

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rahil v. Chand*,
2025 BCSC 106

Date: 20250124
Docket: S218931
Registry: New Westminster

Between:

Amandeep Kaur Rahil and Jagvir Singh Rahil

Plaintiffs

And

Alden Ashneil Chand and Century 21 Coastal Reality Ltd.

Defendants

Before: The Honourable Justice Marzari

Reasons for Judgment

Counsel for the Plaintiffs:

A. Paranagama

The Defendant, appearing in person:

A.A. Chand

Place and Dates of Trial:

New Westminster, B.C.
November 18–20, 2024
December 4, 2024

Place and Date of Judgment:

New Westminster, B.C.
January 24, 2025

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INTRODUCTION

[1] The plaintiffs, Amandeep Kaur Rahil and Jagvir Singh Rahil (collectively the “Rahils”), bring suit against the defendant, Mr. Alden Chand, for monies they advanced to him to invest in properties for which Mr. Chand was a realtor, but which Mr. Chand, in fact, invested in the purchase of his own property in Aldergrove, near Abbotsford, BC (the “Abbotsford Property”). The action pleads breach of fiduciary duty, breach of contract, and fraudulent misrepresentation. At trial, the plaintiffs’ focus was only on the first two of these causes of action.

[2] Mr. Chand responds, through his pleadings, that the Rahils orally agreed to the use of their funds as a down payment on the Abbotsford Property. He pleads that they agreed that he would hold the mortgage and make the mortgage payments on the Abbotsford Property, with each party to have a half interest in that Property. He pleads that part of this oral agreement was that the Rahils “would be added on title to the Abbotsford Property on a future date to be agreed upon between the parties”.

[3] Through his pleadings, Mr. Chand also admits that he was the listing realtor for the two properties the Rahils say that they provided their funds to Mr. Chand to invest in, as follows:

- a) A condominium on 104th Street in Surrey, BC (the “Surrey Property”); and
- b) A pre-sale condominium located on Leon Avenue in Kelowna, BC (the “Kelowna Property”).

[4] The following key facts are also not at issue in light of Mr. Chand’s admissions at his examination for discovery:

- a) The Rahils provided Mr. Chand with a bank draft for \$15,000 on July 8, 2018, in relation to the Surrey Property, and Mr. Chand prepared a “Contract of Purchase and Sale Addendum” for the Surrey Property

stating that the \$15,000 bank draft was a deposit on the Surrey Property “which will be incorporated into the purchase price of \$340,000”.

- b) Mr. Chand deposited the \$15,000 bank draft into his personal account. Mr. Chand used the Rahils’ \$15,000 for the purchase of the Abbotsford Property pursuant to a contract dated August 2, 2018, in which he was the named purchaser.
- c) The Rahils provided Mr. Chand with another \$200,000 on September 19, 2018, as a deposit on the Kelowna Property. Mr. Chand prepared and executed an “Assignment of Interest in Offer to Purchase & Agreement of Purchase and Sale” which shows the Rahils as “The Assignee” of the Kelowna Property. Mrs. Rahil also signed a “Consent to Assignment” and a “Receipt of Funds Record” with respect to this transaction. These documents were prepared by Mr. Chand for the Rahils.
- d) Mr. Chand deposited the Rahils’ \$200,000 into his personal account.
- e) One week later, on September 26, 2018, Mr. Chand completed the purchase of the Abbotsford Property for \$880,000 using a mortgage and the Rahils’ \$200,000 to “close the deal”.
- f) The \$215,000 provided by the Rahils in July and September 2018 was used by Mr. Chand to purchase the Abbotsford Property in his own name and that of his uncle, Daniel Chand.
- g) At the time of his examination for discovery in June 2020, Mr. Chand was living in the Abbotsford Property.
- h) The Abbotsford Property sold in November 2020 for an amount undisclosed to the court. Just under \$88,000 of the proceeds of this sale were placed into trust by Mr. Chand’s solicitor, Kellie Hamilton, in relation to the Rahils’ claims.

- i) Mr. Chand has not accounted to the Rahils for any of the rents received or his return on investment from the Abbotsford Property. Nor has he returned any portion of the \$215,000 provided to him by the Rahils in 2018.

[5] The primary issue in this trial is whether Mr. Chand was in a fiduciary relationship with the Rahils as their realtor, and if so whether he breached his obligations in this regard and is required to account to the Rahils for their losses.

[6] A related issue is whether Mr. Chand entered into contracts with the Rahils when accepting their funds that he then breached, and whether Mr. Chand was unjustly enriched.

[7] If I find such breaches, I must consider whether the Rahils suffered loss or damages and to what extent.

[8] Finally, the Rahils advance a claim for punitive damages.

PROCEDURAL BACKGROUND

[9] When this matter came before me for trial in November 2024, it had already been the subject of several attempts by the plaintiffs to pursue resolution by way of summary trial. Those efforts were frustrated at various times by Mr. Chand not having a response prepared, lack of judicial time to hear the summary trial, and ultimately a ruling that the matter was not amenable to summary trial and directing a trial at the earliest available date.

[10] At the required trial management conference a month before trial, Mr. Chand sought an indefinite adjournment on the basis that he was no longer able to work as a realtor as a result of this litigation and could not afford a lawyer for trial. Justice Verhoeven advised Mr. Chand that he would need to apply for an adjournment should he wish one, and provided him with resources to assist him in this regard.

[11] Mr. Chand did not bring an adjournment application before trial, but on the morning of trial, Mr. Chand sent the scheduling manager and counsel for the

plaintiffs an email saying he “had fallen ill this past weekend” and that he would “work to schedule a new trial date.” The plaintiffs advised they would be opposing the adjournment, and the scheduling manager advised that the matter would remain on the list.

[12] Mr. Chand did not attend trial that morning, and the plaintiffs asked that I proceed in his absence based on what they described as a pattern of avoidance and delay by Mr. Chand. Rather than do that, I directed Mr. Chand to appear by video that morning, at which point he sought an adjournment for medical reasons.

[13] I was not satisfied with Mr. Chand’s description of symptoms, or his stated indefinite inability to proceed with the trial. Nevertheless, I directed that Mr. Chand could attend the trial remotely by MS Teams that afternoon and the following morning during Mrs. Rahil’s evidence in chief, and attend at his doctors the following afternoon when he stated he had secured an appointment. I advised him that I would require a doctor’s note setting out a diagnosis of his condition, as well as a prognosis for his recovery, should he wish to pursue a further adjournment.

[14] Mr. Chand attended court on the third day of trial after seeing his doctor, and sought an adjournment. He provided medical documentation that contained no diagnosis or prognosis, but did include a doctor’s note that suggested he be allowed to stay home from “work responsibilities” for the next one to two weeks “as needed.” In support of his adjournment application, he also provided an undated neurology referral for January 25, 2025, and a lab requisition which he suggested was for a CT scan he received at the hospital the previous day, but in fact was from a walk-in clinic dated July 2024 for various samples to be taken. Mr. Chand argued that the lab requisition must have been improperly printed out by the hospital’s computers, which I doubted.

[15] Mr. Chand suggested that, although the medical documentation he had did not provide a diagnosis or prognosis, acknowledge that he was required to attend trial, mention a CT scan that he said he had undergone, nor provide any prescription for the treatment of his symptoms, that much of this had been done and discussed

the previous day, and that his family doctor would be provided with all the results of the tests he had undergone and would provide a synthesis of his condition, a diagnosis, and treatment requirements the following Monday.

[16] The plaintiffs objected to an adjournment on the basis of inadequate medical support for Mr. Chand's stated condition. Nevertheless, Mr. Chand suggested that, in accordance with his medical note, he might recover in the next two weeks, and that amount of time would also allow his family doctor to review his medical condition and hospital tests. I granted Mr. Chand a two-week adjournment, with the requirement that he promptly disclose to the plaintiffs any medical documentation describing his condition and his prognosis for recovery, or any other medical documentation upon which Mr. Chand might rely for a further medically based adjournment. I also ordered transcripts of the plaintiffs' evidence in chief for Mr. Chand's review.

[17] On the date set to continue the trial two weeks later, Mr. Chand provided a note from his family doctor that he had a "marked headache and associated symptoms" at his last doctor's visit on November 22, 2024, which was 2 days after the granted adjournment and more than 10 days before the adjourned trial date. It did not review any hospital tests or mention any CT scans, and did not provide a diagnosis.

[18] Mr. Chand also provided a note from a dentist, which he stated he had got the previous day, though not from his regular dentist. The note stated that Mr. Chand required a tooth extraction due to "deep decay". It did not describe any other medical conditions, or connect Mr. Chand's previously reported symptoms or his ability to attend court to his need for a tooth extraction. For oral reasons delivered at that time, I denied Mr. Chand a further adjournment, and directed that the trial proceed.

[19] The plaintiffs then proceeded to complete read-ins from Mr. Chand's discovery into the record to conclude their case. At the time for the morning break, Mr. Chand asked if we had to continue, and I explained that the trial was continuing. However, Mr. Chand did not return after the morning break. I considered whether to

proceed in Mr. Chand's absence pursuant to R. 12-5(76) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, and the factors noted by Justice Ehrcke in *Dhillon v. Virk*, 2014 BCSC 745 at paras. 15–16. I concluded that it would not be in the interests of justice to allow Mr. Chand to obtain an adjournment by his actions, when I had denied one on the evidence, and that the prejudice to the plaintiffs in not being able to proceed with this trial, which had already been adjourned once at Mr. Chand's request, was significant.

[20] At the lunch break, I asked plaintiffs' counsel to send Mr. Chand an email confirming the discovery questions and answers she had read into the record in his absence, and reminding him that I was expecting him to appear that afternoon to continue the trial. Mr. Chand did not return, at which point I once again considered whether to proceed in Mr. Chand's absence, and found that it was in the interests of justice to do so. I allowed the plaintiffs to close their case and provide their closing submissions.

FACTUAL FINDINGS

[21] In coming to my factual findings in this case, I have the direct evidence of Mrs. Rahil, substantial documentary evidence, Mr. Chand's pleadings, and Mr. Chand's evidence on discovery as read in by the plaintiffs.

[22] The plaintiffs included in their read-ins some of Mr. Chand's version of events, and where that contradicts Mrs. Rahil's evidence I have considered which evidence I believe based on the evidence as a whole, including the documentary evidence, and its consistency with the preponderance of the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd 35006 (7 March 2013). As set out in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.):

... In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[23] I have found the documentary evidence in this case to be particularly helpful in this regard.

[24] On the basis of all the evidence before me in this trial, I find that in 2018, the Rahils were living in a home they owned in Surrey, with their two children approximately 10 and 12 years of age. Mrs. Rahil was a machinist and Mr. Rahil drove a van for a window factory. While Mrs. Rahil can understand some English, she struggles with written English, and Mr. Rahil speaks no English at all. Mrs. Rahil completed high school in India, while Mr. Rahil has a grade 8 education, also from India. Mrs. Rahil testified with the assistance of an interpreter.

[25] The Rahils met Mr. Chand in 2018, when Mr. Chand was living across the street from them. They found him to be friendly, and in June 2018, he told them he had just been licensed as a realtor, and he asked if they would help him out by letting him put a for-sale sign up on their front lawn for a week to give him some exposure. They agreed to do so to help him out, though they had no intention of selling their home.

[26] At some point, Mrs. Rahil asked Mr. Chand if he might have some driving work for her husband. Mr. Chand responded that, because they had helped him out by letting him put up the for-sale sign, he would help them out in return.

[27] Mr. Chand told the Rahils that he had a property listing in Surrey, and that if they gave him between \$10,000 to \$15,000, he would invest it in that property and give them the profit. Mr. Chand showed them photos of the Surrey Property, and told the Rahils that they would not be buying it but investing in it, and that he would arrange an assignment of the Surrey Property to another buyer, and return their money at a profit before the completion of the sale. He told the Rahils they could trust him on this, because they had helped him out as a realtor.

[28] The Rahils believed Mr. Chand and got a bank draft for the \$15,000 they had saved for their children's education. They provided this bank draft made out to "Alden Chand" to Mr. Chand on July 8, 2018. Mr. Chand came to their living room

and had them sign the Contract for Purchase and Sale Addendum noted above. The Contract for Purchase and Sale Addendum appears to be a standard form, with the logos of Century 21, the Fraser Valley Real Estate Board, the BC Real Estate Association and the Canadian Bar Association at the top. It shows the Rahils as the “Buyers” of the Surrey Property and states that they have given Mr. Chand the \$15,000 “for a deposit” on the Surrey Property to be “incorporated [sic] into the purchase price of \$340,000”. The Rahils signed that Addendum in front of Mr. Chand. The Rahils were not provided with, and Mr. Chand avers in discovery that there never was, a separate contract for purchase and sale of the Surrey Property.

[29] I reject Mr. Chand’s evidence in his discovery that the Rahils gave him this \$15,000 to purchase the Surrey Property for himself. It is inconsistent with Mr. Chand’s statement that he was the listing agent for the Surrey Property and could not have afforded to purchase the Surrey Property himself. It is also highly improbable given the Rahils’ financial situation. It is also inconsistent with the Contract for Purchase and Sale Addendum, which he acknowledges he prepared, listing the Rahils as the purchasers of the Surrey Property. Moreover, Mr. Chand himself repeatedly admits in discovery that this \$15,000 was not a gift from the Rahils, and that it was given to him in connection with the Rahils’ desire to invest their funds.

[30] I accept, instead, Mrs. Rahil’s evidence that they believed and trusted Mr. Chand as a realtor that he was investing their \$15,000 towards the purchase of the Surrey Property at a purchase price of \$340,000, but that he was going to assign that contract to a third party, and that he would provide them with the profit.

[31] Approximately one month later, in early August 2018, I find that Mr. Chand told the Rahils that he had an offer on the Surrey Property for \$360,000, and that they had therefore made a \$20,000 profit on the Surrey Property. The Rahils then agreed to assign their contract to Mr. Chand’s new purchaser for the \$360,000. Mr. Chand advised them they did not need to sign anything further to accomplish

this, and they believed him. Mr. Chand also states in his discovery that the nature of his relationship with the Rahils was that they trusted him.

[32] The Assessment Roll Report and title documents for the Surrey Property establish that a sale of that Property did, in fact, complete on August 9, 2018. However, the sale was to unrelated third parties and the purchase price was \$346,000. There is no evidence from the Rahils or Mr. Chand to indicate that Mr. Chand ever acted on the Addendum or invested the Rahils' \$15,000 into the Surrey Property. I find that he did not.

[33] Rather, I find that Mr. Chand deposited the Rahils' \$15,000 into his own account rather than into a trust account (as he admits) and that he most likely used it towards the deposit of his own purchase of the Abbotsford Property, which deposit he paid in mid-August 2018. I find that Mr. Chand did not discuss this use of the Rahils' funds with them before doing so, and that they believed throughout this time that he had purchased the Surrey Property for \$340,000 with their funds as a deposit, and then successfully assigned the contract at a \$20,000 profit.

[34] When the Rahils asked Mr. Chand to return their \$15,000 plus the \$20,000 profit to them, I find that Mr. Chand instead suggested that they invest those funds, together with an additional \$200,000, into the Kelowna Property.

[35] Mr. Chand pleads that he was the listing agent for the Kelowna Property, but in his evidence in discovery he says that it is more accurate to say that he was "marketing" the Kelowna Property and was looking for someone to purchase it "as an assignment". However, the documentary evidence establishes that Jagat Kaur Dhillon purchased the Kelowna Property as a pre-sale for \$162,900, and that Mr. Chand and his real estate firm, Century 21 Coastal Realty (Surrey) then entered an exclusive listing contract for the Kelowna Property between dated April 23, 2018, for a term expiring on July 30, 2018, to seek an assignment of the Kelowna Property purchase with a list price of \$193,000. There is also in evidence a Transaction Record Sheet on Century 21 letterhead showing what appears to be a sale from Ms. Dhillon to a Daniel Chand (also the name of Mr. Chand's uncle) two days later

on April 25, 2018, for the stated list price of \$193,000. In discovery, Mr. Chand admits he received a real estate commission of \$6,500 on this transaction.

[36] I find that Mr. Chand, as he admits in discovery, did not tell the Rahils about the pre-sale price of the Kelowna Property. Nor did he tell the Rahils that he had assigned that pre-sale to Daniel Chand for \$193,000. Instead, I find that he told the Rahils in September 2018 that if they provided him with an additional \$200,000 on top of the \$35,000 he had made for them from the Surrey Property, he would be able to purchase the Kelowna Property for them as a pre-sale, and assign the contract to another purchaser within a month. He would then return the full amount of these funds to them with substantial profit.

[37] I find that Mrs. Rahil told Mr. Chand that they did not have \$200,000, and that he suggested they get a line of credit against their home to raise the funds. I find that Mr. Chand reassured the Rahils that the interest would not be very much because they would get their money back within a month. I accept Mrs. Rahil's evidence that he repeatedly told them to trust him, and words to the effect that: "I just started my business, I am not going to cheat you."

[38] Trusting Mr. Chand, I find that Mrs. Rahil arranged to borrow \$200,000 against her home and provided Mr. Chand with two bank drafts on September 19, 2018: one for \$190,000 from Coast Capital as part of her home line of credit, and another for \$10,000 from Toronto Dominion. Both drafts were made out to "Alden Chand" as Mr. Chand requested. Mrs. Rahil explained that she was not suspicious of this because she trusted Mr. Chand and she understood that it was because what she was purchasing was a contract for the Kelowna Property that would be assigned before completion.

[39] I find that the Rahils attended at Mr. Chand's Century 21 Coastal Realty office on September 19, 2018, and provided Mr. Chand with the two bank drafts totalling \$200,000. At that meeting, Mr. Chand provided the Rahils with a series of documents he prepared for them to sign, including:

- a) An “Assignment of Interest in Offer to Purchase and Agreement of Purchase and Sale,” which shows the Rahils as “The Assignee” of the Kelowna Property;
- b) A “Consent to Assignment” which also shows the Rahils as the assignees of the Kelowna Property; and
- c) A “Receipt of Funds Record” which shows the receipt of \$200,000 for the purchase of the Kelowna Property.

[40] I find that all of these documents were prepared by Mr. Chand for the Rahils’ signature on what look like standard real estate forms.

[41] The Receipt of Funds Record was specifically requested by Mrs. Rahil and prepared by Mr. Chand. It lists: “Sales Representative/Broker name: Alden Chand, Century 21 Coastal Realty Surrey” and indicates that it is a form prepared by the Canadian Real Estate Association. It states that Mr. Chand has received \$200,000 from Mrs. Rahil on September 19, 2018, and that the purpose of these funds is the purchase of the Kelowna Property.

[42] I accept Mrs. Rahil’s evidence that Mr. Chand explained that these documents confirmed that he would be purchasing the Kelowna Property for them with their funds, together with the \$15,000 advanced earlier and the \$20,000 he told them they had earned in profit on the Surrey Property. Mr. Chand assured them that their investment term would only be one month before he found someone to assign the contract to at a significant profit.

[43] Mr. Chand admitted in discovery that he knew that the Rahils had borrowed the \$200,000 through a line of credit against their house to make this payment, though he also says that there was no discussion as to the amount of time he might hold these funds for. I reject Mr. Chand’s discovery evidence that the Rahils’ deposit on the Kelowna Property was not meant to be for an assignment, and that the Rahils actually wanted to purchase the Kelowna Property for themselves. I prefer Mrs. Rahil’s evidence as to the indicated time frame of this investment, particularly in

light of the interest that the Rahils were required to pay against this line of credit. I accept Mrs. Rahil's evidence that she would not have taken these funds out of her line of credit had she not been assured by Mr. Chand that she would be able to repay them within a month.

[44] It is uncontested that Mr. Chand used these funds to complete the sale of the Abbotsford Property in his own name approximately one week later. Mr. Chand purchased the Abbotsford Property in his own name and that of his uncle, Daniel Chand. Mr. Chand states in his discovery evidence that he included his uncle on title as to a 1% interest in the Abbotsford Property to assist Mr. Chand in obtaining a mortgage for the balance of the purchase, in the amount of \$704,000.

[45] In his discovery evidence, Mr. Chand states that he advised the Rahils of his intention to do this before he purchased the Abbotsford Property. He says that the Rahils instructed him not to go ahead with the purchase of the Kelowna Property, and instead told him to retain the funds for himself (though not as a gift), and that is when he used the funds to buy the Abbotsford Property.

[46] Mrs. Rahil testified that she did not find out about the Abbotsford Property until approximately 7 months later, in April 2019. Instead, she says that at the end of September 2018, Mr. Chand told them that he had an offer for the Kelowna Property for \$217,000, but that they told him not to take the offer because it was less than their investment of \$235,000. Mr. Chand had told them he had invested on their behalf (made up of their \$15,000 advanced for the Surrey Property and the \$20,000 profit he told them they had made on that assignment, together with the \$200,000 advanced on September 19, 2018).

[47] Mrs. Rahil testified that in November 2018, Mr. Chand told her that he now had an offer for \$227,000 for the Kelowna Property and that she and Mr. Rahil asked him to accept this offer, even though it was less than what they thought they had invested in the Kelowna Property, because they were struggling to pay the interest on the \$200,000 line of credit, and it had now been well over a month. Mrs. Rahil testified that Mr. Chand told them not to take the offer and to wait because there

would be a better offer. He would not agree to accepting the \$227,000 offer on their behalf.

[48] Mrs. Rahil further testified that in January 2019, Mr. Chand told them he had a \$232,000 offer on the Kelowna Property, and they asked him to accept that offer, even though they believed they were losing money on their initial investment. Mr. Chand agreed to accept that offer, and Mrs. Rahil asked to sign the paperwork to confirm the assignment. However, Mr. Chand kept putting her off.

[49] By March of 2019, Mrs. Rahil still had no documents to assign the contract for the Kelowna Property, and Mr. Chand said he would make an appointment with a lawyer and would let them know when to come in and sign the papers. She told Mr. Chand that they were going to India in early March 2019, and asked Mr. Chand to provide the funds and to complete all the signatures before they left, but this did not happen.

[50] Mrs. Rahil testified that she then told Mr. Chand that they would be back from India on April 3, 2019. At this time, Mr. Chand then told them he scheduled an appointment with the lawyer for April 2, 2019. Mr. Chand later agreed to move the appointment to April 4, 2019, but he would not answer her calls that day and there was in fact no appointment.

[51] When Mrs. Rahil called Mr. Chand on April 5, 2019, Mr. Chand said “I have a big surprise for you” and that he would come to their house to show them. Mr. Chand did not answer his phone on April 6, 2019. However, on April 7, 2019, he came to their house with his laptop. The Rahils were excited, believing they would be getting their investment funds returned with a good profit, and this was the surprise.

[52] Instead, Mrs. Rahil testified that Mr. Chand started showing them photos of the Abbotsford Property, which he said he had bought for them. Mr. Chand also told them the house was in his name but he would transfer it to them. They were shocked because they had repeatedly told him they could not afford to sustain their

line of credit, and had not asked him to purchase this house. They demanded their money be returned. Mr. Chand implied that they were ungrateful and should be excited about the house he had bought them. He left without any agreement to return their money.

[53] Mr. Chand states in his discovery evidence, as read in at trial, that the Rahils' \$215,000 was invested in the Abbotsford Property as their investment, and that it was never a gift to him. He stated that they did not discuss or agree how long he would hold their investment for, but he was thinking it would be five to ten years. At another point, he also says that he told the Rahils he had purchased the Abbotsford Property for himself, and that they were "very happy for me".

[54] I find that Mr. Chand did not tell the Rahils about the Abbotsford Property until April 2019, more than six months after he had purchased it. Furthermore, I find that Mr. Chand purchased the Abbotsford Property for himself.

[55] I find it difficult to believe Mr. Chand's other version of events that he did not buy the Abbotsford Property for himself, but rather that he discussed the purchase of the Abbotsford Property with the Rahils, and that the Rahils changed their mind about purchasing an assignment of the Kelowna Property and instead directed Mr. Chand to invest their funds indefinitely in the purchase of the Abbotsford Property. Such a change of heart would have had to occur between September 19, 2018, when the Rahils provided their \$200,000 to Mr. Chand and signed the assignment and deposit documentation for the Kelowna Property, and September 26, 2018, when Mr. Chand used their funds to complete his purchase of the Abbotsford Property. I find it highly unlikely that the Rahils told Mr. Chand that same week that he should use their funds towards the purchase of a more expensive house in his own name. Nor is there any documentary support for this very significant change in instructions, which ought to have been documented by their realtor. Such a change would have represented, for the Rahils, an indefinite \$235,000 investment in the Abbotsford Property, which they could not afford.

[56] I find that Mr. Chand did not inform the Rahils of his use of their funds to purchase the Abbotsford Property instead of the Kelowna Property in September 2019, and I believe Mrs. Rahil that they did not realize that Mr. Chand had used their money in this way until April 2019.

[57] I find that Mr. Chand lied about purchasing the Kelowna Property for the Rahils as an assignment, or at all. I find that he lied about having various offers on the Kelowna Property throughout the fall of 2018 and early 2019. The property tax and assessment roll documents for the Kelowna Property establish, and Mr. Chand admitted in discovery, that the Kelowna Property was sold on October 25, 2018, for a purchase price of \$162,900 to Ms. Dhillon, apparently in accordance with her original purchase of that Property. I have no satisfactory explanation as to how to reconcile this independent sale information with the documentary evidence that also establishes that Mr. Chand assigned the purchase of the Kelowna Property to Daniel Chand for \$193,000 in April 2018, other than to assume that Mr. Chand's assignment of the Kelowna Property to Daniel Chand was ultimately not completed.

[58] In any event, I accept Mrs. Rahil's evidence that at no point did she intend to gift Mr. Chand any portion of the \$215,000 she advanced to him for real estate transactions, or to allow him to use her funds to purchase the Abbotsford Property.

[59] Mr. Chand also acknowledges in his discovery evidence that these funds were not a gift, though he pleads that they were an agreed upon investment in the Abbotsford Property for an undefined period of time. I do not accept that explanation by Mr. Chand, and the evidence does not support it, including the acknowledged fact that Mr. Chand knew that the Rahil's had a great deal of debt, had borrowed the \$200,000 against their home, and had to pay interest on those funds.

[60] After April 2019, I find that Mrs. Rahil repeatedly called Mr. Chand demanding the return of their money. Mr. Chand did not agree, and told the Rahils to stop calling him.

[61] Mrs. Rahil next went to speak to a lawyer, Ms. Karen P. Maki, who sent Mr. Chand a letter in August 2019 demanding the return of the Rahils' \$215,000 with interest and legal fees of just over \$10,000, and suggesting that Century 21, Mr. Chand's realty agency, was also vicariously liable for these losses.

[62] When they received no favourable response, the Rahils commenced this claim against Mr. Chand and Century 21, and filed a Certificate of Pending Litigation ("CPL") against the Abbotsford Property. They also brought a complaint to the Real Estate Council of BC. I gather the claim was discontinued against Century 21 at some point. Mr. Chand also reports that he lost his real estate license due to this complaint. However, the Rahils have yet to recover any of their funds or obtain any other compensation.

[63] Mr. Chand states in his discovery evidence that he rented the Abbotsford Property to tenants for \$2,800 per month, which he used to pay towards the mortgage. He also lived in the Abbotsford Property for some period of time. I find that he did not tell the Rahils about these arrangements or account for any of these benefits to the Rahils.

[64] Approximately one year later in September 2020, Ms. Maki received a letter from Singh Law Corp seeking removal of the CPL from the Abbotsford Property to allow a sale to proceed the following day.

[65] Ms. Maki responded to Mr. Singh that same day requiring Mr. Singh's undertaking to pay \$275,000 into her trust account upon completion of the sale of the Abbotsford Property, which funds would not be paid out until further written agreement or court order.

[66] There is further correspondence in evidence dated November 26, 2020, between the Rahils' law firm, and Kellie Hamilton of Hamilton Law Group, wherein Mrs. Rahil's counsel asks to see the statement of adjustments for a proposed sale of the Abbotsford Property to ensure that there would be sufficient funds paid into trust before sending Ms. Hamilton a release of the CPL.

[67] Mrs. Rahil testified that she instructed her counsel to remove the CPL provided that her counsel received an undertaking and held \$275,000 of the sale proceeds of the Abbotsford Property in trust to settle her claims.

[68] The Abbotsford Property was sold not long after. I infer that the CPL was removed to allow this sale to proceed. However, \$275,000 was not paid into trust.

[69] Mrs. Rahil did not hear anything at all for a while, and then, after what she described as a long time, Ms. Maki told her that there was less than \$88,000 being held in trust in relation to the Rahils' claims from the proceeds of sale of the Abbotsford Property. Mrs. Rahil testified that, had she known that this was the extent of the funds that would be placed in trust, she would not have consented to the removal of the CPL. I accept this evidence.

[70] The Rahils then got a new lawyer, Ms. Paranagama, their current counsel. Ms. Paranagama was unable to determine how the CPL had been removed in circumstances where \$275,000 was not placed into trust. Mr. Chand's counsel, Ms. Hamilton, confirmed to her in October 2023 that she still held \$87,656 in her trust account in relation to this claim.

[71] Mrs. Rahil blames herself for the loss of the family's savings for their children's education, and the burden they have carried since 2018 paying interest of over \$1000/month for the \$190,000 line of credit the Rahils took out against their house to participate in Mr. Chand's stated investments in the Surrey and Kelowna Properties in 2018. She says her husband also blames her in this regard. She has struggled with depression and anxiety, and is on leave from work due to this condition.

[72] The evidence establishes that since 2018, the Rahils have paid more than \$40,000 in interest to service the \$190,000 line of credit against their house. Mrs. Rahil has provided me with her interest statements since 2018 showing over \$60,000 in interest accrued on her line of credit. However, Mrs. Rahil also says that she had also taken out \$95,000 to loan to her parents against this line of credit

during this period, adding to the interest owed. Over time, the documentary evidence establishes that the Rahils manage to pay off the loan to their parents, and to make some ground against their total debt, meaning that the interest they have paid in later years was on less than \$190,000. Interest rates on their line of credit have fluctuated from below 5% to over 7% during this 6-year period.

[73] Mrs. Rahil seeks only approximately 2/3 of the interest she has paid since September 2018 so as to avoid any unwarranted recovery for the interest paid on the loan to her parents. I am satisfied that this is generous overall to Mr. Chand given that the loan to her parents appears to have been repaid at some point, and was not the cause of later interest payments.

[74] Overall, I am satisfied that Mrs. Rahil has made out her claim that the Rahils have paid out approximately \$42,000 in interest to Coast Capital solely on the \$190,000 line of credit they took out to advance the \$200,000 to Mr. Chand in September 2018.

[75] I do not have any evidence of what the \$15,000 taken from their children's education fund would have been expected to earn since July 2018, or the interest on the \$10,000 advance from TD bank that they took out at the same time as the \$190,000 line of credit.

ISSUES AND ANALYSIS

Breach of Fiduciary Duty

[76] Although fraudulent misrepresentation was plead, the plaintiffs advance their claims before me primarily on the basis of breach of fiduciary duty. To establish this tort, they must establish first that Mr. Chand owed them a fiduciary duty as their realtor.

[77] Mr. Chand pleads that he was not the Rahils' realtor and that he owed the Rahils no fiduciary duty. Further, he denies that he failed to disclose all relevant information to the Rahils regarding the Surrey Property, the Kelowna Property or the Abbotsford Property. Instead, he pleads that the Rahils entered into an oral

agreement whereby they would be 50% owners of the Abbotsford Property for an unstated period of time, and that they breached that oral agreement by demanding the return of their full investment.

[78] I am satisfied on the evidence that, although the parties never entered into a realtor agreement for Mr. Chand to act as their realtor, Mr. Chand did in fact do so, and owed them fiduciary duties as such.

[79] In *Mulligan v. Stephenson*, 2016 BCSC 1941 at para. 110, this Court affirmed the presumptive fiduciary nature of the realtor-client relationship. As explained in *Mulligan*, where there is a realtor-client relationship, the onus is on the realtor to show that they were not a fiduciary:

[111] A shifting of burdens occurs in cases involving a *per se* fiduciary relationship. In the realtor-client context, the onus is on the defendant realtor to rebut the legal presumption that he or she is the client's fiduciary. To succeed, the defendant realtor must show the relationship was not one of reliance, trust and confidence, which will be difficult to establish. As noted by M. V. Ellis in *Fiduciary Duties in Canada*, ". . . vendors are legally entitled to expect his or her real estate agent will faithfully promote their interests": M. Ellis, *Fiduciary Duties in Canada*, (Toronto: Carswell, 2011) at 59: see also *DeJesus v. Sharif*, 2010 BCCA 121 (B.C.C.A.).

[80] The scope of the fiduciary duties owed by a realtor, as discussed in *Mulligan* at paras. 92 and 112–113, include:

- a) To act, loyally and transparently, in the best interests of the client;
- b) To act in accordance with the instructions given and within the authority granted by client;
- c) To maintain the confidentiality of information respecting the client;
- d) To assiduously avoid a conflict of interest and to promptly disclose any that arise in the course of the fiduciary relationship; and
- e) To make full and fair disclosure of all material circumstances and of everything the agent knows about the subject matter, including all facts

within the agent's knowledge which might affect the value of the property or the client's decision.

[81] Even where there is no express realtor relationship, our courts have implied agency in some cases: *Luminary Holding Corp. v. Fyfe*, 2021 BCSC 167 at paras. 119–124, rev'd in part (but not on this point) 2022 BCCA 185; *Siemens v. Howard*, 2018 BCCA 197 at paras. 12–19. As articulated by the Court of Appeal in *Siemens* at para. 12, the test for an implied agency relationship is whether it is reasonable for the party asserting the agency relationship to infer from the conduct of the other party that the other party consented to the agency relationship.

[82] In *Luminary*, this Court considered whether there was a relationship of implied agency between a realtor and buyer, where the realtor was acting for the seller but took on the role of advising a potential buyer, who then asserted reliance and an agency relationship. As noted in that case, the Real Estate Council Rules require that a realtor be clear about their role and representation: para. 122.

[83] The circumstances in *Luminary* took place at a time when limited dual agency agreements were still permitted, although the Court notes therein that such joint representations ceased to be permitted under the Real Estate Council's Rules as of June 15, 2018. The Court found that there was an approximate two-week period during which it was reasonable for the plaintiff to infer that the defendant real estate agent was acting on his behalf as well as the seller's behalf, and as such the plaintiff was owed the full range of client duties before the realtor's role was clarified. The Court awarded just over \$1.5 million in damages for the realtor's negligence, including his failure to identify to the buyer certain limitations and opportunities related to the property that they purchased, resulting in lost profits, increased capital costs, and wasted out of pocket expenses.

[84] In this case, Mr. Chand pleads and admits through his discovery evidence that he was a realtor with Century 21 in 2018, and he was the realtor for the Surrey Property and the Kelowna Property (though his agency relationship of the Kelowna

Property appears to have expired before he accepted the \$200,000 deposit from the Rahils for the Kelowna Property).

[85] He admits in his discovery evidence that the Rahils trusted and relied upon him, and that he received \$215,000 from them to invest in various properties, including the Surrey Property and the Kelowna Property. Mr. Chand also states that he was aware that the Rahils were not in a position where they could obtain a new mortgage to purchase a property, and that they were limited to what they could borrow against their existing home.

[86] While it may be possible for a realtor for a seller only to take some of the steps Mr. Chand did without giving rise to a reasonable inference that he was also acting as agent for a potential buyer, Mr. Chand clearly crossed that line. He not only identified and promoted both the Surrey and Kelowna Properties to the Rahils, he advised the Rahils to invest into those Properties in non-standard ways; advised them of the amount they should invest unrelated to the list price of those Properties promising significant returns; accepted their funds; drafted real estate forms and contracts for them to sign (some of them on his Century 21 letterhead); witnessed their signatures; and then purported to advise them on whether to accept the assignment of the Kelowna Property at various prices.

[87] I find that the Rahils fully believed Mr. Chand was acting as their agent with respect to these transactions, and that it was reasonable for them to do so based on Mr. Chand's conduct. They were not buyers of real estate who independently came to be interested in the Surrey or Kelowna Properties. The Surrey and Kelowna Properties were identified to the Rahils by Mr. Chand, and their relationship with Mr. Chand was one of reliance, trust and confidence.

[88] As their agent, Mr. Chand owed certain fiduciary duties to the Rahils, including:

- a) Describing the nature of his relationship with them, and the limits of his ability to act given that he was also acting for the sellers of the Surrey and

Kelowna Properties, another purchaser of the Kelowna Property (Daniel Chand), and was the purchaser of the Abbotsford Property;

- b) Providing transparent information about the status of the Surrey and Kelowna Properties, including the list price and any current accepted offers or assignments;
- c) Placing the funds provided to him by the Rahils in trust;
- d) Applying the funds provided by the Rahils only towards the properties he was specifically instructed to apply them towards: the Surrey Property and the Kelowna Property;
- e) Truthfully advising the Rahils of when the Surrey and Kelowna Properties were sold and for what amounts; and
- f) Avoiding any conflict of interest with the Rahils, including not appropriating the Rahils funds to invest in the Abbotsford Property in his own name, and retaining for himself the rental proceeds and sales proceeds of that Property.

Breach of Contract and Unjust Enrichment

[89] The plaintiffs also argue that Mr. Chand is liable in contract and/or unjust enrichment to them.

[90] Specifically, they argue that the Contract of Purchase and Sale Addendum constituted a contract whereby Mr. Chand agreed to apply their \$15,000 towards the Surrey Property.

[91] They also argue that the various documents they signed in relation to the Kelowna Property, including the Assignment of Interest in Offer to Purchase & Agreement of Purchase and Sale, the Consent to Assignment, and the Receipt of Funds Record constitute contracts pursuant to which Mr. Chand agreed to invest the additional \$200,000 they provided him into the Kelowna Property.

[92] The Rahils argue that Mr. Chand breached both of these contracts by not investing the funds in either of the properties he said he would, and instead using them to buy the Abbotsford Property for himself.

[93] This argument was not well developed by the plaintiffs, and it is unclear to me whether they are asserting that the above documents were contracts establishing an agreement between Mr. Chand and the Rahils, or whether they are evidence of implied contractual terms as to how Mr. Chand was to invest their funds.

[94] The documents on their face are not contracts between Mr. Chand and the Rahils. However, I find that they are evidence of an agreement reached between the Rahils and Mr. Chand as to how he would apply the funds they entrusted him with, and that he breached that agreement by failing to invest the Rahils' funds into the stated properties, and instead investing them into the Abbotsford Property.

[95] I also find that, in the absence of any contract authorizing him to use the Rahils' funds to purchase the Abbotsford Property, Mr. Chand substantially enriched himself to the corresponding detriment of the Rahils, without juristic reason.

[96] The doctrine of unjust enrichment was recently considered by the Court of Appeal in *Bao v. Welltrend United Consulting Inc.*, 2025 BCCA 3. At para. 26 of *Bao*, citing *Kerr v. Baranow*, 2011 SCC 10 at para. 31, the Court of Appeal described the doctrine as an equitable remedy, at the heart of which lies the notion of restoring a benefit which justice does not permit one to retain. The Court went on to explain:

[27] ... The framework of unjust enrichment "is a flexible one that allows courts to identify circumstances where justice and fairness require one party to restore a benefit to another": *Moore v. Sweet*, 2018 SCC 52 at para. 38 [*Moore*]. Although there must indeed be enrichment of the defendant and a corresponding deprivation of the plaintiff, it is not necessary that the disputed benefit be one conferred directly by the plaintiff on the defendant: *Moore* at para. 45, citing Prof. McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (Ontario: LexisNexis Canada, 2014) at 155. The plaintiff must simply "demonstrate that the loss [they] incurred *corresponds* to the defendant's gain, in the sense that there is some causal connection between the two": *Moore* at para. 43. What is required is that the defendant was enriched at the plaintiff's expense: *Moore* at para. 43.

[97] In my view, the Rahils did suffer a deprivation when Mr. Chand used their funds to purchase the Abbotsford Property for himself; his acquisition of the Abbotsford Property, including but not limited to the rents he later received, was an enrichment to which Mr. Chand had no right.

[98] Mr. Chand pleads in defence that he had an oral agreement with the Rahils whereby they instructed him to use their funds to purchase the Abbotsford Property in exchange for a 50% interest in that Property, with the intent that their names would be added to title at some point in the future.

[99] If I were to accept Mr. Chand's pleadings in this regard, even in the absence of evidence at trial to support it, this would mean that Mr. Chand was holding the Rahils' 50% beneficial interest in the Abbotsford Property in trust for them until their names were placed on title. However, Mr. Chand's actions are not consistent with such an agreement.

[100] Mr. Chand has consistently failed to disclose to the Rahils the details of their interest in the Abbotsford Property, including up to trial of this matter (indeed I understand he has not provided disclosure in this litigation either). He did not account to the Rahils for the rents he received, or any expenses he incurred. He did not pay them any rent when he lived in the Abbotsford Property. When he sold the Abbotsford Property several years later in a rising market, the proceeds of the sale held in trust were substantially less than the Rahils' funds used for the down payment. Even then, Mr. Chand did not suggest that 50% of the proceeds of sale were theirs by right pursuant to the oral agreement he plead.

[101] On the evidence, including the documentary evidence and Mr. Chand's own actions, I find that there was no contract that could provide a juristic reason for Mr. Chand's use and retention of the Rahil's \$215,000 for the purchase of the Abbotsford Property in his own name. I find that the plaintiffs have established unjust enrichment in relation to their advancement of \$215,000 to Mr. Chand in July and September 2018.

Conclusion on Breaches and Loss

[102] I am satisfied that Mr. Chand represented himself as the Rahils' realtor, and brought their attention to listings, prepared real estate contracts, and received funds that should have been placed into trust by him and applied towards the purchase of the Surrey and the Kelowna Properties in accordance with the contracts and other documentation he provided them.

[103] I am satisfied that Mr. Chand breached his fiduciary duties as the Rahils' realtor in a myriad of ways including:

- a) Not describing the nature of his relationship with them, the sellers and previous assignees of the Surrey and Kelowna Properties, and the limits of his ability to act;
- b) Not providing transparent and truthful information about the list price and existing or pending assignments of the Surrey Property and the Kelowna Property;
- c) Not advising the Rahils that the listed price for the Kelowna Property was \$165,000, that Daniel Chand had recently signed a contract for \$193,000 for that Property and that he had received a commission for that assignment in April 2018;
- d) Failing to place the funds provided by the Rahils for the purchase of the Surrey and Kelowna Properties into trust;
- e) Using the \$15,000 the Rahils provided him with in July 2018 towards his own down payment on the Abbotsford Property in early August 2018, contrary to their instructions and without informing them, and in a clear conflict of interest;
- f) Not purchasing the Kelowna Property with the \$215,000 advanced by the Rahils;

- g) Using the Rahils' additional \$200,000 to complete the purchase of the Abbotsford Property in his own name a week after they provided these funds to him for the purchase of the Kelowna Property contrary to the Rahils' instructions to him and in a clear conflict of interest; and
- h) Not accounting to the Rahils immediately for the use of their funds and lying to them about their non-existent purchase of the Kelowna Property until April 2019.

[104] I find that Mr. Chand also breached his agreements with the Rahils that he would use the funds they provided to invest in the Surrey Property, and later the Kelowna Property. Implicit in those agreements was that he would not use their funds to buy a property for himself.

[105] I also find that the Rahils have established unjust enrichment, based on the benefits and profits accrued by Mr. Chand following his breach of contract and use of the Rahils' funds to purchase the Abbotsford Property in his own name.

DAMAGES

Equitable Remedies

[106] There are several remedies that the Rahils might have sought in these circumstances, including accounting and disgorgement of Mr. Chand's profits: *Canson Enterprises Ltd. v. Boughton & Co.*, [1991] 3 S.C.R. 534, 1991 CanLII 52; *Mulligan* at paras. 135–136.

[107] The Rahils seek only compensation for their direct losses in the form of the return of the funds they advanced, and compensation for the interest payments they made on those borrowed funds (as well as punitive damages as addressed below). Such direct compensation is a well-established remedy for breach of fiduciary duty: *Guerin v. The Queen*, [1984] 2 S.C.R. 335, 1984 CanLII 25; *Mulligan* at paras. 135–136.

[108] As a remedy, I find that Mr. Chand is required to account to the Rahils for the \$215,000 that he received from them as their realtor, and to repay them this amount.

[109] I find that Mr. Chand is also responsible to the Rahils for an additional \$42,000 in interest payments they made on their \$190,000 line of credit. I find that Mr. Chand caused this loss, as the Rahils were required to make these payments to keep their home as a result of his breach of fiduciary duty and his breach of contract. This results in a total of \$257,000 in damages.

[110] In addition, I would award the Rahil's pre-judgement interest on the \$15,000 they advanced to Mr. Chand from July 8, 2018 to the date of judgement and on the additional \$10,000 they provided from outside their line of credit on September 19, 2018. Based on the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 I calculate this amount to be just over \$3,800.

Punitive Damages

[111] The Rahils also seek a punitive damages award of \$25,000 based on a similar award made by Justice Dickson in *Mulligan* at para. 152.

[112] Punitive damages are an exceptional award, limited to circumstances in which there is "misconduct that represents a marked departure from ordinary standards of decent behaviour": *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 36.

[113] In *Mulligan*, Dickson J. considered the availability of punitive damages as a result of a breach of a realtor's duties to his client as follows:

[139] Punitive damages are imposed for purposes of retribution, denunciation and deterrence: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, para. 111. They may only be awarded if compensatory damages are insufficient to express the court's repugnance at the misconduct in question and to punish and deter. Although in most cases an independently actionable wrong is a precondition for punitive damages, this is not the case with breaches of fiduciary. Where the fiduciary's actions are purposefully repugnant to the beneficiary's interests, punitive damages may be an appropriate award: *Waxman*, para. 586.

[140] Several principles guide the court's discretion in awarding punitive damages. For example, punitive damages should be proportionate to the degree of misconduct. The more reprehensible the conduct, the higher the rational limits of a punitive damages award: *Le Soleil Hospitality Inc. v. Louie*, 2010 BCSC 1183, para. 364; *Kelly v. Norsemont Mining Inc.*, 2013 BCSC 147, para. 131. In addition, punitive damages should be proportionate to the harm caused, the plaintiff's vulnerability and any advantage wrongfully gained, all of which must be considered. Further, the punitive effect of the overall award and any other penalties imposed should be taken into account: *Le Soleil*, paras. 361 and 364.

[141] In *Le Soleil*, I awarded \$100,000 in punitive damages because, amongst other things, the defendants had behaved outrageously and repeatedly abused the court process. In *Kelly*, Fenlon, J. (as she then was) also made a \$100,000 punitive damages award, in part because the modest compensatory damages award was insufficient for deterrent purposes. *Hardman and Walling v. Walling*, 2012 ONSC 6580, provide other examples of \$100,000 punitive damages awards made in the breach of fiduciary duty context. However, each case is highly fact-dependant.

[114] In my view, Mr. Chand's misconduct in this case is particularly repugnant and appropriately attracts an award of punitive damages for the purposes of denunciation and deterrence. With the exception of the punitive damages sought, the Rahils have sought nothing more than direct compensation of their financial loss, without regard to the distress Mr. Chand's actions have caused them and their children. Mr. Chand had the benefit of their funds, and the house it bought him, for two years, and was living in that house during part of this litigation. In my view, compensatory damages alone are insufficient to express the court's repugnance at Mr. Chand's misconduct, which was more high-handed than that of Mr. Stephenson in *Mulligan*. I have no hesitation in making a similar award as requested.

[115] I order that Mr. Chand pay the Rahils \$25,000 in punitive damages, and I direct that these funds come from the funds held in trust from the Abbotsford Property before the other compensatory damages. The Rahils may yet be entitled to compensation from other funds and bodies based on my findings here, but Mr. Chand alone will likely be responsible for these punitive damages.

CONCLUSION

[116] In total, I find that Mr. Chand must pay \$285,800 to the plaintiffs as follows:

- a) \$215,000, the total amount advanced by the Rahils to Mr. Chand;
- b) \$42,000 in interest to date on the \$190,000 advanced in September 2018;
- c) Pre-judgment interest of \$3,800 on the \$15,000 advanced July 8, 2018, to the date of judgment and the \$10,000 advanced September 19, 2018, to the date of judgment; and
- d) Punitive damages of \$25,000.

[117] To the extent that there are funds being held in trust from the sale of the Abbotsford Property to satisfy these claims, I direct that they be applied to Mr. Chand's obligations to the Rahils. Should the Rahils seek compensation from other professional funds for their losses, those will have to be addressed separately.

[118] Post-judgment interest will accrue on any amounts unpaid from the date of judgement.

[119] The Rahils are also entitled to their costs of this action.

"Marzari J."