money was intended for. Although English is not Mr. Dhillon’s first language, I find, based on hearing his testimony over parts of five days, that he understood English sufficiently and was sophisticated enough to understand the difference between a loan and the repayment of redevelopment expenses.

[66] The documentary evidence appears to contradict Mr. Dhillon’s testimony regarding his communications with Ms. Sidhu about the purpose of the funds. He testified that he told Ms. Sidhu that the Cheques were for redevelopment expenses when he personally handed the Cheques to Ms. Sidhu. However, text messages between the parties appear to show that the second Cheque was given to Mr. Sidhu, not Ms. Sidhu.

[67] On the other hand, Real Deal’s position that the Cheques were related to the tax audit is supported by a string of text messages exchanged in May 2019, wherein

Ms. Sidhu and Mr. Dhillon discussed the payment of money by Mr. Dhillon to Ms. Sidhu. Those text messages included the following:

a) Mr. Dhillon: “Ask ramanjit to prepare loan papers. I want to show I gave u as a loan so they can’t question later anything to me.”

b) Mr. Dhillon: “Okay still can u ask ramanjit to prepare loan agreements so cra can’t question to me or my company.”

c) Ms. Sidhu: “Need to pay 510k is for 38 and 73k for Lancing. $250k if u can please.”

d) Mr. Dhillon: “I can make 250k. But we meet to sit after tax season with ramanjit and I need to clear it.”

[68] “Ramanjit” was Avis’ accountant, Ramanjeet Sahi. In my view, this exchange is sufficient by itself to demonstrate that the $250,000 received by Ms. Sidhu from Mr. Dhillon in May 2019 would be used to pay taxes owed by Mr. Sidhu or Real Deal in respect of the Other Properties.

[69] However, this exchange does not show that Mr. Dhillon was legally required to contribute the funds, or that he was contributing the funds to satisfy a legal obligation. Indeed, both parties gave evidence that Mr. Dhillon was providing funds because he wanted to assist his sister and her husband who were in financial difficulty as a result of the CRA audit.

[70] Mr. Dhillon acknowledged during cross-examination that he understood that the funds would be used to pay the CRA but insisted that the funds were for the repayment of redevelopment expenses. He testified: “I did not do this specifically for the GST. She had financial hardship and I gave her $300K for construction costs on Woodward.”

[71] Mr. Dhillon also testified repeatedly that since 2017 or 2018, he believed that he was obliged to pay some of the taxes owing, but that he did not know how much. He also repeatedly said that he wanted to arrive at a final number before paying

anything and that he wanted his payment on account of taxes to be “once for all. Not some here, some there.”

[72] In July 2020, more than a year after the second Cheque was paid, Ms. Sidhu wrote to Mr. Dhillon stating, “Let’s finish the W38 tax thing. We agree for $300,000 for W38 and Lancing. Get the paperwork you want from notary/lawyer the way you want it and I’ll get Balraj to sign that you gave us your share.”

[73] Ms. Sidhu was asked on cross examination why she was asking Mr. Dhillon for an additional $300,000, if he had already paid $550,000 towards the taxes. She testified that she was asking him to pay her money because she and Mr. Sidhu were in a difficult financial position at the time. She said “I was just asking him to pay money so we could pay the tax.”

[74] The result of the foregoing, in my view, is that although both parties understood that the Cheques were being paid to assist Real Deal and Mr. Sidhu with satisfying the tax obligations in respect of the Other Properties, Real Deal has not established that Mr. Dhillon or Avis was legally obliged to contribute to the taxes and that the Cheques were paid pursuant to that obligation.

[75] In further support of their position on this issue, Avis and Mr. Dhillon cite the position taken by Mr. Sidhu in another proceeding, New Westminster registry no. 244733 (the “tax action”). Mr. Sidhu filed a Notice of Civil Claim in that action on June 3, 2022, in which he made claims against Mr. Dhillon, Caroline Hong, and Ms. Hong’s personal real estate corporation. The Notice of Civil Claim describes the tax debts paid by Mr. Sidhu to CRA and the costs incurred by him in relation to the tax debts, and then pleads:

> To date, the Defendants have failed to reimburse the Plaintiff for any of the 38th GST Debt, the Lancing Road GST Debt, the Income Tax Debt, or the Audit Costs.

[76] Avis submits that by arguing in this case that the Cheques were paid on account of Mr. Dhillon’s share of the tax debt in respect of the Other Properties and

simultaneously maintaining the tax action, in which Mr. Sidhu pleads that Mr. Dhillon has not reimbursed Mr. Sidhu for any of the taxes, is an abuse of process.

[77] In this regard, Avis cites the decision in *Este v. Esteghamat-Ardakani*, 2018 BCCA 290, wherein the Court of Appeal held:

> [93] Cases concerning inconsistent pleadings fall along a spectrum. At one end are cases in which the courts find that, properly interpreted, no inconsistency exists: *Stewart v. Clark*, 2013 BCCA 359 at para. 48, 49 B.C.L.R. (5th) 1; *First Majestic Silver Corp. v. Davila Santos*, 2012 BCCA 5 at para. 26, 29 B.C.L.R. (5th) 211. In the middle are cases in which an inconsistency is found, but the court declines to characterize it as an abuse of process because it was not advanced "deliberately or with full knowledge of the facts": *Walsh v. Mobil Oil Canada*, 2013 ABCA 238 at para. 94, 364 D.L.R. (4th) 508. At the other end are cases in which a party knowingly took inconsistent positions: *Pepper's Produce Ltd. v. Medallion Realty Ltd.*, 2012 BCCA 247 at para. 28, 34 B.C.L.R. (5th) 226. Of note is that in both *First Majestic* and *Pepper's Produce*, the following passage from *Mystar Holdings Ltd. v. 247037 Ltd.*, 2009 ABQB 480 at para. 49, 10 Alta. L.R. (5th) 260, is quoted with approval:
>
> > In general, I am persuaded that a party is not free to deliberately argue diametrically inconsistent facts in various actions, thus knowingly advancing irreconcilable positions which are not articulated as alternative claims.
> >
> > [Emphasis in original.]
>
> [94] The principle that a litigant is not entitled to knowingly advance inconsistent positions is longstanding…

[78] In response, Real Deal submits that Avis has known for years that Real Deal takes the position that the Cheques were paid on account of taxes, and that Avis never objected to questions in this regard on examination for discovery. However, no authority has been provided to me for the proposition that these considerations would now preclude Avis from alleging abuse of process at this trial.

[79] Real Deal further submits that there can be no abuse of process in these circumstances because the plaintiff in the tax action is Mr. Sidhu, and he is not a party to this action. However, in my view, that distinction is one of form rather than substance. As stated above, Mr. Sidhu is the principal of Real Deal. He is presumably directing this litigation in which Real Deal is taking the position that the

Cheques were on account of Avis' or Mr. Dhillon's obligation to pay taxes in relation to the Other Properties.

[80] Finally, Real Deal submits that the tax action is a "protective" action, advanced only in case it is unable in this action to persuade the Court that the Cheques were paid on account of taxes. Even assuming that advancing inconsistent pleadings for that purpose is permissible (which is not clear on the authorities provided to me), the pleadings in the tax action do not identify themselves as being pleas in the alternative to Real Deal's position in this action.

[81] In my view, whether or not they are characterized as constituting an abuse of process, the pleadings in the tax action are clear. They state that as of June 2022, nothing had been paid by Mr. Sidhu to Mr. Dhillon on account of the GST debts, income tax debts, and audit costs that he incurred in respect of the Other Properties. Real Deal's position in this trial regarding the tax debts is, in my view, knowingly inconsistent with Mr. Sidhu's position in the tax action, and that inconsistency ought not to be countenanced by this Court.

[82] Further, it is important to note that the position taken by Real Deal and Ms. Sidhu in this case, in light of the tax action, creates the possibility of inconsistent verdicts in the two actions. Ms. Hong and her personal corporation, who are not parties to this action, are entitled to receive a decision from the Court in the tax action as to whether they and Mr. Dhillon is liable to Mr. Sidhu for taxes and, if so, for how much. If I were to find that the $550,000 paid in this case was paid to satisfy amounts owed to Mr. Sidhu by Mr. Dhillon on account of taxes, I would be effectively determining the liability issue in the tax action. In my view, regardless of the abuse of process issue, it would be inappropriate for this Court to find that Mr. Dhillon agreed to pay and did pay the Cheques in respect of a legal obligation to pay the taxes.

[83] In conclusion, I have found on one hand that Mr. Dhillon's position that he paid the Cheques on account of redevelopment costs is unsupported by any corroborative evidence and is inconsistent with the documentary record. On the other hand, I am not persuaded that Mr. Dhillon was paying the Cheques to satisfy a

tax debt owed to Mr. Sidhu, and, importantly, such a finding would be inconsistent with the pleadings advanced by Mr. Sidhu in the tax action.

[84] Following on the above analysis, it is my view that the proven facts lie somewhere between the positions of the parties. I find that Mr. Dhillon wrote “loan” on the Cheques and that he caused a “loan agreement” to be prepared in relation to those funds because he knew the funds were to be used by the Sidhu family to pay Mr. Sidhu’s taxes, and he did not want CRA to associate him with those payments.

[85] However, I also find that Mr. Dhillon did not provide the money because he was legally obligated to contribute to the tax debt. Rather, he provided the funds because Ms. Sidhu needed them. The context was that the Sidhus needed to make the tax payments, but they were in a difficult financial position, and Ms. Hong refused to contribute. I also accept that Mr. Dhillon may have subjectively intended that the amounts were to be credited to him for redevelopment expenses, but I do not accept his evidence that he communicated this clearly to Ms. Sidhu.

Conclusions regarding the contributions by each party to the purchase and redevelopment of the property

[86] For the reasons stated above, neither the Cheques nor the principal of the mortgage in the amount of $1,560,000 obtained from Khalsa Credit Union are contributions by the parties to the redevelopment costs for the Property.

[87] I have found that the $18,000 fee to buy out the furniture lease from the staging company is a redevelopment cost paid for by Real Deal, and I have found that the interest incurred on the RBC and Manulife lines of credit, to the extent that they were used to finance the redevelopment, were redevelopment costs and were paid by Ms. Sidhu or Real Deal.

[88] Both the Total Costs and the Real Deal Costs are to be adjusted from the figures certified by the Registrar: both figures are to be increased by $18,000 and by the line of credit interest amounts attributable to the redevelopment.

[89] The financial contributions made by Avis and Mr. Dhillon towards the redevelopment total $469,140.37.

What remedies are appropriate to separate the interests of the parties?

[90] As discussed above, in order to determine what remedies are appropriate to separate the interests of the parties, the following sub-issues must be considered:

a) Was the sale of the beneficial interest in the property to Ms. Sidhu valid, such that it ended the joint venture?

b) Was there an agreement between the parties that their interests in the Property would be divided based on its value in 2020?

c) What agreement did the parties make with respect to the Property, at the outset?

d) In view of the foregoing, does the *PPA* apply, and if so, how?

e) Is Ms. Sidhu or Real Deal liable to Avis in unjust enrichment?

[91] I will address these issues in turn.

Was the sale of the beneficial interest in the property to Ms. Sidhu valid, such that it ended the joint venture?

[92] Real Deal and Ms. Sidhu argue that Ms. Sidhu was not a bare trustee; rather, she had additional powers beyond the power to hold the Property for the beneficiaries. They submit that since Ms. Sidhu was not simply a bare trustee of the Property, she was entitled to sell it to herself in September 2020.

[93] This argument is relevant to the valuation of the Property for the purpose of this action. If the sale of the Property in September 2020 was valid, then arguably it should be valued for the purpose of this proceeding at that date. In those circumstances, it would be unnecessary to apply the *PPA*. On the other hand, if there was never a valid sale of the Property, then it is still being held pursuant to whatever agreement was made between the parties at the outset.

[94] In support of their argument that Ms. Sidhu was not a bare trustee and was entitled to sell the Property to herself, Ms. Sidhu and Real Deal cite evidence demonstrating that she was the mortgage holder and payor, that she obtained and paid insurance, and that she paid property taxes and utilities in respect of the Property.

[95] This argument is not persuasive. It does not follow from the fact that she was entitled to make payments to preserve the Property, and did make such payments, that she was entitled to sell it. Whether or not she was a bare trustee, it is my view that she did not have the power to sell the Property. She could have only received such a power with the consent of the two beneficiaries.

[96] More importantly, the analysis advanced by Real Deal and Ms. Sidhu in relation to the sale in September 2020 is misconceived. In her capacity as trustee, Ms. Sidhu possessed only the legal interest in the Property. However, she did not purport to use her powers as trustee to sell the legal interest. Instead, she arranged for the sale of the beneficial interest in the Property from Real Deal to herself. Therefore, her role as trustee in respect of the legal interest in the Property had nothing to do with the transaction.

[97] Either Mr. Sidhu decided, or Ms. Sidhu persuaded Mr. Sidhu, to cause Real Deal to sell the beneficial interest in the property to Ms. Sidhu. This sale could not have been valid because Real Deal did not have a 100% beneficial interest in the property, and Avis, as the other beneficiary, did not consent. One cannot sell what one does not own. Although there is a written bare trust agreement in evidence purporting to state that Ms. Sidhu holds the entire Property in trust for Real Deal, it is not signed by Mr. Dhillon. Ms. Sidhu and Real Deal concede that this unsigned agreement may not be relied upon.

[98] For these reasons, I conclude that the purported sale to Ms. Sidhu in September 2020 was not valid. As a result, the purported sale did not end the venture between the parties, and Avis' right to a share of the Property and to an accounting remain extant.

Was there an agreement between the parties that their interests in the Property would be divided based on its value in 2020?

[99] Both parties testified to settlement negotiations between them in 2020. They discussed on several occasions the possibility that Real Deal or Ms. Sidhu would buy out Avis' interest in the Property. In relation to those negotiations, the parties obtained appraisals of the Property as of 2020 to support their respective positions as to value.

[100] Those settlement discussions failed. As a result, the parties were required to engage in this trial, but Real Deal and Ms. Sidhu submit that the course of negotiations in 2020 demonstrates the existence of an agreement between the parties that the Property would be divided based on its value in 2020.

[101] The fact that the parties engaged in negotiations and obtained appraisals in 2020 falls far short of demonstrating an agreement. It is clear on the evidence that the parties were negotiating in good faith, but, like many out-of-court pre-trial negotiations, these failed. I have been shown no evidence that demonstrates that the parties committed themselves to settling based on the value of the Property as of December 2020, regardless of how the dispute might have progressed after that date.

What agreement did the parties make with respect to the Property, at the outset?

[102] On this issue, the positions of the parties are not seriously in conflict. Avis' position is that the parties agreed Ms. Sidhu would hold the property in trust for Real Deal and Avis, and that Avis and Real Deal would "share equally in the beneficial ownership of the property."

[103] Ms. Sidhu testified that she and Mr. Dhillon used the English words "50/50 partnership" and that the balance of their discussions was in Punjabi. In submissions, Real Deal conceded that the agreement at the outset was that Avis and Real Deal would each have a 50% interest in the property.

[104] On the basis of the foregoing, I conclude that the initial agreement between Avis and Real Deal was that they would each have an equal 50% beneficial ownership interest in the Property.

In view of the foregoing, does the PPA apply, and if so, how?

[105] In light of my conclusion that there was no valid sale of the Property to Ms. Sidhu in September 2020, the Property continues to be held by Ms. Sidhu on behalf of the two beneficial owners, Avis and Real Deal. In those circumstances, the *PPA* applies, and since I have also found that the parties did not agree to divide the value of the Property as of 2020, either the Property must be sold or the Property must be divided using its value as of the date of trial. In doing so, the Court may either compel a sale and distribute the proceeds or order a valuation of the Property and a buy-out by Ms. Sidhu of Avis' interest.

[106] In order to choose between these options, the Court must determine whether ss. 6 or s. 8 of the *PPA* applies. Those sections provide:

> **Sale of property where majority requests it**
>
> 6 In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, and if the party or parties interested, individually or collectively, to the extent of 1/2 or upwards in the property involved request the court to direct a sale of the property and a distribution of the proceeds instead of a division of the property, the court must, unless it sees good reason to the contrary, order a sale of the property and may give directions.
>
> …
>
> **Purchase of share of person applying for sale**
>
> 8 (1) In a proceeding for partition where, if this Act had not been passed, an order for partition might have been made, then if any party interested in the property involved requests the court to order a sale of the property and a distribution of the proceeds instead of a division of the property, the court may order a sale of the property and give directions.
>
> (2) The court may not make an order under subsection (1) if the other parties interested in the property, or some of them, undertake to purchase the share of a party requesting a sale.
>
> (3) If an undertaking is given, the court may order a valuation of the share of the party requesting a sale in the manner the court thinks fit, and may give directions.

[107] Whether a particular case falls within ss. 6 or 8 turns on whether the party seeking partition (in this case, Avis) owns a half interest in the subject property.

[108] I have found above that Real Deal and Avis agreed at the outset of the investment that each party would have a 50% beneficial interest in the Property. However, Ms. Sidhu and Real Deal submit that this case falls within s. 8 because the parties' contributions to the development of the Property were unequal. They say that Avis ought to have a proprietary interest only to the extent of its proportionate contribution. As I have found above that Avis' contribution to the redevelopment was comprised only of its initial contribution of $465,000, its contribution was far less than that made by Real Deal.

[109] It is evident that neither Mr. Dhillon nor Ms. Sidhu ever addressed between them what would happen if Real Deal and Avis did not equally contribute to the costs of the redevelopment. As a result, I cannot find that the parties expressly agreed that their respective 50% interests in the Property would vary upwards or downwards depending on their respective proportionate contributions to the Property's purchase and redevelopment.

[110] Real Deal and Ms. Sidhu submit that the Court ought to imply a term to this effect into the agreement between Avis and Real Deal. In that regard, they rely on an admission from Mr. Dhillon that it would not be fair for Avis to claim a 50% interest in the Property if it did not contribute 50% of the redevelopment costs.

[111] As is well-known, a term can be implied into a contract "based on the presumed intentions of the parties where the implied term must be necessary 'to give business efficacy to a contract or as otherwise meeting the 'officious bystander' test as a [term] which the parties would say, if questioned, that they had obviously assumed'": *Kruger v. PortLiving Properties Inc*., 2024 BCSC 1046 at para. 43.

[112] I do not agree that an officious bystander would say that it is obvious in these circumstances that the parties' ownership interests would vary in accordance with their respective contributions. Perhaps it is obvious that it would not be fair for one

party to claim a 50% interest in the proceeds if it did not contribute 50% of the costs, but an interest in the proceeds is different from an ownership interest in the land.

[113] Ms. Sidhu and Real Deal also rely on the doctrines of constructive or resulting trust in support of their submission that they ought to have more than a 50% interest in the Property. However, those doctrines are applied to determine the precise percentage of the parties' interest in property when the only basis for that interest is the parties' respective contributions. In this case, there was an express agreement regarding ownership.

[114] For these reasons, I find that the ownership of the Property has not changed from that agreed upon initially, and that each party has an equal 50% beneficial ownership interest.

[115] As noted above, where the party seeking a sale under s. 6 of the *PPA* has a half-interest or greater in the subject property, the Court must order a sale "unless it sees a good reason to the contrary."

[116] In *Holman v. Brooke*, 2022 BCSC 526 at para. 24, the Court cited the decision in *Bradwell v. Scott*, 2000 BCCA 576, as the leading authority on s. 6, and sets out the following principles governing an application for sale under the *PPA*:

a) a "good reason to the contrary" is provided where "justice requires that such an order be denied": para. 35;

b) while the language is neutral in terms of onus, in practical terms, the court looks to the party opposing a sale to advance evidence of a good reason for refusing a sale order: para. 35;

c) the court has broad discretion to determine whether a good reason, of whatever sort, exists for refusing the order: para. 45;

d) the infliction of serious hardship on the respondent, or the petitioner's lack of good faith, or vexatiousness, or malice, may constitute a good reason to deny a sale: para. 45;

e) "a good reason" is not limited to "serious hardship": para. 45; and,

f) the discretion must be exercised based on the specific facts and circumstances of each case: para. 45.

[117] The case law demonstrates that the discretion bestowed upon the Court in relation to s. 6 is broad and unfettered: *Holman* at para. 25, citing *Sahlin v. The Nature Trust of British Columbia, Inc.*, 2011 BCCA 157 at para. 24.

[118] Further, in *Holman*, Justice Crerar held:

> [26] … As surveyed in the law above, the Court has broad discretion in assessing the appropriate remedy or result. And "good reason" means just that: the statute does not require an "extraordinary reason" to decline a sale.

[119] In assessing whether there are any good reasons to refuse a sales order under s. 6 in this case, I have considered the following factors to be relevant to the exercise of the Court's discretion.

[120] First, it is common ground that the purchase and redevelopment of the Woodward property was for commercial purposes. The parties' plan was to purchase the property, redevelop it, and then sell it at a profit. As Justice Crerar observed in *Holman* at para. 26, "most s. 6 decisions arise in a commercial context, with properties primarily held for investment purposes: such fungible properties will presumptively be sold in the case of a deadlock." That is the factual context in this case. By contrast, in *Holman* itself, the parties chose the property in question to be their "forever home" in a "culturally comfortable" neighbourhood. In those circumstances, the petition for an order that the property be sold was dismissed.

[121] Second, I have found that the purported sale of the beneficial interest in the property by Real Deal to Ms. Sidhu in September 2020 was not valid because it was carried out without the consent of Mr. Dhillon, the other beneficial owner. Further, in 2020, when the parties were seeking to negotiate a buy-out, Mr. Dhillon made it clear to Ms. Sidhu in emails (and apparently orally) that he did not want the Sidhus to move into the Property until a resolution regarding the Property was reached and the paperwork was complete.

[122] Ultimately, the Sidhus moved into the Property in November 2020 without the consent of, and indeed in the face of opposition from, the Property's other beneficial

owner. In my view, the fact that the Sidhus have no legal entitlement to reside in the Property weighs heavily against refusing a sale under s. 6.

[123] Thirdly, it is my view that Real Deal and Ms. Sidhu have not established that they would suffer serious hardship if compelled to move. They went so far as to state that a sale order under the *PPA* would leave them “homeless,” but, in my view, that was hyperbole. There is no doubt that having to move to a smaller, less expensive home would cause some hardship to the Sidhu family, but for many years the family lived in a house that was smaller and valued at much less than the Property. Further, if they are determined to live in this particular house, they are entitled to bid on and to make offers on the Property themselves once it is listed for sale.

[124] The primary factor in favour of refusing a sale is the disproportionately minor amount Avis contributed to the property. I have found above that Mr. Dhillon and Avis contributed $465,000 to the purchase price and nothing thereafter in relation to the redevelopment. As a result, they contributed less than 25% of the total cost of acquiring and redeveloping the Property.

[125] Real Deal and Ms. Sidhu emphasize the magnitude of the difference in contributions in this case. However, they have not provided me with any authority for the proposition that where contributions to the purchase and development of a property are significantly unequal, although the property is owned equally, there ought not to be a sale and the party with the lesser contributions must be bought out.

[126] With respect to the operation of s. 6 of the *PPA* in circumstances where the contributions of the parties to the purchase or maintenance of a property are unequal, the following authorities are of assistance.

[127] In *Zimmerman v. Vega*, 2011 BCSC 757, the respondent to a partition application argued that he disproportionately contributed to the construction of the property and submitted that this was a good reason not to order a sale under s. 6. The Court rejected this argument, stating:

> [37] The second arguable reason that is advanced as "good reason to the contrary" is that Mr. Vega claims to have disproportionately contributed to the construction of the chalet. Mr. Vega says he is entitled to be reimbursed for those extra contributions.
>
> [38] In *Ryser v. Rawlings*, Mr. Justice Williams concludes that a claim for extra contributions does not constitute good reason not to order a sale of property.
>
> [39] In my opinion, if Mr. Vega does have a right for reimbursement for unequal contributions, his claim should be addressed on the accounting relating to division of the proceeds of sale.

[128] Similarly, in *Ryser v. Rawlings*, 2008 BCSC 1050, cited in *Zimmerman*, the Court held:

> [35] In the present matter, I have concluded that the petitioner is a person properly qualified to seek relief under s. 6, and I am unable to find that the respondent has established that there is good reason to do otherwise than order a sale of the property. His claim to more than 50% of the proceeds of sale is not a proper reason for the court to refuse to grant the order under s. 6.

[129] In my view, the statements in these passages apply to the case at bar. The fact that Real Deal made a larger contribution to the cost of the Property is not a good reason for the Court to refuse to grant a sales order under s. 6. The inequality in their contributions can and shall be addressed by way of an unequal division of the sale proceeds. For all of these reasons, I have concluded that Real Deal and Ms. Sidhu have not demonstrated that there is a good reason to refuse an order for sale under s. 6.

[130] I have concluded that the property shall be sold, Avis shall be paid $469,140.37 less 50% of the total loss on the Property (if there is one) from the proceeds, and Real Deal shall receive the balance. The loss cannot be determined until the Property is sold and the amount of the sales proceeds is known, and the Registrar has certified the amount of the contributions made by Ms. Sidhu or Real Deal by way of interest on the RBC and Manulife lines of credit.

[131] Following a sale and a determination of the lines of credit interest attributable to the redevelopment, if the parties are unable to agree to the distribution of the proceeds, the calculation of the loss on the project shall also be referred to the

Registrar for determination in accordance with these reasons. Pursuant to R. 18-1(3), I direct that the result of the assessment or accounting be certified by the Registrar.

[132] In the event that Real Deal wishes to have an opportunity to purchase the house, Avis shall have conduct of sale. In the event that Real Deal declines that opportunity, it shall have conduct of sale. Under either scenario, the party without conduct of sale shall cooperate and take all reasonable steps required to enable the Property to be sold in a timely way.

Is Ms. Sidhu or Real Deal liable to Avis in unjust enrichment?

[133] In the alternative to their primary position that the Cheques totalling $550,000 were provided to Ms. Sidhu on account of redevelopment expenses, Avis and Mr. Dhillon advance a claim under the doctrine of unjust enrichment.

[134] They submit, and I agree, that Ms. Sidhu or Real Deal have been enriched by the payment of $550,000 and that Mr. Dhillon or Avis have suffered a corresponding deprivation.

[135] They also submit that the only possible juristic reasons for the payments are that they constituted Mr. Dhillon’s contribution to a tax debt owed by him in respect of the Other Properties or that they were payments by Avis on account of redevelopment expenses. They submit that if the Court rejects both of those possible juristic reasons, as I have, there is no juristic reason for the payments, and Real Deal and Ms. Sidhu have been unjustly enriched.

[136] Mr. Sidhu and Real Deal argue that the doctrine of unjust enrichment cannot apply because Mr. Sidhu and Mr. Dhillon are the parties to the alleged enrichment but not parties to this action. However, I am not persuaded by this argument. Avis has advanced evidence that the funds came from it (although they were delivered by Mr. Dhillon), and so I find that Mr. Dhillon provided the Cheques as agent for Avis. Ms. Sidhu received the funds from Mr. Dhillon, and the Cheques were made payable to her. Either she received them on her own behalf, for the benefit of the Sidhu

family, or on behalf of Real Deal. The evidence does not show that the funds transferred by means of the Cheques were paid directly to Mr. Sidhu or to CRA to the benefit of Mr. Sidhu.

[137] In my view, in light of the foregoing, the three elements of unjust enrichment have been made out, and Ms. Sidhu and Real Deal are jointly liable to Avis in the sum of $550,000.

Conclusions and costs

[138] The Property shall be sold pursuant to s. 6 of the *PPA.* Avis shall be paid $469,140.37 less 50% of the total loss on the Property (if there is one) from the proceeds, and Real Deal shall receive the balance.

[139] Ms. Sidhu and Real Deal are jointly liable to Avis in the sum of $550,000.

[140] As success in this action is divided and neither party's position with respect to the most contentious issue at trial regarding the Cheques was accepted by the Court, there shall be no costs payable to any party.

"The Honourable Justice K. Loo"