

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nextgen Energy Watervliet TWP, LLC v. Bremner*,
2025 BCSC 1670

Date: 20250828
Docket: S169686
Registry: Vancouver

Between:

Nextgen Energy Watervliet TWP, LLC, Ted Gatzaros (deceased), Maria E. Gatzaros, personal representative of the Estate of Ted Gatzaros and trustee of the Ted Gatzaros Living Trust

Plaintiffs

And

Charles William John Bremner and Wendy Junko Matsubuchi

Defendants

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for the plaintiffs:

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Counsel for the defendants:

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Place and Date of Trial:

Vancouver, B.C.
December 9-13, 2024, May 6-7,
2025

Place and Date of Judgment:

Vancouver, B.C.
August 28, 2025

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Overview

[1] The plaintiffs, Nextgen Energy Watervliet TWP, LLC, Ted Gatzaros, Mr. Gatzaros' estate, and Mr. Gatzaros' trust, are judgment creditors of the defendant Charles Bremner, now deceased, by way of a default judgment they obtained in the state of Michigan in 2012, and which was recognized and enforced by an order of the Supreme Court of British Columbia made on April 7, 2016. The plaintiffs, whom I will collectively refer to as Nextgen, seek to satisfy the judgment from assets owned by the defendant Wendy Matsubuchi, Mr. Bremner's widow. Nextgen has pleaded that funds belonging to it can be traced into two real properties owned by Ms. Matsubuchi. Nextgen asserts that Mr. Bremner obtained an equity interest in those real properties by making contributions to them, or that Mr. Bremner has an interest in the properties as family assets. Nextgen also asserts that Mr. Bremner fraudulently conveyed funds to Ms. Matsubuchi or fraudulently preferred her by releasing his claims against her real properties.

[2] Ms. Matsubuchi argues that although Nextgen's case, as pleaded, is a tracing claim, it has failed to prove, or even submit, that any funds that belong to Nextgen can be traced into her real properties. Ms. Matsubuchi submits that Nextgen is really advancing a resulting trust claim without pleading a resulting trust. Ms. Matsubuchi argues that in any event, a resulting trust cannot succeed on the evidence. Ms. Matsubuchi's evidence is that Mr. Bremner did not pay for either property in whole or in part, and Mr. Bremner's evidence on any contribution he made is internally conflicting as between his examination in aid of execution in the enforcement action and his examination for discovery evidence in this action. Ms. Matsubuchi denied that Mr. Matsubuchi made a contribution towards the purchase of either property and denied receiving funds from Mr. Bremner to pay down the mortgage. She asserts that even if Mr. Bremner gifted her such a sum, there is no presumption that transfers of funds between spouses are "bargains, not gifts" and his evidence is that it was a gift.

[3] Ms. Matsubuchi also claims that Mr. Bremner did not acquire any interest in her real properties by virtue of being a spouse because such interests only arise on

marital breakdown. She argues that even Mr. Bremner commenced a notice of family claim in 2017 in which he claimed an interest in the properties, they reconciled within one year and so there is deemed to be no separation and no interest in the real properties as family property arose. In addition, Ms. Matsubuchi asserts that when they reconciled, Mr. Bremner signed a release of any claims over her real properties in consideration of \$500,000 in loans Ms. Matsubuchi made to him, and because she covered his living expenses.

[4] With regard to transfers of funds, both Nextgen and Ms. Matsubuchi have identified transfers of funds that originated in one of Mr. Bremner's bank accounts and there is a corresponding deposit in one of Ms. Matsubuchi's bank accounts. Ms. Matsubuchi argues that there is no evidence that these transfers were made by Mr. Bremner with the intention of defeating, hindering, delaying or prejudicing any creditor, and she has provided explanations for them that are only consistent with Mr. Bremner transferring funds for Ms. Matsubuchi to use for family purposes, primarily in relation to their two children. Nextgen argues that I should not accept Ms. Matsubuchi's evidence because of credibility problems with it and because of her interest in the outcome of this case.

[5] Nextgen has also identified deposits into Ms. Matsubuchi's bank accounts that do not correspond to an identified withdrawal from Mr. Bremner's bank accounts but which Nextgen characterizes as suspicious. Nextgen asserts I should presume they are fraudulent conveyances. Ms. Matsubuchi argues that without evidence of a disposition from Mr. Bremner, these deposits are not dispositions of property and so cannot be fraudulent conveyances. She also argues that she has explained the majority of them.

Preliminary Issue - Credibility

[6] Mr. Bremner died in 2022, three years before the trial commenced. At trial, Nextgen read in significant portions from his examination in aid of execution conducted in the British Columbia action in which the Michigan judgment was enforced, Action VA S131615, and from his examinations for discovery conducted in

this case. Nextgen also read in an email that Mr. Bremner wrote on April 25, 2017, a day after his examination in aid of execution, in which he recanted evidence he had given at his examination in aid of execution and provided an explanation for why he had given what he later asserted he realized was incorrect evidence.

[7] During the trial, I ruled that Mr. Bremner's evidence given at his examination for discovery was admissible against Ms. Matsubuchi under the common interest exception to Rule 12-5(46) of the *Supreme Court Civil Rules*, and his evidence given at his examination in aid of execution in Action VA S131615 was admissible against Ms. Matsubuchi pursuant to Rule 12-5(54). Since the April 25, 2017 email purports to correct evidence he gave at his examination in aid of execution, it is covered by that ruling. I also ruled that both forms of evidence were admissible against Ms. Matsubuchi pursuant to the principled exception to hearsay. The ruling deferred the issue of how much weight I would give to the evidence to these reasons.

[8] Mr. Bremner and Ms. Matsubuchi are the persons with direct knowledge about their finances, financial transactions and marital status during the relevant timeframe. They share a common interest in protecting assets from Nextgen. Despite that common interest, their evidence conflicted in some regards and was internally inconsistent on some matters. I must determine what evidence to accept.

[9] When determining whether to accept evidence of any witness, the court often considers two components: credibility, also described as veracity; and reliability, which is sometimes also described as accuracy: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 17, 1995 CanLII 3498 (O.N.C.A.).

[10] Credibility and veracity are about whether the witness is telling the truth in a subjective, moral sense. If the witness is shown to be giving evidence inconsistent with what the witness may know or believe to be true, the witness's veracity is called into question. Reliability and accuracy are about whether a witness's evidence is sound for reasons other than the intention to tell the truth, such as their ability to remember or observe events. Credibility and reliability are related, although they are conceptually distinct. In *Morrissey*, the Court of Appeal for Ontario explained that

while a witness who is not truthful is also not reliable, a witness who is giving truthful evidence may not be giving reliable evidence: *Morrissey* at 17.

[11] Evaluating veracity and reliability involves examining the witness’s evidence for the ability and opportunity to observe events, the firmness of memory, whether the witness appears able to resist the interests at play to modify their recollection, a comparison of the evidence against independent evidence, whether the witness changes evidence during direct examination and cross examination, any motive to lie and demeanour. If the trier of fact accepts the witness’s evidence as being generally credible, the trier of fact should determine whether it fits within the “preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”: *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186–187, aff’d 2012 BCCA 296.

[12] Where a party is alleged to have participated in a fraudulent conveyance or a fraudulent preference, evidence pertaining to transactions involving related defendants under “suspicious circumstances” should be supported by corroborating evidence before being accepted: *Wu v. Gu*, 2020 BCSC 396 at para. 99, citing *Cabaniss v. Cabaniss*, 2009 BCSC 1478 at para. 52; *B.(L.A.) v. M.(L.)*, 2004 BCSC 512 at para. 18; *Jennings v. Chow*, 2008 BCSC 110 at para. 18; and *Pacific Wagondepot Ltd. v. Hudson West Development Ltd.*, 2019 BCSC 909 at para. 19.

[13] There are credibility and reliability issues with Mr. Bremner’s evidence and Ms. Matsubuchi’s evidence.

[14] Mr. Bremner testified at his examination in aid of execution on April 24, 2017 that he contributed half the purchase price of \$725,000 for one of the properties owned by Ms. Matsubuchi, referred to as the 10th Street property. In his April 25, 2017 email, he explained that he was mistaken about that, and what had actually happened was that he gave Ms. Matsubuchi a \$550,000 gift a few months after the purchase with which she could do as she pleased, and that she chose to pay down the mortgage. At his examination for discovery, he testified and provided answers to outstanding requests that he did not write a cheque to Ms. Matsubuchi for \$550,000.

He testified that he wrote a cheque to the bank in the amount of the outstanding mortgage, which he left at the front desk of the bank.

[15] In addition, at his examination in aid of execution in April 2017, Mr. Bremner testified that he had no vehicles, no real property registered in his name, and his only assets were a picture of himself, a framed blue ribbon and a Breitling watch. He testified that his prospects of employment were limited. The read-ins from his examination in aid of execution demonstrate a dual theme to his evidence: first, that he had no assets and no prospects; and second, that he was trying to be transparent and give them a full picture of his fiscal despair. Together, these themes seemed to be an effort to persuade the defendants that they were wasting their time because he had no means nor prospects to satisfy their judgment.

[16] Despite that, in September 2017, close to \$65,000 in cheques came out of one of his bank accounts including about \$10,000 alleged to have been deposited in a bank account known to be held by Ms. Matsubuchi. Between January and June 2018, despite his purported limited prospects for employment and no assets, over \$434,000 came into his bank accounts and over the course of a year, almost all of it went out, albeit only a small portion into Ms. Matsubuchi's bank accounts. Between 2018 and 2020, Mr. Bremner paid for their son to travel to chess tournaments around the world, accompanied by a parent or his sister whose expenses he also covered, and he paid for family travel expenses including a multi-month graduation cruise to Alaska, Japan and Korea for their daughter on her high school graduation.

[17] The theme that Mr. Bremner promoted through his evidence on his examination in aid of execution about his almost total lack of assets, complete financial dependency on Ms. Matsubuchi, and no employment prospects cannot be squared with what ensued.

[18] Ms. Matsubuchi's evidence was in some respects inconsistent between her discovery and trial. For example, at her discovery, she agreed that a certain cheque, cheque 79 in the amount of \$35,000 payable to "W. Matsubuchi-Bremner", was written by Mr. Bremner to her and she deposited it in her bank account. At trial, she

testified that she was not sure about that, she was unable to find a record of it being deposited in her bank account, and based on the cheque's memo line, she thought it was a cheque to her son, who has the same first initials and last name as she does.

[19] Ms. Matsubuchi testified that she is a Japanese Canadian with ancestors who had been dispossessed of property that was never returned to them, and as a result she has a "what's mine is mine" attitude towards property and finances. She testified that she brought that approach to her marriage to Mr. Bremner and their finances. She also testified that she had concerns about their age difference and that Mr. Bremner's children from a previous marriage might make a claim on his assets.

[20] Despite this evidence of proprietary and fiscal possessiveness, Ms. Matsubuchi testified that she had on many occasions loaned Mr. Bremner money that she expected him to repay and that he sometimes did repay. However, when dealing with the specifics of those loans, she testified that she assumed he repaid money she had loaned him, with interest, but she could not recall.

[21] Ms. Matsubuchi brought an application for an order cancelling certificates of pending litigation that Nextgen filed against Ms. Matsubuchi's properties in this action. On that application, Ms. Matsubuchi swore an affidavit that she had made loans to Mr. Bremner over the years, \$500,000 of which was outstanding at the time the affidavit was sworn, and appended cheques she deposed evidenced the outstanding loans. On cross examination at trial, it was pointed out to her that some of the cheques appended were not for loans to Mr. Bremner and that the other cheques only totalled \$404,364.20. Ms. Matsubuchi testified that she did not add the cheques up when she made the affidavit. She testified that Mr. Bremner gave her the \$500,000 total and she assumed that was correct when she swore her affidavit.

[22] Either Ms. Matsubuchi was being deliberately untruthful in some of this evidence, or she was not careful and therefore her evidence is not reliable. The explanation that she made the affidavit swearing that she had loaned \$500,000 to Mr. Bremner when she did not know that at the time, but was relying on him to tell her that, demonstrates an extremely concerning lack of truthfulness because she

swore that she had personal knowledge of the facts to which she deposed unless she stated otherwise. She did not state otherwise in her affidavit. Cross examination at trial demonstrated a lack of veracity on the issue of whether she had personal knowledge that she had loaned \$500,000 to Mr. Bremner and whether the total of the loans she asserted she had made was \$500,000. This evidence also undermines the reliability of her evidence because she did not take the step of ensuring the evidence she swore to was correct.

[23] Ms. Matsubuchi's evidence also suffered from frequently not being responsive to the question asked. Sometimes when witnesses do not answer a question asked, especially when it is on a significant point, the trier of fact may draw the conclusion that the witness is deflecting. However, I formed the impression that her answers were not deflections despite that they were not responsive answers. Nextgen read in many excerpts from Ms. Matsubuchi's examinations for discovery and I listened to her direct and cross examination at trial. From that, I concluded that Ms. Matsubuchi has a thought process that does not conform to the expectation that a witness will listen to a question and answer the question asked. I formed the impression that she was thinking out loud, and her expressed thoughts were on something tangential to the question as a result of her non-linear thought process. If the questioner persisted, she would eventually answer the question without being defensive or reluctant to do so. This occurred on matters large and small, regardless of the significance of the question. These observations counter, to some extent but not completely, the concern that Ms. Matsubuchi lied under oath. But the reliability issues pertaining to her evidence remain.

[24] For the evidence of both Mr. Bremner and Ms. Matsubuchi, I will approach the evidence carefully and will look for objective corroborating evidence.

[25] Having said that, Ms. Matsubuchi and Mr. Bremner are the defendants, and the burden of proof lies with Nextgen to prove its various claims. It does so in part in reliance on their evidence. My finding that Mr. Bremner and Ms. Matsubuchi have given inconsistent, certainly unreliable and possibly untruthful evidence cannot be a

substitute for a finding that Nextgen's funds can be traced into Ms. Matsubuchi's real property, that Mr. Bremner had an equitable interest in those properties, or that they engaged in fraudulent conveyances or preferences. It is necessary to consider their evidence, determine what can be accepted, and consider what documentary or other objective evidence proves. That assessment takes place utilizing certain presumptions or evidentiary rules that exist to address the informational asymmetry that exists in most fraudulent conveyance and fraudulent preference cases.

The Properties

[26] Before Ms. Matsubuchi met Mr. Bremner in the late 1990s, she had, by 32 years of age, acquired two North Vancouver homes on a teacher's salary. She rented one out. She lived in the other and rented out part of that home.

[27] Nextgen asserts that Mr. Bremner made payments of taxes and renovations on both properties. In the affidavit sworn on the application to remove the certificates of pending litigation filed by Nextgen against the properties, Ms. Matsubuchi deposed that Mr. Bremner had paid funds totalling about \$22,000 over the years for improvements on the properties.

10th Street Property

[28] The uncontroverted evidence is that Ms. Matsubuchi is the sole registered owner in fee simple of 748 10th Street East, North Vancouver. It is uncontroverted that she purchased the property on May 31, 2002 for \$725,234 in part with the funds she realized by selling a home she bought before she met Mr. Bremner on Boulevard Crescent in North Vancouver.

[29] There is conflicting evidence as to whether Mr. Bremner made a contribution to the purchase of the 10th Street property, or made a gift to Ms. Matsubuchi after the property was purchased for the purpose of paying down the mortgage, or paid off the mortgage himself some months after Ms. Matsubuchi purchased it.

[30] There is no dispute that Ms. Matsubuchi, Mr. Bremner and their two children resided in the property from 2002 until Mr. Bremner's death in 2022. Ms. Matsubuchi and the children have resided there since.

17th Street Property

[31] Ms. Matsubuchi is the sole registered owner in fee simple of 333 17th Street East, North Vancouver. It is uncontroverted that she bought the property in 1992, before she met Mr. Bremner. She lived in the property for a period of time but she was not living there when she met Mr. Bremner because by then she had purchased and was living in the Boulevard Crescent property. There is no evidence that Mr. Bremner ever lived in the 17th Street property. The evidence is that since Ms. Matsubuchi and Mr. Bremner met, the property has been a rental property.

[32] Mr. Bremner testified at one of his examinations for discovery about a cheque that Ms. Matsubuchi wrote to him where the memo line says "333 East 17 renovations". Mr. Bremner testified that he may have paid for renovations on the 17th Street property to help out Ms. Matsubuchi when she was away, but she repaid him.

Tracing Claim

[33] Nextgen pleads that Mr. Bremner used funds that belonged to Nextgen for the preservation, maintenance or improvement of the 17th Street property and the 10th Street property. Nextgen claims a remedial constructive trust over the properties. Nextgen did not make any submissions on the law pertaining to tracing or as to how the evidence relates to is tracing claims.

[34] Nextgen commenced its Michigan claim in the Circuit Court for the County of Wayne, State of Michigan (the "Michigan Action") on October 28, 2010. Nextgen alleged that it retained IFC Ventures, Inc., a company of which Mr. Bremner was an officer and director, to obtain financing for a project. Nextgen alleged that in 2008, on the strength of a bridge loan term sheet executed by IFC Ventures, Inc. and Nextgen, Nextgen paid a corporate fee of \$1,000,000 USD to Mr. Bremner and others and expended a further \$1,012,879.99 USD to receive the financing. Nextgen

alleges that Mr. Bremner and the other defendants in the Michigan Action failed to deliver the financing. Nextgen alleged civil conspiracy to defraud, unjust enrichment and fraud in the inducement against Mr. Bremner and the other defendants.

[35] The Michigan Court granted judgment against Mr. Bremner in the amount of \$2,012,879 USD on August 9, 2012 “for failure to respond to the Courts Orders with respect to the requirements of Orders entered on May 21, 2012, and for other cause shown”. There are no findings of fact by the Michigan Court in relation to the allegations made by Nextgen.

[36] Accordingly, there is evidence that a claim was made against several defendants including Mr. Bremner, and that Mr. Bremner was one of several defendants against whom default judgment was granted. There is no evidence from the Michigan Action that Mr. Bremner had funds that belong to Nextgen.

[37] Nextgen read in evidence from Mr. Bremner’s examination in aid of execution in the enforcement action, in which Mr. Bremner testified that he received funds from an entity called IFC Ventures Number 2 in relation to a transaction involving Nextgen and an entity called IFC Ventures Number 1. Mr. Bremner testified that he used those funds for personal purposes, but did not say what purposes.

[38] Nextgen did not lead any evidence that it asked Mr. Bremner about whether he used those funds or any funds that he received in relation to any transaction involving Nextgen and IFC Ventures, Inc. for the 10th Street property or the 17th Street property.

[39] There is conflicting evidence on the purchase of the 10th Street property, a \$550,000 gift that Mr. Bremner asserts he made to Ms. Matsubuchi that Nextgen alleges she used to pay down the mortgage on the 10th Street property, and Mr. Bremner independently paying off the 10th Street property mortgage in an unspecified amount. Below, I address why I do not accept that any of those things happened. But in any event, there is no suggestion that any of those alleged contributions were made with Nextgen funds. The purchase and alleged pay down of

the mortgage on the 10th Street property took place years before Nextgen alleges it paid the funds to the defendants in the Michigan Action.

[40] In addition, Mr. Bremner testified that one year he paid the property taxes on the 10th Street property and the 17th Street property as an accommodation because Ms. Matsubuchi was away when they were due. He testified that she paid him back. He also testified that he paid for renovations on the 17th Street property which Ms. Matsubuchi repaid him for. There is no suggestion that the funds he used to pay the taxes or the renovations were Nextgen funds.

[41] I conclude that Nextgen has not established a tracing claim.

Equitable Interest In the Real Properties

[42] Nextgen's amended notice of civil claim claims a remedial constructive trust in relation to funds it pleads belong to Nextgen and can be traced to the 10th Street property and the 17th Street property.

[43] At trial, Nextgen argued that Mr. Bremner had a beneficial interest in the 10th Street properties due to financial contributions he made to the 10th Street property by paying half its purchase price, by making a gift to Ms. Matsubuchi in the amount of \$550,000 which Ms. Matsubuchi used to pay out the mortgage on the 10th Street property, and that these transactions created a resulting trust.

[44] The remedy pleaded, a remedial constructive trust, is a constructive trust in favour of Nextgen on the basis that it is Nextgen's funds that were paid into the 10th Street property. The claim argued at trial is that a resulting trust was created that is a beneficial interest of Mr. Bremner, against which Nextgen seeks to execute.

[45] Aside from the stark difference that the tracing claim asserts a beneficial interest in the property in favour of Nextgen, and the resulting trust claim asserts a beneficial interest in the property in favour of Mr. Bremner, the instruments, a remedial constructive trust on the one hand and a resulting trust on the other hand, are two very different things.

[46] A constructive trust is an equitable remedy imposed by the court where it is necessary, consonant with good conscience, to avoid a person unjustly appropriating the labours of another, regardless of intention to create a trust: *Virk v. Singh*, 2022 BCCA 153 at paras. 77–79, citing Donovan W. M. Waters, Mark R. Gillen & L. D. Smith, eds., *Waters' Law of Trusts in Canada*, 5th ed. (Toronto: Carswell, 2021) at 508; *Pettkus v. Becker*, [1980] 2 S.C.R. 834 at 843–44, 1980 CanLII 22. A remedial constructive trust is remedy available for unjust enrichment and breach of fiduciary duty, and may be imposed where equity and good conscience require: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, 1997 CanLII 346.

[47] As I address in more detail below, a resulting trust arises where a property is transferred or is purchased with money transferred, and the property is not legally held by the transferor. The question is whether the transferor has a beneficial interest. The intention of the transferor is key. Notions of equity may be part of the context, but they are not central nor even necessary.

[48] Accordingly, Nextgen's submissions on resulting trust are not supported by its pleading of a remedial constructive trust as a remedy for its tracing claim. Despite the lack of a pleading, Ms. Matsubuchi has addressed it and so I will also.

Legal Principles Pertaining to Resulting Trusts

[49] The doctrine of resulting trusts applies when a person gratuitously transfers property to another person and it is necessary to determine whether the transferor retains an ownership interest. If the transferor intended that the property or its value would come back to them eventually, the law imposes a trust, such that the transferee is recognized as having held the property in trust for the transferor, and the property will “result back” to the transferor: *Rascal Trucking Ltd. v. Nishi*, 2011 BCCA 348 at paras. 30–32 [*Rascal Trucking BCCA*], *aff'd Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33.

[50] The classic case for a resulting trust is when one party gratuitously transfers property to another party, however, the doctrine applies in the same way where one party supplies the money to purchase property that is put in the name of another

party, or in their joint names. This specific type of resulting trust is often called a “purchase money resulting trust”: *Rascal Trucking BCCA* at paras. 39–40; *Swanstrom v. Wuest*, 2018 BCSC 2299 at para. 41.

[51] A resulting trust only arises where the transferor intended to retain an interest. If the transferor intended for the property to be given as a gift, then they will be held to that intention; they cannot rescind the gift: *McKendry v. McKendry*, 2017 BCCA 48 at paras. 31–32. The “presumption of resulting trust” places the burden on the transferee to prove the transfer was a gift because the law presumes bargains, not gifts: *Rascal Trucking BCCA* at paras. 34–35; and *Beaverstock v. Beaverstock*, 2011 BCCA 413 at paras. 10, 12.

[52] The presumption of resulting trust has a mirror presumption called the presumption of advancement. Under the presumption of advancement, when the transfer is made between spouses or from a parent to their minor child, a gift is presumed, and the party challenging the transfer bears the burden of proving that a resulting trust was intended: *Pecore v. Pecore*, 2007 SCC 17 at paras. 27–41.

[53] Courts generally start the assessment with the transferor’s intent, and resort to the presumptions only if the evidence is inadequate to establish intent. In *Namdarpour v. Vahman*, 2019 BCCA 153, the Court of Appeal held that presumptions “operate only where the trial judge is unable to reach a conclusion about the transferor’s actual intention at the time of transfer”.

[54] In this case, both parties also made reference to s. 81.1 of the *Family Law Act*, S.B.C. 2011, c. 25, which provides that neither the presumption of advancement nor the presumption of resulting trust apply to determining the ownership of property as between spouses. In my view, this provision is not applicable to Nextgen’s claim that Mr. Bremner had a beneficial interest in the 10th Street property by contributing to its purchase or making a money gift to Ms. Matsubuchi which she used to pay down the mortgage.

Whether Nextgen Can Assert Mr. Bremner's Equitable Interest

[55] Unlike the claim based on tracing giving rise to a remedial constructive trust in favour of Nextgen, the resulting trust claim alleges a beneficial interest belonging to Mr. Bremner. That gives rise to the question as to whether Nextgen can make a claim for a resulting trust in the shoes of Mr. Bremner for the purpose of executing against that interest.

[56] Nextgen asserts the answer to that question is found in the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, s. 86(3) which provides that a judgment registered against land pursuant to s. 88 of the *Court Order Enforcement Act* has the same status as a charge on land that the judgment debtor provided, to the extent of the judgment debtor's beneficial interest in the land. While a judgment registered against land is registered to the extent of the judgment debtor's beneficial interest pursuant to this provision, s. 86(3) does not specifically provide that a judgment creditor can sue a third party to assert the judgment debtor's beneficial interest in land owned by the third party.

[57] Section 86(3) is a codification of the principle of *nemo dat quod non habet*: a judgment creditor's interest in the judgment debtor is no greater than that of the judgment debtor: *Chichak v. Chichak*, 2021 BCCA 286 at para. 19, citing *Gill v. Bucholtz*, 2009 BCCA 137. Section 86(3) is often referred to in cases where the judgment creditor registers the judgment against property for which the judgment debtor holds the legal title as standing for the proposition that judgment creditor does not gain priority over prior unregistered interests such as a resulting trust or a purchaser for value.

[58] Nextgen also relies on *Webber et al. v. Singh et al.*, 2005 BCSC 224, rev'd in part *Webber v. Dulai Roofing Ltd.*, 2006 BCCA 501. In that case, the judgment debtor Bant Jhajj was one of two persons on title, the other being his brother Harnek Singh. Mr. Jhajj's legal interest was 1% of the property. The judgment creditor registered his judgment against Mr. Jhajj against the title to the property, preventing a sale of the property from completing. At trial, Justice Williams observed that the judgment registered was, pursuant to s. 86(3)(a) of the *Court Order Enforcement*

Act, a charge against Mr. Jhaggi's beneficial ownership. Justice Williams held that the judgment creditor, on the principal that the judgment creditor stands in no better shoes than the judgment debtor, was only entitled to have his judgment satisfied from Mr. Jhaggi's 1%, "unless it could be proved that his beneficial interest in the property was greater than or less than his legal interest" (at para. 20). At para. 22, Williams J. held that there was no evidence that Mr. Jhaggi's beneficial interest in the property exceeded his legal interest. On appeal, that analysis was not questioned. The question was whether the judgment creditor was entitled to have the entire amount of its judgment registered against title even though it was greater than the judgment debtor's legal interest, in the hopes that the value of the property would increase until the value of the judgment debtor's interest matched the judgment. The judgment creditor asserted that in those circumstances, the trial judge was not entitled to cancel its charge to allow the sale to proceed. The Court of Appeal disagreed, see para. 13.

[59] This case is different because in *Webber*, Mr. Jhaggi was on title and the judgment had been registered against the title. The question was to what extent the judgment registered charged the title, and the answer was that it charged the title to the extent of Mr. Jhaggi's beneficial interest, but there was no evidence that his beneficial interest differed from his legal interest. That is a different question than whether a judgment creditor, who is a stranger to a transaction between a judgment debtor and a title holder, can assert the transaction created a beneficial ownership in property in favour of the judgment debtor and then charge the title with the judgment.

[60] In addition, by its own terms, s. 86(3) applies where the judgment has been registered pursuant to s. 88 of the *Court Order Enforcement Act*, in which case s. 89 of the *Court Order Enforcement Act* provides that the Registrar of the *Land Title Act*, R.S.B.C. 1996, c. 250 may make an inquiry to determine if the alleged judgment debtor is an owner, defined as "a person alleged by the judgment creditor to be a judgment debtor and to have acquired from or through a registered owner, by transfer, transmission or otherwise, an estate or interest in the land in question". That would seem to allow Nextgen to register the judgments against the title and have the Registrar of Land Titles make the determination sought to be made in this

case. But that is not what Nextgen has done, accordingly, s. 86(3) of the *Court Order Enforcement Act* does not advance the matter.

[61] Nextgen did register certificates of pending litigation against the properties, but they do not engage s. 86(3).

[62] In *Blackman v. Davison* (1987), 3 A.C.W.S. (3d) 370, 1987 CanLII 2713 (B.C.C.A.), the Court of Appeal held that a judgment creditor could not assert that the wife of the judgment debtor held the family home in a resulting trust for the judgment debtor, in the absence of evidence of fraudulent intent, because “the matter of title, interest and ownership of the marital home is strictly and exclusively between the spouses”: at para. 17. That supports the conclusion that a claim of a judgment creditor for a resulting trust in favour of its judgment debtor could not be, as a matter of law, pursued by the judgment creditor. However, in the concurring judgment, with which all judges agreed, Justice Macfarlane reasoned the appeal should also be dismissed on the basis that the trial judge had not erred in finding that the husband intended the marital home as a gift to his wife and therefore the claim of a resulting trust could not succeed. That seems to suggest that the stranger could make the claim, but on the evidence it had not succeeded.

[63] Ms. Matsubuchi does not specifically argue that Nextgen cannot, as a matter of law, claim that Mr. Bremner had a beneficial interest in the properties in order to execute its judgment against that beneficial interest. She rests her argument on the fact that such a claim must fail because the evidence does not establish Mr. Bremner made significant contributions to either property, and any contributions he made were gifts.

[64] I am of the view that first set of reasons in *Davison* seems to suggest a stranger to a transaction between spouses cannot argue that the transaction gave rise to an equitable interest in one of the spouses, but based on the concurring reasons, it is not clear that the decision precludes such a claim.

[65] Accordingly, I will consider whether such an interest can be established on the evidence.

The Transactions Alleged to Give Rise to the Resulting Trust
Half of the Purchase Price of the 10th Street Property

[66] Nextgen relies on evidence given by Mr. Bremner at his examination in aid of execution in the action in which the judgment was obtained, where he stated that he paid half of the purchase price of the 10th Street property. He testified that the purchase price was \$725,000. However, the next day, he sent the April 25, 2017 email in which he stated that he did not have an equity interest in the 10th Street property because he had not made contribution towards one half the purchase price, but rather, had given Ms. Matsubuchi a gift of \$550,000 some months after the purchase. He stated that Ms. Matsubuchi could do what she wished with those funds, and she used them to retire the debt on the 10th Street property. At an examination for discovery in this action, on October 15, 2020, Mr. Bremner testified that the purchase price was \$750,000 and that he did not contribute to the purchase price.

[67] Ms. Matsubuchi testified that Mr. Bremner did not contribute to the purchase price and she did not receive \$550,000 from Mr. Bremner after the purchase. Nextgen asserts that her evidence was internally contradictory on this point because when asked about this on discovery, she denied that he made a contribution, but moments later, when asked about the \$550,000, she stated “I don’t remember that”. Ms. Matsubuchi argues this is not contradictory evidence because she had been asked repeatedly about the source of the funds for the purchase of the property, and she had repeatedly answered that the sources did not include Mr. Bremner. When she was asked whether he had given her a gift of \$550,000 after the purchase of the 10th Street property, she answered that she did not remember that at the time of the 10th Street property purchase.

[68] In the April 25, 2017 email that Mr. Bremner wrote to counsel for Nextgen, he stated that he had given Ms. Matsubuchi \$550,000 and she had used it in part to repay a loan from her father of \$140,000. However, in response to a request that he provide specifics and documents regarding this gift, he stated that he had not written

a cheque for \$550,000. He stated that he had written a cheque to the bank in the amount of the outstanding mortgage and left it at the front desk of the bank.

[69] At her examination for discovery, Ms. Matsubuchi testified that she did not remember a \$550,000 gift from Mr. Bremner nor a \$140,000 loan from her father. She testified, “I’m not going to say it didn’t happen. I’m just saying no, I don’t [recall]”. At trial, she testified that she did not receive \$550,000 from Mr. Bremner, but she did receive \$140,000 from her father.

[70] I agree that Ms. Matsubuchi’s evidence is not necessarily internally contradictory on the point of the alleged \$550,000 gift.

[71] Mr. Bremner has given three different irreconcilable versions of contributions he made to the 10th Street property: first that he contributed half the purchase price of \$725,000, which would be about \$312,500 dollars; second that he did not make a contribution to the purchase price, but he did, some months later, make a gift to Ms. Matsubuchi of \$550,000, that she could do with what she wished; and third that he had not written a cheque for \$550,000, but rather left a cheque in the amount of the outstanding mortgage with the bank.

[72] Accordingly, Mr. Bremner’s evidence needs corroboration and there is no corroborating evidence that he made a contribution to the purchase price. There is only his internally conflicting evidence and Ms. Matsubuchi’s evidence that he did not.

[73] In any event, Mr. Bremner and Ms. Matsubuchi both testified that a portion of the funds for the purchase price came from the net proceeds of the sale of a house that Ms. Matsubuchi had purchased before she met Mr. Bremner. Those proceeds were about \$300,000. That evidence was not challenged. There is documentary evidence that Ms. Matsubuchi secured a \$425,000 mortgage on which she was the sole mortgagor. Ms. Matsubuchi testified that she might have had some additional savings, and at trial she testified that her father loaned her \$140,000.

[74] The documentary evidence shows that an HSBC mortgage in the principal amount of \$425,000 was registered on May 31, 2002, the same date that Ms. Matsubuchi purchased the property. It was replaced with another HSBC mortgage on June 3, 2003. That mortgage was replaced by a Royal Bank of Canada mortgage on May 13, 2005, which mortgage is still on the property. According to Ms. Matsubuchi's financial statement made in family law proceedings in 2015, that mortgage at that time was a line of credit with an outstanding balance of \$85,000.

[75] Accordingly, the objective evidence demonstrates that the 10th Street property was purchased with a combination of the proceeds from the sale of Ms. Matsubuchi's Boulevard Crescent property and a mortgage. There is no objective evidence that Mr. Bremner contributed to the purchase. I do not need to accept Ms. Matsubuchi's evidence to conclude that Nextgen has not proved that Mr. Bremner made a financial contribution to the purchase of the 10th Street property.

\$550,000 Gift to Pay Down the Mortgage on the 10th Street Property

[76] Mr. Bremner's evidence on this point is the same internally contradictory evidence set out above.

[77] As noted above, the tenor of Ms. Matsubuchi's evidence on several questions around this gift was that it did not happen, but in answer to one of many questions, she stated that she did not recall it.

[78] It may be that Ms. Matsubuchi does not remember a \$550,000 gift because there was not one; the \$550,000 gift is only one of the three versions Mr. Bremner testified about. Nevertheless, it is odd that she did not remember whether or not there was an occasion when Mr. Bremner gave her a large sum of money to pay off the mortgage or paid it off himself.

[79] Mr. Bremner's evidence about the \$550,000 is directly internally contradictory so I cannot rely on it. Although I am also concerned about Ms. Matsubuchi's inability to be certain on this topic, as I have related above, the documentary evidence does

not demonstrate that Ms. Matsubuchi or anyone else retired the mortgage on the 10th Street property around the time that Mr. Bremner allegedly made the gift.

[80] The evidence does not satisfy me, on the balance of probabilities, that Mr. Bremner made a \$550,000 gift to Ms. Matsubuchi or paid down her outstanding mortgage on the 10th Street property.

[81] Accordingly, there is no need to determine whether a resulting trust arose in relation to the 10th Street property.

Payment of Taxes and Renovation Bills on the 17th Street Property

[82] In closing submissions, Nextgen did not make any submissions about a resulting trust pertaining to the 17th Street property. As noted above, it has also not pleaded this. Accordingly, I will not consider this argument further.

Conclusion on Equitable Interest in the Real Properties

[83] On the evidence, I am not persuaded that Mr. Bremner contributed to the purchase price of the 10th Street property or paid down the mortgage of the 10th Street property. Nextgen did not plead that Mr. Bremner contributed to the 17th Street property and did not make any submissions in that regard. I conclude that the evidence does not support a resulting trust in Mr. Bremner's favour.

Ownership in the Real Properties as Family Property

[84] Nextgen asserts that Mr. Bremner and Ms. Matsubuchi separated by August 2015, when Mr. Bremner served Ms. Matsubuchi with a notice of family claim. Nextgen asserts that the separation triggered an interest that Mr. Bremner had in family property, including the 10th Street property and the 17th Street property. Nextgen seeks a declaration that Mr. Bremner had an interest in those properties as family property pursuant to s. 81 of the *Family Law Act*. Nextgen also asserts they likely separated at least a year earlier than August 2015 because in the notice of family claim Mr. Bremner pleaded that they separated in March 2014, and in the response to family claim, Ms. Matsubuchi pleaded that they separated in 2009.

[85] Ms. Matsubuchi argues that because she and Mr. Bremner reconciled within a year of the service of the notice of family claim, s. 83(1) of the *Family Law Act* deems the separation to have not occurred, the result of which is that no interest in family property arose.

[86] The following issues need to be determined in order to address whether Mr. Bremner has an interest under the *Family Law Act* in the 10th Street property and/or the 17th Street property that Nextgen can execute against:

- a) Can a non-spouse step into the shoes of a spouse to assert an interest in family property pursuant to the *Family Law Act*?
- b) Did Mr. Bremner and Ms. Matsubuchi reconcile such that they were not considered separated?
- c) If the first issue is answered yes, and the second issue is answered no, how is Mr. Bremner's interest valued?

Legal Principles

[87] Section 81 of the *Family Law Act* provides that spouses are entitled to family property and responsible for family debt. On separation, each spouse has a right to an undivided half interest in all family property as a tenant in common and is equally responsible for family debt. In *Vancouver Coastal Health Authority v. Moscipan*, 2019 BCCA 17 at para. 92 [*Moscipan*], the Court of Appeal explained that a spouse's interest in family property arises on separation and not before.

[88] Section 83(1) of the *Family Law Act* provides that spouses are not considered to have separated if, within one year after separation, they begin to live together again for the primary purpose of reconciling, and they continue to live together for at least 90 days.

[89] Section 84(1)(a) of the *Family Law Act* defines family property as all real property and personal property owned by at least one spouse or the subject of a

beneficial interest of at least one spouse as of the date of separation except excluded property.

[90] Section 85(1)(a) of the *Family Law Act* provides that property acquired by a spouse before the relationship began is excluded property.

[91] Section 87 provides that family property is valued at its fair market value determined as of the date when an agreement dividing the family property and family debt is made, or as of the date of a hearing before the court respecting the division of property and family debt but provides discretion to depart from that date. In *Kumagai v. Campbell Estate*, 2018 BCCA 24, the Court of Appeal at para. 76 said a departure from the presumptive date of valuation is effectively a reapportionment or unequal division of the family property, which can only be done under s. 95 of the *Family Law Act*. Thus, the party seeking to impose a different valuation date is required to show it would be “significantly unfair” to value the family property as of the date of the hearing. In *Jaszczewska v. Kostanski*, 2016 BCCA 286, the Court of Appeal said at para. 42 that significant unfairness requires something unjust, unreasonable or unfair in some important or substantial sense. In *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44, Mr. Justice Butler described significant unfairness as “compelling or meaningful having regard to the factors set out in s. 95(2)”. Section 95(2) of the *Family Law Act* says:

- (a) the duration of the relationship between the spouses;
- (b) the terms of any agreement between the spouses, other than an agreement described in section 93 (1) [*setting aside agreements respecting property division*];
- (c) a spouse's contribution to the career or career potential of the other spouse;
- (d) whether family debt was incurred in the normal course of the relationship between the spouses;
- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
- (g) the fact that a spouse, other than a spouse acting in good faith,

- (i) substantially reduced the value of family property, or
- (ii) disposed of, transferred or converted property that is or would have been family property, or exchanged property that is or would have been family property into another form, causing the other spouse's interest in the property or family property to be defeated or adversely affected;
- (h) a tax liability that may be incurred by a spouse as a result of a transfer or sale of property or as a result of an order;
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.

[92] Under s. 94(1) of the *Family Law Act*, a judge of this court has authority to make an order for the division of family property “on application by a spouse”.

The Family Litigation

[93] On July 10, 2015, Mr. Bremner filed a notice of family claim.

[94] In July of 2015, Mr. Bremner filed certificates of pending litigation against the 10th Street property and the 17th Street property. At his examination in aid of execution he testified that he did not want to do so, but his lawyer in the family litigation insisted and he understood it was common practice, so he went along with it.

[95] In the notice of family claim, Mr. Bremner alleged that he and Ms. Matsubuchi had separated on March 14, 2014.

[96] At his examination in aid of execution, Mr. Bremner testified that he believed he stated in his notice of family claim that he and Ms. Matsubuchi separated in March 2014. Mr. Bremner testified at his examination in aid of execution that their reconciliation occurred over a period of months. He did not testify when that period commenced. He testified it concluded by June 2016.

[97] Ms. Matsubuchi testified that Mr. Bremner served her with the notice of family claim in August 2015, on the same day she was leaving for a cruise with their children and some other family members. She testified that someone came to their door and handed her an envelope.

[98] Ms. Matsubuchi testified that before leaving on the cruise, she asked Mr. Bremner what the claim was about and he told her they would talk about it when she came back from the cruise. She testified that she went on the cruise, and when she came back, Mr. Bremner picked her and the children up and they went home. She testified that she asked him what was going on. She testified that Mr. Bremner was mad because he thought that their children were being treated unfairly and that Ms. Matsubuchi and others were ganging up on the kids. She testified that Mr. Bremner told her that he was mad, but she should forget it. Ms. Matsubuchi testified that Mr. Bremner said he was sorry. She testified he was happy to see her and they jumped back into bed together that night after the kids went to bed. She testified that she told him that he had started the process for a divorce so he had to undo it. She testified that he provided her with a document entitled “release” the following spring and she considered it undone by then.

[99] Ms. Matsubuchi testified that Mr. Bremner’s statement in his notice of family claim about them separating in March 2014 was not correct.

[100] On September 17, 2015, Ms. Matsubuchi filed a response to family claim and a counterclaim in the family law action. In her counterclaim, she asserted that she and Mr. Bremner separated on August 17, 2009. Ms. Matsubuchi was asked about that in cross examination, and she testified that it must have been a mistake. She agreed that she would not knowingly make a false statement in a court document such as her counterclaim. She testified that the counterclaim was supposed to say August 17, 2015, as the date of separation, not August 17, 2009. However, certain schedules in her response to family claim demonstrate that the 2009 date was not a simple typo. She alleged in the response to family claim that Mr. Bremner had lived separate and apart from her in the family home, was buying his own food, making his own meals and maintaining himself in a separate unit. She alleged he had done so since the date of separation. At trial she agreed that the information she provided in her response to family claim was not correct.

[101] Ms. Matsubuchi testified that she and Mr. Bremner lived together from the time they were married to the time that he died. She testified they shared a room and a bed until about 40 months before he died when he was too ill to go up the stairs to their shared bedroom. She testified that after the August 2015 cruise, they continued this arrangement.

[102] Ms. Matsubuchi also testified that she is a religious person, and so she talked to three priests about their situation. She testified that she did not want to be divorced. She testified that she understood from those conversations that if Mr. Bremner did not want to stay married, it was not something she could stop.

[103] Ms. Matsubuchi testified that she and Mr. Bremner worked with a social worker on their problems, including on the issues pertaining to the children. She testified that they resolved the issues. Mr. Bremner testified at his examination in aid of execution that they had reconciled, and that that the reconciliation was coordinated by the Ministry of Children and Family Development through which they attended counselling. He testified that over a period of months, they reached an agreement and reconciled around June of 2016.

[104] Mr. Bremner prepared a document entitled "Release" which was dated June 1, 2016. At his examination in aid of execution, Mr. Bremner testified that the release was originally Ms. Matsubuchi's idea, but he prepared it.

[105] Mr. Bremner's signature appears on the release. The signature is witnessed. Mr. Bremner testified the first name of the witness was Arlene, but he could not recall her last name. In response to a request that he determine her last name, he advised that the witness was not Arlene, and he could not recall who it was.

[106] Mr. Bremner deposed that he waived his interest in the two properties in exchange for the sums Ms. Matsubuchi had loaned him over the years. He testified that he assessed the offset of the debt against his interest in the 10th Street property and 17th Street property off the top of his head, that he did not have any appraisals done on the value of the properties but that he did have the notices of assessment.

[107] At one of Mr. Bremner's examinations for discovery, counsel for Nextgen suggested that this release was not made in June 2016 but was made after Mr. Bremner sent the April 25, 2017 email. Mr. Bremner testified that was possible. Counsel for Ms. Matsubuchi argued that the release could not have been made after April 25, 2017, because in their response to civil claim in this action, filed January 17, 2017, they made reference to the release. In addition, Nextgen read in examination in aid of execution evidence that Mr. Bremner gave on April 24, 2017, in which he testified that up until the time he "made the transaction release with her" ... he "owed her about \$500,000". That evidence appears to be in reference to the release dated June 1, 2016 and it cannot be that it was done after the April 25, 2017 email if he testified about it on April 24, 2017.

[108] There is no evidence that the release was made after the April 25, 2017 email. In any event, they are not on the same topic. The April 25, 2017 email is about \$550,000 that Mr. Bremner asserted he gave Ms. Matsubuchi to do with as she saw fit, and she used it to pay down the 10th Street property mortgage, something Ms. Matsubuchi asserts did not happen. The release does not purport to be about the \$550,000 gift from Mr. Bremner to Ms. Matsubuchi, it purports to be about \$500,000 in loans that Ms. Matsubuchi made to Mr. Bremner.

[109] On March 16, 2017, Ms. Matsubuchi made the affidavit that I referred to above in support of her application to discharge certificates of pending litigation filed by Nextgen. For the reasons I have given, that affidavit does not support a finding that Ms. Matsubuchi made \$500,000 in loans to Mr. Bremner. However, other evidence demonstrates that Ms. Matsubuchi did make significant loans to Mr. Bremner over the years, and sometimes he made loans to her. I accept this evidence despite the credibility problems with Ms. Matsubuchi's evidence, because there are cheques evidencing loans and transfers from Ms. Matsubuchi to Mr. Bremer with an amount where the cents part of the dollar figure matches the year in which the transaction occurred. As I will discuss in more detail below, Ms. Matsubuchi testified this was a tool she used to track what money went where

and when, including for loans to Mr. Bremner and transfers of funds she made within her own accounts.

[110] Given that I accept that Ms. Matsubuchi made loans to Mr. Bremner, and Mr. Bremner signed a release of his interest in the properties after commencing family law litigation and filing certificates of pending litigation against them, there is evidence that he intended to release his interest in those properties.

[111] The certificates of pending litigation filed by Mr. Bremner were discharged on November 17, 2016.

Discussion

Whether Mr. Bremner and Ms. Matsubuchi Reconciled Within One Year

[112] Ms. Matsubuchi asserts that there was no separation prior to August 2015 when Mr. Bremner served her with the notice of family claim. She argues that because she and Mr. Bremner reconciled within one year of the separation, the separation was deemed to not have occurred.

[113] This issue requires a finding of the dates of separation and reconciliation.

[114] Separation requires that at least one of the parties communicate an intention to separate and conduct themselves consistent with that intention: *Nearing v. Sauer*, 2015 BCSC 58 at paras. 54–55, 59. With regard to conduct, the courts consider whether the parties continued to live in the same residence, share a marital bedroom, carry on activities as a couple, intermingle finances and participate in family events.

[115] The service of the notice of family claim would meet this test of communicating and conducting oneself as intending to separate, despite that the parties remained living under the same roof. The question is whether there was an earlier separation. Nextgen relies on Mr. Bremner’s notice of family claim and Ms. Matsubuchi’s response to family claim and counterclaim, which assert earlier dates of separation, 2014 and 2009, respectively.

[116] Ms. Matsubuchi submits that the pleadings are at most prior inconsistent statements, they were not made in a manner which allows assessment of credibility, and so while they go to credibility of in court testimony, the content of the out of court statement does not have any independent evidentiary value: *Deacon v. The King*, [1947] S.C.R. 531, 1947 CanLII 38; and *R v. Kirkpatrick*, 2022 SCC 33.

[117] I am of the view that averments in pleadings are not necessarily a statement of a witness. A date of separation is often a legal conclusion based on evidence as to the matters referred to above that determine separation at law. A family law litigant's assertion of a separation date in a pleading does not necessarily have evidentiary value because it is what the party asserts for strategic reasons, or what the party hopes the evidence will establish. However, in this case, Ms. Matsubuchi testified that she would not include any pleading in a document to go before the court that was not true.

[118] It is not necessary to determine what weight to give to anything in Ms. Matsubuchi's pleading because I do not accept any of Ms. Matsubuchi's evidence about the separation or the reconciliation. Her suggestion that the same day as she returned from the cruise Mr. Bremner said to forget about the divorce proceedings and she considered that they reconciled immediately is contradicted by the fact that about a month after returning from the cruise, Ms. Matsubuchi filed a response and counterclaim to Mr. Bremner's notice of family claim. In her testimony, she had to agree that her pleading that Mr. Bremner was eating separately and maintaining himself in a separate unit in the family home since separation was not correct. That pleading is not consistent with her evidence that the stated separation date was a typo in the year, and that they never changed their living arrangements.

[119] Whether the statements in the pleadings were mere positions or not, Ms. Matsubuchi's evidence on the date of separation and reconciliation cannot be reconciled. It makes no sense that if right after the Alaska cruise he told her to forget about it and that he would undo the process he started, such that she does not

believe they ever actually separated, she would file a response to family claim, a counterclaim, and an F-8 financial statement.

[120] Mr. Bremner's evidence is also too internally conflicting to rely on for the date of separation and the date of reconciliation. There is no evidence that Mr. Bremner communicated an intention to separate from Ms. Matsubuchi in March 2014 or any time prior to August 2015. There is no evidence of a change in his conduct or their conduct as a married couple prior to August 2015 that supports the finding of a separation before then.

[121] The release dated June 1, 2016 is some objective evidence that the reconciliation was accomplished by that date. But that document is also unreliable because Mr. Bremner testified that the witness was Arlene, but then testified, through his responses to requests left, that it was not Arlene and he did not know who it was. The assertion that Mr. Bremner intended to release his claim against the properties is objectively supported by the discharge of the certificates of pending litigation. But that did not happen until November 2016, some months after the June 1, 2016 release and more than a year after the service of the notice of family claim. While I accept that Mr. Bremner released his claims against the properties, I do not accept that as evidence of a reconciliation by a particular date.

[122] The evidence as a whole that is uncontradicted is that Mr. Bremner, Ms. Matsubuchi and the children continued to live together in the family home until he died in 2022. There is no evidence that the separation continued in the sense of them not functioning as a family. They did not continue the family law proceeding after service of the initial pleadings. A judicial case conference set to proceed in December 2015 was adjourned. The evidence demonstrates that Mr. Bremner and Ms. Matsubuchi did resume functioning as a married couple. But I am not able to say when their reconciliation occurred such that I can conclude they were separated for less than a year. It follows I cannot conclude that Mr. Bremner did not have an interest in the real properties as family property that arose on separation.

Whether Nextgen Can Assert Mr. Bremner's Interest in Family Property

[123] Section 94(1) of the *Family Law Act* provides that the court may make an order for division of a family property on the application of a spouse. That appears to be a codification of the principle enunciated at para. 17 of *Blackman* that the matter of interest and ownership of the marital home is exclusively between the spouses.

[124] In *Kootenay Savings Credit Union v. Brar*, 2023 BCSC 1379 [*Kootenay Savings BCSC #2*], a judgment creditor sought to have funds paid out of court in satisfaction of its judgment against real property owned by a judgment debtor who was a divorced spouse. In an earlier proceeding reported at 2021 BCSC 2027 [*Kootenay Savings BCSC #1*], aff'd 2023 BCCA 68, leave to appeal ref'd, 40689 (2 November 2023), the Court set aside, as a fraudulent conveyance, the judgment debtor's transfer of his interest in the property to three family members, one of whom was his spouse. The funds from the sale of the property were paid into court. The judgment debtor and his spouse divorced. The judgment's debtor's ex-spouse had an interest in the family home, and by that, an interest in the funds paid into court, independent of the fraudulent conveyance. The ex-spouse's interest had not yet been determined in the family law proceeding. At para. 14 of *Kootenay Savings BCSC #2*, Justice Lyster held that could only be determined within the family law proceeding. She ordered that the judgment creditor's application be heard at the same time as the family law proceeding. The judgment creditor then applied to be added as a party to the family law proceeding. In *Saran v. Brar*, 2024 BCSC 1248, Justice Gibb-Carsley dismissed the judgment creditor's application, describing, at paras. 30–34, the mischief that could be done to family proceedings if judgment creditors can be made parties to them.

[125] That case was different from this one, in that there was a family law case pending and in this case there is not. However, there are principled reasons why family law matters should be decided in family law proceedings and not justiciable by a stranger to the marital relationship.

[126] The first is that the interest in family law property is created by statute, and the legislature has seen fit, by s. 94(1) of the *Family Law Act*, to give courts jurisdiction to determine the interest of a spouse in family property “on the application of a spouse”. The court does not have jurisdiction to determine that issue on the application of a non-spouse. In addition, the mischief that Gibb-Carsley J. described in *Saran* is compelling. Societal interests in sanctity of marriage are served by parties to marriages being the only ones who can litigate whether their marriage or marriage-like relationship has ended and seeking apportionment of family property.

[127] Next, the provisions of the *Family Law Act* make it practically impossible to determine the issue outside of a family law proceeding. While s. 81, as interpreted by the Court of Appeal in *Moscipan*, provides that the interest does not arise until separation, the determination of the issue may include several inquiries that are undertaken in litigation between the spouses. If there is excluded property involved, the value of the excluded property must be determined as of the date of the marriage or when the relationship began (see s. 84(2)(g) of the *Family Law Act*). In this case, that involves determining the value of the 17th Street property at the date of marriage and the value of the Boulevard Crescent property at the date of marriage, because the sale proceeds of Boulevard Crescent were used to purchase the 10th Street property. Second, the valuation date for the family property is determined as of the date of trial, unless significant unfairness is shown that mandates apportionment under s. 95(2). In this case, there is no date for a family trial.

[128] Finally, the s. 95(2) factors for determining significant unfairness such that a different date can be used generally pertain to the circumstances of the spouses such that they are not properly litigated by a stranger to the marriage.

[129] I conclude that the legislature did not intend that a non-spouse could invoke s. 95(2) to have the family property valued and apportioned at a date other than the trial of the family law proceeding.

[130] I appreciate that in *Saran and Kootenay Savings BCSC #1*, the Court acknowledged the unfairness to a judgment creditor if family law proceedings do not advance, as that may hamper its efforts to execute its judgment. The Court took steps to avoid that, short of adding the judgment creditor to the family law proceedings. But in that case, the judgment debtor had a legal interest in the property that the judgment creditor could execute against, independent of family law proceedings, subject to the determination of the extent of that interest which required determination of the judgment debtor's spouse's unregistered interest that arose as a result of the end of the marriage. In this case, Mr. Bremner does not have an interest in the property independent of family proceeding; Nextgen is seeking to assert Mr. Bremner's family property interest.

[131] The issue is clouded because of the separation. Had that not occurred, Nextgen would not have any basis to assert Mr. Bremner's interest in the properties as family property or seek division of the family property because his interest would not have arisen. Although I am not able to conclude the parties reconciled within a year of separation, they did reconcile, and neither advanced the family proceeding. I am of the view that family law legislation, which provides the court's jurisdiction to determine an interest in property as between spouses including when one spouse is not on title, the value of that interest, and how the interest shall be realized, does not allow for Nextgen to advance the family proceeding and seek a division of family property in the shoes of Mr. Bremner. Policy reasons drive the same result.

[132] In any event, Nextgen has not led the evidence or made submissions that would permit the Court to divide the family property. Nextgen has not led any evidence or made any submissions on the existence of or value of excluded property or in support of a valuation date different than a trial date in the family proceeding.

[133] Nextgen has not proposed any means of addressing the principles that animate the requirement that division of family property must take place in a family law proceeding. Nextgen asserts that I simply make a declaration similar to that made in *Fillion v. Fillion*, 2011 BCSC 1593 at para. 199, that Mr. Bremner has a

proportionate interest in the properties stated in percentage terms. Nextgen asserts that the matter would then go to a proceeding before the registrar for Nextgen to execute its judgment.

[134] That submission is problematic for two reasons. First, I cannot determine Mr. Bremner's percentage proportionate interest in the properties, as of a date that Nextgen has not identified, pursuant to the *Family Law Act*, for the reasons I have given above. Second, even if I could, the quantification issues cannot be determined in a registrar's proceeding as a matter of execution of a judgment. Apportionment of family property includes assigning the value to it, or the means by which the value will be determined, and the means by which it will be divided. Those matters that must be determined by a judge.

[135] While the jurisprudence stands for the proposition that a judgment debtor should not be able to frustrate the judgment creditor through family law proceedings, in this case, there is no evidence that Mr. Bremner and Ms. Matsubuchi used the family proceeding to frustrate Nextgen. Indeed, the evidence of the family proceeding undermines Nextgen's theory that Mr. Bremner engaged in a series of fraudulent conveyances to Ms. Matsubuchi as early as 2002 and no later than 2011. If he intended to have his assets protected by sheltering them with her, it makes no sense that in 2015, he would commence a claim seeking ownership of her assets that had never been in his name. Nextgen asserts that the commencement of the family claim was a mistake that Mr. Bremner made in this regard, which Mr. Bremner realized and that explains the release and abandoning the family law claim. I do not consider that to be plausible if Mr. Bremner was engaged in the scheme asserted by Nextgen.

[136] I conclude that Nextgen cannot step into Mr. Bremner's shoes to assert his interest in family law property. I conclude that if I am wrong on that, Nextgen has not led the evidence that permits that determination to be made.

Conclusion on Family Property

[137] Nextgen has not persuaded me that it can assert any interest Mr. Bremner had in Ms. Matsubuchi's real properties as family property or how to determine what interest he had, if any. Accordingly, I will not make a declaration of family property in relation to the real properties.

Fraudulent Conveyances or Fraudulent Preference

[138] Nextgen asserts that several transfers between Mr. Bremner and Ms. Matsubuchi are fraudulent conveyances as are several deposits into Ms. Matsubuchi's bank account for which a source cannot be identified. Nextgen asserts that Mr. Bremner's release of his interest in the real properties is a fraudulent preference.

Legal Principles

Fraudulent Conveyances

[139] The *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 consists of two sections. Section 1 defines a fraudulent conveyance and provides that it is void and of no effect against a person whose rights are disturbed, hindered, delayed or defrauded and s. 2 provides the defence of valuable consideration.

[140] Sections 1 and 2 read as follows:

Fraudulent conveyance to avoid debt or duty of others

1 If made to delay, hinder or defraud creditors and others of their just and lawful remedies

- (a) a disposition of property, by writing or otherwise,
- (b) a bond,
- (c) a proceeding, or
- (d) an order

is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.

Application of Act

2 This Act does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud.

[141] Justice Goepel discussed the purpose of the *Fraudulent Conveyance Act* in *Moscipan* at para. 85, citing *Royal Bank of Canada v. North American Life Assurance Co.*, [1996] 1 S.C.R. 325 at para. 59, 1996 CanLII 219, as “to strike down all conveyances of property made with the intention of delaying, hindering or defrauding creditors and others except for conveyances made for good consideration and *bona fide* to persons not having notice of such fraud”.

[142] The *Fraudulent Conveyance Act* is remedial legislation which should be interpreted liberally and purposively: *Moscipan* at para. 85, citing *Royal Bank of Canada* at para. 59.

[143] The statutory definition of fraudulent conveyance found in s. 1 was described in *Ocean Construction Supplies Ltd. v. Creative Prosperity Capital Corp.* (1995), 34 C.B.R. (3d) 241 at para. 25, 1995 CanLII 740 (B.C.S.C.) as a “transfer of an interest in property which is made with the intention, and which has the effect, of hindering or impairing the right of a creditor or other person to satisfy a claim against the transferor”.

[144] The caselaw interpreting s. 1 addresses issues about (a) what kinds of transfers qualify as a “disposition of property”; (b) the nature of the requisite intent; (c) the legal test for determining the requisite intent, including issues related to credibility; and (d) what is meant by “creditors and others”.

[145] The caselaw demonstrates that the broad and liberal interpretation of the legislation includes conveyances that would not be considered disposition of property in the strict sense. For example, in *Moscipan*, the defendant’s decision to add her husband to the title on their family home as a joint owner when she knew she was dying from a terminal illness amounted to a fraudulent conveyance, because the intent was to convey the family home to her husband and shield it from her creditors. In *Waheed v. J.M. Food Services Ltd.*, 2023 BCSC 2113, rev’d in part

on other grounds 2024 BCCA 381, Justice Winteringham held at para. 121 that a corporate defendant's rights to sell dough and small-wares were its primary assets, and it therefore amounted to a fraudulent conveyance when it transferred those rights to a related corporate entity, even though the transferred assets would not normally be considered property.

[146] In *Chan v. Stanwood*, 2002 BCCA 474 at para. 22, Justice Newbury held that a swap of corporate assets for preferred shares was a disposition in circumstances where the preferred shares were subject to restrictions which prevented the holder or a creditor who executed against the shares from getting at the underlying protected assets. The deciding factor was that the design of the transaction was to protect the assets. This suggests that a "disposition of property" is broad enough to apply to any arrangement that is designed for the purpose of delaying, hindering or defrauding creditors. The focus of the analysis is less on the nature of the disposition, and more on the transferor's intent.

[147] Section 1 of the *Fraudulent Conveyance Act* requires that the transfer was made with the intent to hinder, delay or defraud a creditor. In *Abakhan & Associates Inc. v. Braydon Investments Ltd.*, 2009 BCCA 521 at para. 73, the Court of Appeal noted that it is not necessary that the intent be blameworthy, dishonest or in bad faith. A person's good faith efforts to protect their property can still be a fraudulent conveyance. As Justice Masuhara explained in *Cabaniss* at para. 56, "fraudulent intent can exist concurrently with good faith motive, and the latter does not negate the former".

[148] Intent is a state of mind and a question of fact: *Abakhan & Associates Inc.* at para. 74. If there is direct evidence of the transferor's intent, that is considered including the weight or credit given to the direct evidence, viewed in light of the other circumstances and the inferences to be drawn: *Abakhan & Associates Inc.* at para. 80. In many cases, there is no direct evidence of the transfer's intent, and the court must assess the totality of the circumstances surrounding the transfer to

determine intent, including badges of fraud: *Abakhan & Associates Inc.* at para. 80; *Cabaniss* at para. 49; and *Moscipan* at para. 43.

[149] The authorities identify the following badges of fraud:

- a) the relationship between the parties to the transfer;
- b) the effect of the disposition on the assets of the debtor, i.e. whether the transfer effectively divests the debtor of a substantial portion or all of their assets or has the effect of delaying, hindering or defrauding creditors;
- c) the state of the debtor's financial affairs at the time of the transaction, including their income, assets and debts;
- d) evidence of haste in making the disposition;
- e) the timing of the transfer relative to notice of debts or claims against the debtor;
- f) lack of valuable consideration for the transfer from the transferee;
- g) the transferor continuing to remain in possession following the conveyance; and
- h) secrecy respecting the transaction.

See: *Banton v. Westcoast Landfill Diversion Corp.*, 2004 BCCA 293 at para. 5, citing *Frimer v. Lercher*, [1984] B.C.J. No. 728 at para. 12, 29 A.C.W.S. (2d) 341 (S.C.); *Balfour v. Tarasenko*, 2019 BCSC 2212 at para. 60; *Moscipan* at para. 43; *Wu* at para. 84; and *Dexia Credit Local v. Rogan*, 2008 BCSC 1406 at paras. 23–24.

[150] Where the plaintiff has established that the transfer occurred in suspicious circumstances—as indicated by the presence of badges of fraud—the defendants will be called upon to explain their intent. This is variously referred to as a “presumption” or “shift in the burden of proof” that arises when badges of fraud are established. Other authorities say that this evidentiary approach is a rule of practice, or a “burden

of explanation” rather than a true rule of law, whereby the burden of proof lies with the plaintiff but the burden of explanation lies with the defendant: see for example, *Cabaniss* at para. 52; *Waheed* at paras. 108–109, citing *Ocean Construction Supplies Ltd.* at para. 28; and *Kelly v. Gonzalez*, 2014 BCSC 1269 at para. 41. It is not a requirement that intent be inferred where badges of fraud are present and it is always open to the defendant to rebut an inference of intent arising from badges of fraud: *Mawdsley v. Meshen*, 2010 BCSC 1099 at para. 211, aff’d 2012 BCCA 91 at para. 71, leave to appeal ref’d [2012] S.C.C.A. No. 182; *Pacific Wagondepot Ltd.* at para. 20.

[151] As discussed above, careful credibility assessments are required when engaging in a fraudulent conveyance analysis. In *Pacific Wagondepot Ltd.* at paras. 19–20, Justice Macintosh explained that when a transaction is made between related parties and in suspicious circumstances, a court may reject uncorroborated evidence. On this point, Macintosh J. cited *Ocean Construction Supplies Ltd.*, where, at para. 28, Madam Justice Baker added that a judge is not, in such circumstances, required to reject uncorroborated evidence.

[152] In protecting “creditors and others”, the *Fraudulent Conveyance Act* protects future creditors: *Abakhan & Associates Inc.* at para. 87 applying *Canadian Imperial Bank of Commerce v. Boukalis* (1987), 34 D.L.R. (4th) 481, 1987 CanLII 2694 at paras. 22–23 (B.C.C.A.). In *Waheed* at para. 91, Winteringham J. explained that the definition of “others” includes those who do not have debts owing to them but do have claims that have not reached a legal conclusion. On this point, see also *Cabaniss* at para. 45.

[153] However, the timing of a transfer in relation to the existence of a specific creditor is circumstantial evidence on the question of whether the transfer was made with an intent to hinder, delay or defraud creditors: *Banton* at paras. 4–5.

[154] Section 2 of the *Fraudulent Conveyance Act* sets out a statutory defence to fraudulent conveyance that avoids operation of the legislation where the defendant establishes that the disposition was made: (1) for good consideration; (2) in good

faith; and (3) to a person who had no notice or knowledge of the fraud: *Abakhan & Associates Inc.* at para. 89. See also: *Wu* at para. 86.

[155] Ms. Matsubuchi does not rely on the s. 2 defence, so I will not review the jurisprudence that has interpreted it.

Fraudulent Preferences

[156] The purpose of fraudulent preference legislation is the same as for fraudulent conveyances and it follows that the same broad interpretive approach is employed: *Waheed* at para. 88.

[157] Section 3 of the *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164 defines a fraudulent preference:

Transfers which prejudice creditors

3 Subject to section 6, a disposition of property by a person at a time when the person is in insolvent circumstances, is unable to pay the person's debts in full, or knows that the person is on the eve of insolvency, is void as against an injured creditor, if made

- (a) with intent to defeat, hinder, delay or prejudice creditors or some of them, and
- (b) to or for a creditor with intent to give the creditor preference over other creditors or some of them.

[158] Fraudulent preferences involve the application of a similar test to that for fraudulent conveyances, with the added requirements that, at the time the transfer was made, the transferee was a creditor of the transferor and the transferor was on the eve of insolvency: *Waheed* at paras. 151–52; *Wu* at paras. 95–96; and *Pacific Wagondepot Ltd.* at para. 18.

[159] The test for a fraudulent preference under s. 3 has three elements. First, the transferor must have been in insolvent circumstances at the time of the transfer. Second, the transferor must have had an intent to defeat, hinder, delay, or prejudice creditors. Third, the transferor must have had an intent to give one creditor a preference over others: *Wu* at para. 95; and *Liu v. Wang*, 2009 BCSC 1792 at para. 33.

[160] The insolvent circumstances must be established at the time of the transfer; a subsequent insolvency does not necessarily establish the insolvency element of fraudulent preference: *Liu* at paras. 50–53.

[161] The intent required by s. 3 of the *Fraudulent Preference Act* can be determined using the same analytic approach described above for determining intent under s. 1 of the *Fraudulent Conveyance Act*. Evidence of suspicious circumstances creates a presumption of fraudulent intent. The burden then shifts to defendants to explain “why their conduct is not caught by the legislation”: *Wu* at para. 96. Courts must adopt the same careful approach to credibility: *Wu* at para. 99.

[162] If the transferee was not a creditor of the transferor at the time the transfer was made, the *Fraudulent Preference Act* does not apply: *Ocean Construction Supplies Ltd.* at para. 30.

[163] A “creditor” is defined in s. 1 of the *Fraudulent Preference Act* as including:

- (a) a surety and the endorser of a promissory note or bill of exchange who would, on payment by that person of the debt, promissory note or bill of exchange for which the suretyship was entered into or endorsement was given, become a creditor of the person giving the preference within the meaning of the sections, and
- (b) the beneficiary of a trust or other person to whom liability is equitable only.

[164] Section 6 sets out a defence analogous to s. 2 of the *Fraudulent Conveyance Act*:

Sales and transfers in good faith

6 (1) Nothing in sections 3, 4 and 5 applies, if the money paid, or the property disposed of bears a fair and reasonable relative value to the consideration, to a sale in good faith, to a payment made in the ordinary course of business to innocent persons, to a payment to a creditor, or to a disposition in good faith of property of any kind made in any of the following circumstances:

- (a) in consideration of a present actual payment in good faith in money;
- (b) by way of security for a present actual advance of money in good faith;
- (c) in consideration of a present actual disposition in good faith of any property.

The \$550,000 Gift

[165] Nextgen asserts that if I do not accept that Mr. Bremner made contribution to the purchase of the 10th Street property, then I should accept his evidence that he made a \$550,000 gift to Ms. Matsubuchi and the transfer was a fraudulent conveyance.

[166] For reasons I have given above, I do not accept Mr. Bremner's evidence that he made contribution to the purchase price or a gift of \$550,000.

[167] This finding is a problem for Nextgen, because a disposition of property is required to establish a fraudulent conveyance. I acknowledge that Nextgen is at an informational disadvantage of showing the disposition and is pointing to Mr. Bremner's own evidence, the substance of which is against his interest and would usually be compelling.

[168] In my view, this dilemma and the large and liberal interpretation of fraudulent conveyance and fraudulent preference legislation is such that I should consider the badges of fraud to determine if they provide support for a presumption for accepting Mr. Bremner's evidence that he transferred \$550,000 to Ms. Matsubuchi in 2002 to revisit the finding I made above. The theory is that the intention, about which inferences can be drawn if there are badges of fraud, is relevant to whether a transfer was made at all. In other words, if Mr. Bremner had a reason to convey a large sum of money to Ms. Matsubuchi, it is more likely that he did do it.

[169] The badges of fraud that could pertain to this transfer of funds would be based on the circumstances at play in 2002. At that time, none of the plaintiffs were creditors. Indeed, the transaction that gave rise to the Michigan lawsuit had not occurred and the Michigan lawsuit was not commenced until 2010. That does not end the analysis, because future creditors are "others" under the *Fraudulent Conveyance Act*. Nextgen points to another lawsuit, referred to as the "Inline Action", a British Columbia case, which was commenced in March 2005 against Mr. Bremner, Ms. Matsubuchi and Ms. Matsubuchi's father. Nextgen asserts that proceeding involved many of the same kinds of allegations as the Michigan Action,

and therefore Mr. Bremner was generally undertaking risky business practices that exposed him to litigation. I am not persuaded that the Inline action is a badge of fraud surrounding the alleged \$550,000 gift. The statement of claim alleges conduct in 2004 that underlies the claims in the lawsuit. The plaintiffs in the Inline Action did not proceed with the claim. Even considered together with the Michigan Action, the evidence does not persuade me that Mr. Bremner's business practices gave rise to risk of being sued such that he generally had motivation to protect his assets.

[170] With regard to the badges of fraud:

- a) Mr. Bremner and Ms. Matsubuchi were spouses which is a badge of fraud;
- b) There is no evidence that this was a distribution of effectively all of Mr. Bremner's assets such that it would delay, hinder or defraud creditors. There is generally no evidence about Mr. Bremner's state of financial affairs at the time of the transaction.
- c) There is no evidence of haste in making the transaction.
- d) The timing of the transaction is not suspicious due to any notice of debts or claims against Mr. Bremner. As I have discussed above, I do not accept the Inline Action as evidence that Mr. Bremner was generally worried about claims from persons with whom he had done business.
- e) There is no evidence of any consideration—Mr. Bremner asserted it was a gift and Ms. Matsubuchi's position is that it did not happen, but if it did, the presumption of advancement applies.
- f) There is no evidence that Mr. Bremner continued to control the \$550,000—his assertion about the gift is that he gave it to Ms. Matsubuchi to do with as she wished. Even accounting for his internally conflicting evidence, there is no evidence that he remained in control of the family home or the sum he transferred.
- g) There is no evidence of secrecy respecting the transaction.

[171] The only badge of fraud is that this was a transfer between spouses. The evidence supports that Mr. Bremner had no need to make a contribution to the family home; for the first five years of the marriage, he had lived in the family home without making a financial contribution to it. That is the way that Ms. Matsubuchi wanted it and that is the way they had always managed the family home. Ms. Matsubuchi was the only one on title and she paid for all of the house-related expenses and continue to do so throughout their marriage. Accordingly, despite their relationship, the badges of fraud do not persuade me that I should accept that Mr. Bremner made the transfer. And even if he did, there are no badges of fraud such that I would presume that Mr. Bremner made the transfer to delay, hinder or defraud any creditors. If he made the transfer, which I do not accept, the most likely explanation is that he felt an obligation to contribute to the family home and did so as a gift, given that he had not made any contribution in the first five years and was not obliged, by the way they managed their affairs, to do so in the future.

[172] Finally, and repetitive of what I have said above, Mr. Bremner gave three different versions of a large sum of money he contributed one way or other to the 10th Street property, none of which are supported by objective evidence. More importantly, there is a lack of objective evidence showing the 10th Street property mortgage was retired in the timeframe that it would have been if either of the versions of his evidence about making a gift or paying down the mortgage himself was true.

The Release

[173] Nextgen asserts that release of Mr. Bremner's interest in the 10th Street property and the 17th Street property is void as a fraudulent conveyance. Nextgen asserts that the release can therefore neither serve to protect the properties against Nextgen executing against Mr. Bremner's resulting trust beneficial interest in the properties or his family law interest in the properties.

[174] A release of an interest in property could be considered a disposition of property under the broad and remedial approach to fraudulent conveyances and preferences discussed above.

[175] With regard to the beneficial interest argument, for the reasons outlined above, I have not found that Mr. Bremner had a beneficial interest in either property through a resulting trust.

[176] Regarding the family property interest argument, Nextgen submits that the separation was real and permanent and that Mr. Bremner and Ms. Matsubuchi did not reconcile within a year, or ever, but used the release to put Mr. Bremner's interests in Ms. Matsubuchi's properties out of Nextgen's reach.

[177] I have accepted that Mr. Bremner and Ms. Matsubuchi separated, but I have not accepted that they reconciled less than a year after they separated and therefore Mr. Bremner's interest in the properties under the *Family Law Act* may have arisen. However, I have also determined that Nextgen cannot step into Mr. Bremner's shoes to assert his interest in those properties pursuant to the *Family Law Act* and that, in any event, Nextgen has not led the evidence that permits that determination to be made.

[178] Accordingly, I am of the view that the release of Mr. Bremner's claims to the properties is moot for the same reasons I have given pertaining to the existence and valuation of those interests

The Transfers

[179] Nextgen has analyzed the bank statements and records of Mr. Bremner and companies that he solely owned (collectively, "Mr. Bremner's bank accounts"), and bank of accounts of Ms. Matsubuchi. It has identified transfers of sums over one million that it asserts are fraudulent conveyances. Nextgen divides them into two categories. The first it calls "traced transfers": twenty transfers totalling \$274,071 where a sum of money leaving one of Mr. Bremner's bank accounts is deposited into one of Ms. Matsubuchi's accounts in close proximity. Nextgen calls the second

category “suspicious transfers”: sums totalling \$725,373.25 deposited to Ms. Matsubuchi’s accounts between August 2011 and April 2021 that it asserts are not explained.

[180] Nextgen’s assertion that the unexplained deposits are suspicious contains a presumption of judicial fact finding that I have not yet undertaken. Accordingly, I will refer to the second group as “untraced deposits”.

[181] Ms. Matsubuchi has done an analysis of the traced transfers. She has identified 22 and she asserts she has explained most of them, and those which she cannot explain do not meet the test for a fraudulent conveyance or preference. With regard to the untraced deposits, she asserts they cannot amount to a fraudulent conveyance or fraudulent preference because there is no evidence of a disposition by Mr. Bremner, so there is no starting point for engaging either a fraudulent conveyance or fraudulent preference analysis. She also asserts that she has explained most of them; and most of them are likely transfers between her own accounts and so the assertion that she has received \$725,000 in unexplained sums is a false assertion.

The Traced Transfers

[182] Nextgen does not employ a transfer-by-transfer analysis to show that there are badges of fraud for each transfer. It asserts, writ large, that there are 20 traced transfers to Ms. Matsubuchi and based on the badges of fraud generally, I should conclude they are fraudulent conveyances.

[183] One of the badges of fraud that Nextgen asserts is better characterized as an argument about Ms. Matsubuchi’s credibility that is specific to her evidence about what she knew and did not know about Mr. Bremner’s banking arrangements. Nextgen asserts that Ms. Matsubuchi obstructed Nextgen from discovering fraudulent transactions by claiming to not know where Mr. Bremner banked.

[184] Nextgen asserts that Ms. Matsubuchi falsely testified at her examination for discovery that she did not know where Mr. Bremner banked and that he had never

written a cheque to her. Nextgen points to Ms. Matsubuchi's answer of "no" to the following: "You've never seen a debit card of his? You've never seen him use a debit card or write a cheque to you? You have no idea where his accounts are?" The "question" is three questions posed as one and formed in the negative, for which a negative response could mean that the examinee disagrees with one or more of the negative propositions. With respect, questions posed in this manner elicit responses that cannot be substantively understood through no fault of the examinee and about which no negative credibility assessment can be made.

[185] Between that examination for discovery and a subsequent one, Nextgen obtained cancelled cheques that Mr. Bremner had written to Ms. Matsubuchi. The cheques showed his banking institution on them. When Ms. Matsubuchi was confronted with this, she acknowledged she had deposited the cheques. She testified that she is not the type of person who would take note of a banking institution on a cheque before depositing it. I regard that evidence as generally plausible. Some people look at a cheque as just a cheque with a number on it made payable to the payee, not a cheque written from an account at a certain institution. Based on all of Ms. Matsubuchi's evidence, I accept this explanation from her. I do not accept that she was lying about all matters pertaining to Mr. Bremner, their obviously separate finances, and the financial transactions that occurred between them, despite that I found her veracity and accuracy wanting in some respects.

[186] Nextgen also asserts the following badges of fraud pertaining to the traced funds:

- a) The timing of the traced transfers, which were all deposited after the Michigan judgment and the enforcement order from this Court. The history of the enforcement action is that the order was made in April 2016, this action was commenced in October 2016, and there was an examination in aid of execution in the enforcement action in March 2017. The traced transfers have dates of deposit ranging from August 26, 2017 to April 14, 2021. The timing is a badge of fraud, although it is attenuated for the later

transfers. I also note that there is evidence of money going back and forth between Mr. Bremner and Ms. Matsubuchi before the Michigan judgment. That supports the assertion that the transfers after the Michigan judgment were part of the usual financial back and forth between the spouses and not inspired by an intention to delay, hinder or defraud and thereby weakens the force of the badge of fraud.

- b) The effect was to “delay, hinder and defeat” [*sic*] Mr. Bremner’s creditors. The traced transfers are between August 2017 and April 2021. In April 2017, Mr. Bremner testified at his examination in aid of execution that he had virtually no assets and was entirely financially dependant on Ms. Matsubuchi. I accept therefore, that transfers of funds during that timeframe would delay, hinder or defraud Mr. Bremner’s creditors.
- c) The traced transfers divested Mr. Bremner of a substantial portion of his assets. I agree this badge of fraud exists based on the same evidence listed immediately above.
- d) The traced transfers were between related parties in suspicious circumstances. I agree this badge of fraud is present.
- e) The defendants failed to produce all bank records that could be used to determine the source of fund transfers. The evidence is that Nextgen obtained several orders for production of banking records pertaining to Ms. Matsubuchi and Mr. Bremner. There is no evidence that Ms. Matsubuchi lied about her accounts or failed to produce the records. The evidence is that they had a flood in 2017 and lost all of their records. The records had to be obtained from the financial institutions, and orders are generally required for that, regardless of the consent of the account holder. On all of those applications, except one, no one attended for the defendants, so the applications were essentially unopposed. On the one application where counsel for Ms. Matsubuchi attended, the only records sought for her were in relation to the original mortgage on the 10th Street

property, which was in place from 2010 to 2011. I do not consider this to be obstructive behaviour on the part of Ms. Matsubuchi. As a result of some of the records, Nextgen discovered Mr. Bremner had two additional accounts that it did not know about. Mr. Bremner had not disclosed them when he was examined in aid of execution. He had subsequently died. Nextgen sought to adjourn the original trial setting to obtain those records. For the reasons I have given, I accept that Ms. Matsubuchi did not know where Mr. Bremner banked and so could not fill in this information gap. Accordingly, while it appears that Mr. Bremner did not disclose all of his accounts, this is not a badge of fraud in relation to Ms. Matsubuchi.

[187] There are badges of fraud but there is also evidence that counters the badges of fraud, namely the history of financial transfers between Mr. Bremner and Ms. Matsubuchi, the fact that Mr. Bremner relied on Ms. Matsubuchi to undertake certain financial transactions for him and then reimbursed her because he was not internet savvy, and Mr. Bremner commencing the family law claim.

[188] The family law claim significantly undercuts the Nextgen's assertions of fraudulent transactions. As discussed above, if Mr. Bremner was engaged in a multi-year campaign to avoid paying creditors including Nextgen, then it makes no sense that he would commence the family law claim seeking to have assets in Ms. Matsubuchi's name apportioned and transferred to his name where they could be executed against. As also discussed above, Nextgen argues that this was a mistake on Mr. Bremner's part, which he undid by entering in the release. I am not persuaded by this. Nextgen's theory is that the fraudulent conveyances, comprised of both the traced and untraced transfers, commenced years before Mr. Bremner commenced the family law claim in 2015. A person with such longstanding fraudulent intent is unlikely to make such a blunder. I conclude that the family law proceeding ameliorates the force of the badges of fraud.

[189] Nevertheless, the badges of fraud are present to some extent and should be considered in relation to the specific transfers. Unfortunately, Nextgen only made

submissions at the level of the traced transfers as a whole. It did not make submissions as to whether I should determine that Ms. Matsubuchi should be required to discharge an explanatory burden for any given transfer. Nextgen did not make any submissions about her explanations about any given transfer, except, again, at a level of generality that I should not accept her evidence because of the credibility problems.

[190] However, Ms. Matsubuchi took up the task of addressing each transfer, so I will address her explanations to determine whether the requisite intent to hinder, delay for defraud survives her explanation.

[191] Ms. Matsubuchi identified 22 transfers where funds coming out of one of Mr. Bremner's accounts corresponded to a deposit into one of her accounts. This is two more than identified by Nextgen, although two transfers from Nextgen's list of traced transfers were not identified by Ms. Matsubuchi, resulting in a total of 25 transfers identified by at least one party as a traced transfer. I will address these 25 transfers.

Vancity Cheque 65 and Coast Capital Cheque 41 – Loans

[192] Vancity cheque 65 dated September 26, 2017 is in the amount of \$10,000 and has a notation on the memo line "repayment of some interest". Ms. Matsubuchi testified that it was repayment of some money that Mr. Bremner owed her.

[193] Coast Capital cheque 41, dated July 18, 2020 in the amount of \$15,000 and has a memo line "Loan repayment LOC".

[194] At various points in this litigation and at trial, Ms. Matsubuchi testified that she had loaned Mr. Bremner money from time to time, and that she expected to be repaid with interest. While her own evidence is not necessarily corroborative, the memo lines on the cheques, and her evidence that she had loaned him money over time, persuades me to accept this explanation.

[195] That is not the end of the analysis, because, as discussed above, there can be both a *bona fide* motive for a transfer and fraudulent intent (*Cabaniss* at para. 56). The authorities demonstrate even where a given transfer was not a sham, but was still made for the purpose of shielding assets from a creditor, fraudulent intent is established: see for example *Chan* at para. 22. In *Chan*, there were badges of fraud and the defendants' evidence was that the purpose of the transaction was to keep the family in the family home. In order to do so, the family home had to be put out of the reach of creditors. The demonstration of fraudulent intent through badges of fraud was not displaced by the defendants' evidence, but reinforced by it.

[196] While there are badges of fraud, Nextgen has not made any submissions on how those badges of fraud relate to these transactions. As I have described, there is evidence that Ms. Matsubuchi made loans to Mr. Bremner over many years. Nextgen disputes that by 2016, she had made \$500,000 of non-repaid loans and I find Ms. Matsubuchi's evidence about the affidavit she swore on that point, to be wanting. However, I accept that some amount of loans were outstanding at that time which Ms. Matsubuchi forgave. There are records of funds that have the cents identifier in 2017 and later that supports that she continued to loan him money after the release.

[197] The question is whether repayment of loans negates fraudulent intent for the transfer. I note that Nextgen asserts that these transfers are fraudulent conveyances. It does not assert or argue that they were fraudulent preferences.

[198] In the cases where there was both a legitimate reason for a transfer and fraudulent intent, there was evidence, beyond the badges of fraud, that the transfer was made with the intention to protect assets or to somehow keep assets from the reach of the judgment creditor, see *Chan* at para. 22, *Abakhan & Associates Inc.* at para. 82; and *Cabaniss* at para. 71. There is no evidence of that here, and the badges of fraud are not strong enough to draw an inference that Mr. Bremner intended to delay, hinder or defraud creditors in addition to repaying Ms. Matsubuchi.

Vancity Cheques 69, 76; Coast Capital Cheques 2, 9 and the October 27, 2018 Electronic Transfer - William's Chess Expenses

[199] These cheques and one electronic transfer were made between January 17, 2018 and November 5, 2018, and total \$73,000. The memo line on each of the cheques references William's chess or travel for trips that Ms. Matsubuchi testified were chess tournaments, with the exception of Coast Capital cheque 9, which does not have an entry on the memo line. At trial, Ms. Matsubuchi identified all of these transfers as being related to international chess tournaments.

[200] By way of background, Ms. Matsubuchi testified that Mr. Bremner cherished the children and would do anything for them. He had played the role of primary parent in some ways, taking them to school, picking them up, and participating in their activities. She testified that despite that Mr. Bremner was financially strapped, he did not consider any expense too much for the children, even when Ms. Matsubuchi did not think the expenditures were reasonable or affordable. For example, Mr. Bremner hired Richard Brodeur to be a private goalie coach for William when was playing rep hockey. When Veroncia graduated from high school, Mr. Bremner paid for a several month-long trip to Alaska, Korea, Japan and Russia.

[201] With regard to expenses for chess trips, Ms. Matsubuchi's evidence is that at age 10, William developed anxiety and depression. In grade six he started struggling to attend school, and for some years, did not attend. She testified that their son's non-attendance at school was not okay with her and school authorities, but Mr. Bremner did not think William should be pressured to attend school. That was a major issue in their marriage at the time of their separation. Ms. Matsubuchi testified that around that time, William often stayed in his room, sometimes for weeks at a time. On one occasion, he emerged to announce that he would like books on chess for Christmas. Ms. Matsubuchi testified that he had developed an intense interest in chess and she and Mr. Bremner fostered it given that it was positive development.

[202] According to Ms. Matsubuchi's evidence, William obtained a worldwide ranking of 84 in chess and attended tournaments all over the world, including in Greece and in Québec. His academic struggles were not resolved; he took longer

than normal to complete high school. He attends Capilano University, but he has taken 14 semesters to complete a four-semester degree, and he is not independent. Nevertheless, he earned a scholarship through chess.

[203] Ms. Matsubuchi testified that her earnings would not support William's travel to chess tournaments, and Mr. Bremner agreed he would pay for them. Some of the memo lines on the cheques and the dates of the cheques were corroborated by entries on Ms. Matsubuchi's credit cards showing expenses in the places the chess tournaments were.

[204] I consider Ms. Matsubuchi's evidence, together with the memo lines on the cheques, to be adequate to establish that these transfers were made for the purpose of funding William's chess.

[205] Again, that is not the end of the analysis, because there can be fraudulent intent even where there is also a *bona fide* motive for a transfer. Once more, while there are badges of fraud present here, Nextgen has not made any submissions on how those badges of fraud relate to these transactions.

[206] I conclude from the evidence that Mr. Bremner had, for many years before and after the chess tournaments, spent lavishly on his children both for their well being and because he wanted them to have everything. While this may have been irresponsible, it is consistent with other evidence about Mr. Bremner's habits, including that he gambled and drank.

[207] These incidents of Mr. Bremner's spending on his son's chess career took the form of reimbursing Ms. Matsubuchi for such expenses. Ms. Matsubuchi undertook some financial transactions on behalf of Mr. Bremner because he did not have the technical savvy or modern financial habits, such as e-transfers and internet skills. His reimbursement of her was a practical necessity. Given the evidence of the situation of this family, I conclude that reimbursement of Ms. Matsubuchi for chess expenses was not undertaken with an intention to hinder Mr. Bremner's creditors.

[208] This spending may be considered excessive or irresponsible, but irresponsible spending generally is not the mischief the *Fraudulent Conveyance Act* is designed to address. The evidence satisfies me that his intention in spending this money on William was for the purpose of furthering William’s chess career, and he did not also have an intention relating to Nextgen or creditors generally.

Coast Capital Cheques 1, 10, 12, 19 and 37 – Family Vacations

[209] These cheques are dated June 17, 2018, March 31, 2019, April 10, 2019, February 17, 2020 and April 30, 2020. They total \$69,071. Ms. Matsubuchi testified that these cheques were Mr. Bremner’s contributions to family trips, mostly cruises, at various points in time. One of these trips was the graduation trip for Veronica described above. Three of the cheques have notations on the memo lines relating the cheque to trips. For others, Ms. Matsubuchi testified that the timing of the cheques relates to the holidays they took such that she believes they were his contributions towards these holidays. For some of the cheques, Ms. Matsubuchi pointed to expenses on her credit card statements that corresponded with the holidays and with the amounts on the cheques, taking into account exchange rates.

[210] This evidence was not challenged. I consider Ms. Matsubuchi’s evidence, together with the memo lines on the cheques, to be adequate to establish that these transfers were to pay for expenses incurred for family holidays.

[211] With regard to whether they also were made with fraudulent intent, I conclude that they were not, for the same reason I concluded that William’s chess expenses were not made with fraudulent intent.

Coast Capital Cheques 16 and 51 – Post Secondary Education

[212] These cheques have memo lines stating “V’s massage school” and “Wm’s university fund”. They are dated December 24, 2018 and May 31, 2019, and total \$25,000. Ms. Matsubuchi testified that they were for Veronica to attend massage school as a post secondary education/training program, and for William’s registered education savings plan, something that Ms. Matsubuchi had insisted they make

contributions to since the children were born, and asked Mr. Bremner to pay her back for some of that.

[213] Again, Nextgen did not specifically dispute this evidence. Nor did they relate the badges of fraud to these specific transactions.

[214] I consider that there was a *bona fide* reason for these transactions. I do not consider this to be also accompanied by fraudulent intent because of the evidence that I referred to that Mr. Bremner always did what was best for his children out of his devotion to them, and that does not mean that he did it to delay, hinder or defraud Nextgen or any creditor.

Coast Capital Cheques 78 and 24 – Legal Fees

[215] Coast Capital cheque 78 is dated April 17, 2018, and has on its memo line “John Whyte”, referring to the lawyer who was counsel for both Mr. Bremner and Ms. Matsubuchi on this matter.

[216] Coast Capital cheque 24 is dated March 12, 2020, and is in the amount of \$7,914.88. That amount matches a payment that Ms. Matsubuchi made to the law firm Lakes Whyte LLP around the same time frame, as recorded on her credit card statement.

[217] As mentioned, Mr. Whyte was counsel for both Mr. Bremner and Ms. Matsubuchi on this matter. Mr. Bremner’s estate was not probated and so did not participate in the trial, but Mr. Whyte remained counsel.

[218] I consider this evidence to demonstrate these to be *bona fide* transfers for the purpose of paying legal fees on the joint defence of this matter and is inconsistent with fraudulent intent.

Transfers for which Ms. Matsubuchi has No Explanation

[219] Ms. Matsubuchi could not explain Tangerine Cheques 9, 13, 14; Coast Capital Cheque 63 and an April 14, 2021 Electronic Transfer.

[220] Tangerine cheque 9 is in the amount of \$5,379.75. The other three are each in the amount of \$10,000. There is no information in the memo line on any of them. The electronic transfer was sent on April 14, 2021 in the amount of \$2,000.

[221] With regard to Tangerine cheque 9 dated October 18, 2019, Ms. Matsubuchi testified that she thought that Mr. Bremner was probably helping her out with her Visa. She testified it had been a very expensive summer (it was the year of Veronica's graduation cruise).

[222] With regard to Coast Capital cheque 63 dated September 23, 2020, Ms. Matsubuchi testified that she went back and looked at her Visa bill, and the balance was just over \$10,000 at that time, so she suspects Mr. Bremner wrote her a cheque to pay down her Visa.

[223] With regard to Tangerine cheques 13 and 14 and the April 14, 2021 electronic transfer, I was not referred to any evidence that Ms. Matsubuchi was asked about these cheques and transfer at discovery or trial.

[224] I do not accept Ms. Matsubuchi's evidence that Tangerine cheque 9 and Coast Capital cheque 63 relate to her Visa bill because of the problems I have identified with the veracity and reliability of her evidence. She seems to have simply concluded that because she cannot provide an explanation, it must have been for him to pay down her Visa. In addition to the general problems with her evidence, this evidence is too speculative and there is no objective evidence or context to provide corroborating comfort.

[225] However, there is no evidence that Coast Capital cheque 63 was deposited to any account of Ms. Matsubuchi's. It was deposited into an account that is a number that corresponds with an account held by their daughter Veronica. Therefore, it does not appear to be a disposition from Mr. Bremner to Ms. Matsubuchi. While a transfer from Mr. Bremner to his daughter could theoretically be a fraudulent transfer, Nextgen did not pursue this argument and there is no evidence before me to support that conclusion.

[226] The evidence persuades me that Ms. Matsubuchi and Mr. Bremner had unorthodox financial arrangements, children with ongoing needs, and Mr. Bremner spent lavishly on them regardless of his financial reality or obligations to creditors. I conclude that these transfers were “more of the same” type of financial back and forth between Mr. Bremner and Ms. Matsubuchi that was not part of a fraudulent scheme but rather just how they dealt with their financial affairs.

[227] I conclude fraudulent intent is not established for these transfers.

Tangerine Cheque 12 – Raptors Tickets

[228] This cheque is in the amount of \$7,988.25 written on Mr. Bremner’s Tangerine account on October 30, 2019. The memo line contains the note “Raptors tickets”. Ms. Matsubuchi testified that Mr. Bremner went on a sports betting trip with friends of his to Toronto to see the Raptors play. Ms. Matsubuchi purchased the tickets online because Mr. Bremner was not savvy with online purchasing and she knew how to do it. Mr. Bremner did not have a credit card, and she did, so he had her buy them and he reimbursed her.

[229] I accept Ms. Matsubuchi’s evidence about this. The memo line and the odd dollar figure fits with the context evidence that Mr. Bremner was a heavy gambler and a lavish spender. The fact that Ms. Matsubuchi arranged for the ticket fits with the context evidence that includes that Mr. Bremner was “old school” in the sense of writing cheques instead of doing electronic transfers.

[230] I conclude that this transfer was purely to facilitate Mr. Bremner arranging to go to a Raptors game with friends. This was not a disposition of property because Ms. Matsubuchi simply acted as a purchasing conduit for Mr. Bremner.

Coast Capital Cheque 39 and Tangerine Cheque 15 – Dental Bills

[231] Coast Capital cheque 39 dated June 15, 2020, is in the amount of \$10,000 and has no memo line. Tangerine cheque 15 dated October 20, 2020, is in the amount of \$6,000 and has a note in the memo line “c’s teeth”.

[232] Ms. Matsubuchi testified that as Mr. Bremner's health deteriorated, he lost bone density in his teeth and had to have work done. She testified that his dentist was Dr. Barr, and she paid the bills. She also thought the Coast Capital cheque 39 could have been for her Visa bill, which was about \$9,000 at that time.

[233] I do not consider Ms. Matsubuchi's evidence about Coast Capital Cheque 39 to be adequate because of the problems I have identified with the veracity and reliability of her evidence. She seems to have simply concluded that because she cannot provide an explanation, it must have been for him to pay down her Visa. In addition to the general problems with her evidence, this evidence is too speculative and there is not objective evidence or context to provide corroborating comfort.

[234] However, I do not conclude this was a fraudulent conveyance for the same reasons I articulated above pertaining to transfers for which Mr. Matsubuchi could not provide a more detailed explanation.

[235] With regard to Tangerine cheque 15, I conclude that this transfer was purely to facilitate Mr. Bremner having dental work. This was not a disposition of property because Ms. Matsubuchi paid Mr. Bremner's dental bill and he repaid her.

Coast Capital Cheque 79

[236] This cheque is made out to "W. Matsubuchi-Bremner", it is dated April 25, 2018, and it was cleared on April 26, 2018. The back of the cheque shows it was deposited to a bank account at Coast Capital. The memo line of the cheque reads "Payment for gold bar loan". At her examination for discovery, Ms. Matsubuchi agreed that the cheque was payable to her and that she deposited it into her account. At trial, she testified that she was unable to find a deposit into one of her accounts that corresponded to this cheque. She testified that she thought about it, and specifically, the memo line which referenced a gold bar loan. She testified that Mr. Bremner had given William a gold bar to hold so that he could buy a car when he turned 16. She testified that she thought the cheque was probably to their son William, whose name is also "W. Matsubuchi-Bremner", and was exchanging the gold bar for cash.

[237] Ms. Matsubuchi testified that throughout their marriage she used the name Wendy Matsubuchi and Wendy Matsubuchi-Bremner. She testified that Mr. Bremner did the same, sometimes going by Charles Bremner and sometimes by Charles Matsubuchi-Bremner. I note that the other cheques written by Mr. Bremner to Ms. Matsubuchi on the same account in the same timeframe are made out to “W. Matsubuchi”, including Coast Capital cheques 76 and 78.

[238] In addition to this evidence from Ms. Matsubuchi, I noted that in her Form F-8 financial statement in the family law proceedings, she was a joint account holder with her son William on several accounts at Coast Capital. She also disclosed that she was holding 2 gold bars in her safety deposit box that belonged to William.

[239] In my view, there is sufficient corroborating evidence to accept this explanation despite that Ms. Matsubuchi’s evidence changed between her examination for discovery and trial.

[240] I conclude that Coast Capital cheque 79 is not a disposition of property by Mr. Bremner to Ms. Matsubuchi. As mentioned above, while a transfer from Mr. Bremner to his son could theoretically be a fraudulent transfer, Nextgen did not pursue this argument and there is no evidence before me to support that conclusion. I therefore conclude that Coast Capital cheque 79 is not a fraudulent conveyance.

The Untraced Deposits

[241] Nextgen asserts that there are many badges of fraud and that those badges of fraud are such that I should conclude the untraced deposits into Ms. Matsubuchi’s accounts came from Mr. Bremner.

[242] As I noted above, badges of fraud are used to determine the intent of the maker of an alleged fraudulent conveyance or preference. Generally, before they are employed, they must be relevant to a specific disposition. Put another way, the starting point is generally evidence that the alleged maker of a fraudulent conveyance or preference has made a disposition of property, rather than the starting point being evidence that a related individual has received property from an

unknown source and applying the badges of fraud to establish that the unknown source was the defendant.

[243] However, the jurisprudence does not rule out using badges of fraud to determine whether there has been a disposition, and as also noted above, in theory a finding that the circumstances are such that the alleged transferor would have a reason to move assets away from the reach of creditors, can assist.

[244] Again, Nextgen does not employ a transfer-by-transfer analysis to show that there are badges of fraud for each transfer. It asserts, writ large, that there are 32 unexplained deposits to Ms. Matsubuchi's accounts made between August 2011 and April 2021.

[245] I note that various very different things were happening over this lengthy period of time. In 2011, the Michigan Action had been commenced but had not resulted in a judgment. In 2017, the Michigan judgment was the subject of a recognition and enforcement order in this court. In 2017, Mr. Bremner deposed that he was broke, but he also gave evidence that at some point he had over one million dollars in a Cayman Island bank account that was closed by 2017, and as also discussed at length, he testified that in 2002 he gave \$550,000 to Ms. Matsubuchi. I do not accept that there is a one-size-fits-all badges of fraud analysis that works for all of the unexplained deposits.

[246] I will review the evidence that Nextgen asserts supports a finding that the untraced deposits came from Mr. Bremner.

[247] The first is that the dollar value of the transfers is inconsistent with Ms. Matsubuchi's income as a teacher. Against this, I note that a large proportion of the suspicious transfers, 21 of 32 and over \$500,000 of the total, are dollar amounts with a cent amount that matches the year in which the deposit was made. For example, in 2011 there was a deposit of \$10,000.11 into one of Ms. Matsubuchi's accounts and in 2021 there was a deposit of \$50,000.21 into one of Ms. Matsubuchi's accounts. Ms. Matsubuchi was asked about that, and she testified

that she often attached cents to financial transactions which matched the year as a way of keeping track of them. She testified that she did that for transferring sums between her own accounts, and for loans that she made to Mr. Bremner. This evidence was not challenged. There were many transactions that had this peculiar form and there are some transactions that support the veracity of Ms. Matsubuchi's evidence on this. For example, one of the untraced deposits was made on September 8, 2017, in the amount of \$12,000.17. On the same day, there is a withdrawal from Ms. Matsubuchi's line of credit for the same amount. When Ms. Matsubuchi was asked about this transaction at her examination for discovery, she was just asked about the deposit, not the withdrawal from her line of credit and her attention was not drawn to the fact that there was a withdrawal in the same amount. She testified that she did not know what the deposit was for, and that she could not rule out that it came from Mr. Bremner. This type of evidence was typical at her examination for discovery and the passages read-in demonstrate that it became shorthand for her saying it was possible but not probable that a given deposit came from Mr. Bremner.

[248] I accept Ms. Matsubuchi's evidence on her use of cents and that the untraced deposits with cents that correspond with a year could well be transfers she made to herself or draws on her line of credit. There was also evidence that Ms. Matsubuchi frequently loaned money to Mr. Bremner which she expected to be repaid using the same cents reference tool. Accordingly, some of these untraced deposits could be repayments of loans made to Mr. Bremner. Since Nextgen asserts that the untraced deposits are fraudulent conveyances, and not fraudulent preferences, the fact that they could be loan repayments does not detract from this "cent" evidence being a valid explanation that removes the taint of suspicion from the transactions.

[249] When Ms. Matsubuchi testified about most of these deposits at her examination for discovery, she was being referred only to her bank statements, not to those of Mr. Bremner where she could see whether there was, or was not, a corresponding withdrawal, and not to her other bank statements or line of credit to

see if she was the source of the unexplained deposit. She testified for some of them that it was possible, but not probable, that the funds came from Mr. Bremner.

[250] The rest, deposits totalling \$220,370.31, occurred over a 10-year period, with rarely more than one or two in a given year. In addition to her teaching income, Ms. Matsubuchi hosted and housed foreign students. She testified that she earned up to \$42,000 some years. Accordingly, these sums at the frequency that she deposited them are not inconsistent with the evidence about her income. Again, when asked about these deposits at her examination for discovery, Ms. Matsubuchi testified that it was possible, but not probable, that the funds came from Mr. Bremner.

[251] I pause to note that the fact that Ms. Matsubuchi explained that she was uncertain of the source of the untraced deposits, given the passage of time, speaks in favour of her credibility. Nor did she simply say she could not remember anything. For many of the untraced transfers she testified that she had a guess about where the funds came from, that she did not think they came from Mr. Bremner, but that she could not rule that possibility out.

[252] Next, Nextgen asserts Ms. Matsubuchi has failed to explain the untraced deposits, despite having years to provide an explanation and provide banking documents. I am of the view that this assertion is not well founded. Ms. Matsubuchi was asked about transactions covering over a decade. Not surprisingly, she could not remember them all, but she provided the information she could and she explained her use of the cents in financial transactions which covered the majority of the transactions. She was told not to guess. It is not clear what she was supposed to go look at to provide a better explanation. Nextgen also points to the fact that some deposits were later traced to Mr. Bremner (and are now in the traced transfers category). Nextgen asserts that is evidence that Ms. Matsubuchi was hiding Mr. Brener's bank records. I do not accept that assertion. The evidence is only that Mr. Bremner and Ms. Matsubuchi kept their accounts separate. She had no ability to produce his bank accounts.

[253] On a related note, Nextgen argues that Ms. Matsubuchi's credibility is fatally undermined by her evidence at an examination for discovery that she did not know where Mr. Bremner banked. I do not agree for the same reasons I set out above or when discussed this evidence. Similarly, as I also explained above, I accept Ms. Matsubuchi's evidence that she deposited cheques from Mr. Bremner without taking note of the banking institution on the cheque.

[254] Nextgen also asserts that the traced transfers and the untraced deposits, taken together, total \$999,444.25, which is close to the one million USD that Mr. Bremner "fraudulently obtained from the plaintiffs". There are several problems with this submission. First, and substantively, there is no finding from the Michigan action or in any British Columbia proceeding relating to that judgment that Mr. Bremner engaged in fraudulent conduct. That was a claim for which the plaintiffs obtained default judgment. Second, I do not know what the exchange rate was in 2012 when the judgment was obtained, but at this point in time there is substantial difference between one million dollars in United States dollars and one million dollars in Canadian dollars due to a 20 plus point differential in the exchange rate in favour of the U.S. dollar over the last several years. Finally, again substantively, many of the untraced deposits are likely transfers from Ms. Matsubuchi to herself.

[255] Most of Nextgen's assertions of badges of fraud pertain to the traced funds because they presume a transfer and so do not assist in determining whether there were transfers in relation to the untraced funds. The arguments that Nextgen makes that could apply to the untraced funds are as follows:

- a) The timing of the untraced deposits is after the Michigan judgment. This assertion is not entirely correct. Some of the untraced deposits pre-date the Michigan judgment. They all occurred after the action was commenced. However, in general, the fact that they occurred over 10 years is inconsistent with Mr. Bremner wholly moving funds he received from the plaintiffs to Ms. Matsubuchi, especially when compared to the funds that went into his accounts over those 10 years.

- b) The effect was to “delay, hinder and defeat” [*sic*] Mr. Bremner’s creditors. There is not enough evidence about Mr. Bremner’s financial status over the first six years of the untraced deposits to support this argument. However, it is supported for the period 2017 on.
- c) The untraced deposits divested Mr. Bremner of a substantial portion of his assets. There is not enough evidence about Mr. Bremner’s financial status over the first six years of the untraced deposits to support this argument. However, it is supported for the period 2017 on.
- d) The untraced deposits were between related parties in suspicious circumstances. I do not accept this for the reason I have given above about many of the untraced transfers likely being transfers from Ms. Matsubuchi to herself.
- e) The defendants failed to produce bank records that could be used to determine the source of transfers. I reach the same conclusion set out above when discussing this asserted badge of fraud in relation to the traced transfers.

[256] Because Nextgen’s arguments are not tied to specific untraced deposits, I am left to merely state that there are badges of fraud that pertain to the timeframe of the post-2017 untraced deposits and the only badge of fraud prior to that is that the untraced deposits were deposited into the account of Mr. Bremner’s spouse.

[257] However, I accept Ms. Matsubuchi’s evidence that many of these deposits were likely transfers to herself. That evidence, and the lack of evidence sourcing any of the deposits to Mr. Bremner, is such that I cannot conclude these were dispositions of property by Mr. Bremner.

[258] I dismiss the claim for fraudulent conveyances of the untraced deposits.

The \$500,000 in Loans Released

[259] Nextgen argues that if the release of Mr. Bremner’s interest in the 10th Street property and the 17th Street property was valid, and if it was not a fraudulent conveyance, then it is a fraudulent preference because Mr. Bremner traded his interest in the properties in exchange for forgiveness of loans. Put another way, he repaid the loans by releasing his interest in the properties. Nextgen asserts this was a fraudulent preference.

[260] Using a broad interpretation, I accept that the release could be a disposition of property that is a fraudulent preference. However, this argument suffers from the same problems I have addressed on the argument that the release was a fraudulent conveyance. I do not accede to it for the same reason.

Conclusion on Fraudulent Conveyances or Fraudulent Preferences

[261] Despite some badges of fraud, the evidence does not support a finding that Mr. Bremner fraudulently conveyed funds to Ms. Matsubuchi or fraudulently preferred the debt he owed her when he released any claim he had to her real properties in exchange for forgiveness of that debt.

Disposition

[262] Nextgen’s claims are dismissed.

[263] Given the outcome, I am inclined to order costs in Ms. Matsubuchi’s favour, but I will receive submissions on costs if the parties wish to make them. If so, the parties should contact Supreme Court Scheduling within 30 days of these reasons for a time to appear before me. They shall exchange written submissions on costs no later than 10 days before the hearing, and shall provide those submissions to scheduling to provide to me no later than one week before the hearing.

“Matthews J.”