

SUPREME COURT OF NOVA SCOTIA

Citation: *Clark v. Ewing*, 2023 NSSC 174

Date: 20230608

Docket: Hfx No. 444661

Registry: Halifax

Between:

Paul Clark

Plaintiff

and

Angela Ewing and Andrew Ewing

Defendants

DECISION ON TRIAL

Judge: The Honourable Justice Ann E. Smith

Heard: December 12, 13, and 14, 2022, in Halifax, Nova Scotia

Counsel: Laura Kanaan and Morgan Knox, for the Plaintiff
Michael Scott and Emily MacDonald, for the Defendants

By the Court:

Introduction

[1] The Plaintiff, Paul Clark, sues his daughter Angela Ewing and her husband, Andrew Ewing, in unjust enrichment. Paul Clark says that in 2011 he built an in-law suite on property which Angela and Andrew bought in 2010. Paul says that he gave the Ewings \$35,000 as a downpayment for the purchase of this property, in exchange for the right to construct an in-law suite on the property. When the Ewings sold this property in 2014 Paul says that he was entitled to a share of the sale proceeds.

[2] While the Ewings don't dispute that Paul Clark gave them a down-payment for the purchase of their property, they say that this was a gift. They agree that Paul built the in-law suite on their property and that doing so cost him time, effort, and money. However, the Ewings say that Paul isn't entitled to any portion of the sale proceeds because he transferred any interest he had in the property to his wife Laurie Clark when the two separated in 2013. At that time Paul and Laurie signed a Separation Agreement which stated that Paul transferred his interest in the marital home to Laurie.

[3] At issue, then, is whether the written agreement which Paul and Laurie signed in 2013 had the effect of eliminating any interest Paul had in the in-law suite because he transferred that interest to Laurie.

[4] The Court must also determine whether Paul had an equitable interest in the in-law suite, and if so, whether he is entitled to the equitable remedy of unjust enrichment. In addition to meeting the legal test for unjust enrichment, one who claims an equitable remedy, must come before the Court with clean hands. Does Paul have clean hands?

[5] Although Laurie and Paul started this lawsuit together in 2015, in 2022 Laurie decided to not go forward with the action and so her claim against the Ewings was dismissed.

Background

[6] In 2010, the Ewings purchased a property at 74 Sunrise Lane in Mount Uniacke “the Property”. Paul Clark and his then-wife, Laurie Clark, gave the Ewings \$35,000 toward the purchase price. The plan was for Paul Clark to build an in-law suite on the Property and for the Clarks to live in it for six months of the year, while continuing to spend their winters in Florida, as they had done for many years.

[7] The parties agree that in 2011, the Clarks spent \$100,000 constructing the two bedroom in-law suite, workshop, and garage. This was a stand-alone structure on the Property, close to the Ewings' home, also on the Property. In December 2012, Paul Clark announced that he was separating from Laurie Clark. In 2013, without legal advice, the Clarks executed a separation agreement (which Paul Clark found on the internet) pursuant to which he agreed to "transfer his interest" in the in-law suite to Laurie Clark.

[8] In late 2014, the Ewings sold the Property. They gave \$50,000 from the sale proceeds to Laurie Clark. The Ewings gave nothing to Paul Clark.

[9] Paul Clark says the Ewings have been unjustly enriched by his improvements to the Property. He seeks \$72,903 in damages, which he says represents the value of the contribution he made to the Property when he constructed the in-law suite.

[10] The Ewings say Paul Clark has no standing to bring a claim against them in unjust enrichment because he transferred any interest he had in the property to Laurie Clark.

Issue

[11] The issue in this case is whether Angela and Andrew Ewing were unjustly enriched by the addition of the in-law suite which Paul Clark constructed on the Property.

[12] In order to resolve that issue, the Court must first consider whether the agreement which the Clarks signed in 2013 transferred any interest Paul had in the in-law suite to Laurie Clark. If the agreement had that effect, then Paul Clark is entitled to nothing.

[13] The Court must also consider whether Paul Clark has an equitable claim in unjust enrichment arising from the work he did in constructing the in-law suite which he argues increased the value of the Property.

The Evidence

[14] The court heard *viva voce* evidence from Paul Clark, Laurie Clark, Angela Ewing and Andrew Ewing. Neither party called expert evidence. I will now review the salient portions of the testimony of each witness.

Paul Clark

[15] Paul Clark is a highly skilled trades person, having worked in the construction industry for 32 years before retiring in 2003. He was licensed as a gasfitter, steamfitter, and plumber, and developed considerable residential and industrial

construction experience over the course of his working life. Paul renovated several houses that he and Laurie Clark purchased during their marriage, and the couple built a house in New Russell, Nova Scotia, prior to Paul building the in-law suite on the Property.

[16] The Clarks have two daughters. Kelly lives in New Brunswick. The Clarks' other daughter, Angela Ewing, lives in Fletcher's Lake, Nova Scotia, with her husband Andrew Ewing.

[17] Paul Clark testified that he and the Ewings began discussing "buying a house together" in early 2010. He described his relationship with his daughter Angela at that time as "very good, we were always very close, until she got married."

[18] Paul Clark testified that he had told Angela that he and Laurie were not intending to build an in-law suite on their property with the expectation that the Ewings would look after them in their old age. He said they were not interested in being a burden to her, and that if it ever became necessary for them to move to a retirement home or a nursing home, they had enough money to do so. Paul said he also told Angela that he and Laurie expected to live in the in-law suite for about 20 years. At that point, he would be 80 years old and it would "likely be time to head out." Paul Clark said he also discussed this 20-year expectation with Laurie.

[19] In addition to telling Angela that they expected to live in the in-law suite for about 20 years, Paul also told her that if they built the in-law suite, they would be going to Florida for six months every winter. He said, “So it wasn’t like we were going to be there 12 months a year steady by any means.”

[20] Defence counsel asked Paul Clark about the discussions he had with Laurie and Angela about the Clarks’ intention to live in the in-law suite for about 20 years. Paul said that he specifically recalled those conversations. Paul Clark was then shown an email which he sent to Laurie Clark on May 29, 2016, prior to discovery examinations in this case, while Laurie was still a Plaintiff in this Action. Paul stated in the email:

Laurie, when we get together with Will to do the discovery regarding our claim, if it is ever asked how long that we thought that we would likely live in the in-law suite we should say that we talked between us and figured that with the age we were at we would likely stay there for 20 years if our health allowed before we needed to go anywhere to be helped.

That way if we win the case and they want to prorate the money over the years it would be 183,000 over 20 years and then they keep 3 years of that because that is all the time it was used and they reimburse us for the other 17 years.

You understand what I’m saying here.

[Emphasis added]

Laurie Clark responded on the same day, “Yes, I understand Paul.”

[21] Paul Clark denied that he was asking Laurie Clark to lie on discovery. He said they had already talked about the 20-year time frame and that he was “reminding her” that that was what they had discussed.

[22] Paul Clark and the Ewings looked at a few houses before Angela brought him to see the Property. The house was situated on a two acre lot with plenty of room to build a separate in-law suite. He said Angela had previously viewed the property with the listing agent, but he told her that they should not use a listing agent because “they work for the seller, not the buyer.” Paul Clark said he had a real estate agent that he had used in the past, and he asked her if she was interested in writing up an agreement of purchase and sale. Paul testified that he made an agreement with the agent that \$1,000 of the real estate commission would go to Angela. Paul Clark said that he actually signed the agreement of purchase and sale so that the listing agent would not be aware that it was Angela who was purchasing the property.

[23] Paul Clark’s rationale for signing the agreement of purchase and sale was that he and Laurie Clark each had “an interest” in the Property because they gave the Ewings \$35,000 as a down payment to buy the house. He said the Ewings had only wanted to spend \$200,000 on a new house. Since the sale price of the Property was \$235,000, he said they gave the Ewings the \$35,000 with the understanding that they would be entitled to build the in-law suite on the Property.

[24] Paul Clark was shown an undated Scotiabank document signed by him as the “donor” and Angela Clark as the “borrower”. The document states:

This is to confirm that a financial gift in the amount of \$35,000.00 has been made to Angela Clark to assist in the purchase of a home. These funds are being provide [sic] as a gift and will never have to be repaid.

I/we further confirm that I/we am/are an immediate relative* of Angela, and that no part of the financial gift is being provided by any third party having an interest, direct or indirect, in the sale or purchase of the property being mortgaged.

...

* Immediate relatives are defined as a parent, child, sibling, grandparent or guardian.

[Emphasis added]

[25] Paul Clark confirmed that he signed this letter. He testified that all banks have forms of this nature that they want you to sign if you are giving someone money for a down payment. He said the bank wants to know that if they give the borrower a mortgage, the borrower will not be expected to pay the down payment money back and potentially end up in dire financial straits as a result. Paul Clark said he understood that the \$35,000 would not be repaid. Instead, it would be “paid back in kind”, with the Clarks “having the rights to build the in-law suite on the property.”

[26] The purchase of the Property closed on June 30, 2010. The Clarks sold the property they owned in New Russell in August 2010, following which they went to Florida, as was their usual practice.

[27] While in Florida, Paul Clark had designs prepared for the in-law suite. He then provided Andrew Ewing with the information necessary to obtain the building permit. The application for the permit, dated April 12, 2011, stipulated that the estimated value of work was \$60,000.

[28] When the Clarks returned from Florida in late April 2011, they moved into the Ewings' home and stayed until the middle of September 2011. Paul Clark testified that Angela was pregnant at the time, and they wanted to get into the in-law suite before she gave birth.

[29] Construction started in mid-May 2011, and the Clarks moved in by September 2011, at a time when there was still a lot of work to be done inside.

[30] Paul Clark explained that the in-law suite was a separate building, connected to the main house by a 16 foot deck. The building was 30 ft. by 40 ft. The ground floor contained a garage (30 ft. x 26 ft.) and a workshop (30 ft. x. 14 ft.). There were two garage doors at the front of the building. The two-bedroom in-law suite was located upstairs. In addition to the two bedrooms, the in-law suite had a combination kitchen/living room/dining room, a bathroom and a walk-in closet in the main bedroom. It also had a wood stove and several mini split heat pumps. The in-law suite had no laundry facilities, so the Clarks were permitted to use the washer and

dryer in the Ewings' home (the "main home"). According to Paul Clark, he and Laurie were permitted to access the main house whenever they wanted. He said Laurie would look after the Ewings' dogs, letting them out at lunch time while the Ewings were at work. The Ewings also had access to the workshop and the garage. With respect to utilities, Paul Clark testified that they (the Clarks) had their own electric panel and a satellite dish. The in-law suite, like the main house, used well water.

[31] Paul Clark testified that he performed most of the work on the in-law suite himself. He prepared a list outlining all the work that was done and who did it, which was entered as an exhibit. He also said he installed French doors on the main house so the Ewings could step out onto the new deck.

[32] Paul Clark testified that he and Laurie lived in the in-law suite from the middle of September 2011 until the end of October 2011, when they went to Florida. They returned in April 2012 and lived in the in-law suite for a further six months until they again went to Florida. Paul Clark said he was not allowed to stay in the in-law suite after that. When asked to explain, he said that around December 11, 2012, he called Angela on the telephone from the Clarks' condo in Florida and asked if she would go to the in-law suite and check on something for him on the computer. He testified that Angela refused to do so, and "it was something I felt was really important for

me.” The conversation turned into an argument. Paul Clark said he was already a little bit stressed out because he had decided that night that he was going to split from Laurie the next day, and he said to Angela, “Hey, I can’t talk to you anymore.”

[33] Paul Clark said he told Laurie the next day that they were separating and the Clarks then headed back to Nova Scotia. They drove home to the in-law suite where they stayed for a week to get Laurie set up with a car and other things she would need. On December 16, 2011, Paul Clark drove back to Florida without Laurie who remained in the in-law suite.

[34] Paul Clark testified about a document dated January 1, 2013, with the heading “Separation Agreement”. He said it was an agreement that he had found on the internet and edited. Paul said the purpose of the agreement was to give Laurie some comfort that he was not going to come back from Florida and kick her out of the in-law suite. Paul Clark testified that neither of them had a lawyer at the time. The agreement states, in part:

3. The terms of this Agreement are intended to settle the matters addressed, but it will not be incorporated into a final decree of divorce. The Parties agree that a subsequent separation agreement will have to be made and duly incorporated into a final decree of divorce.
4. The Parties have each voluntarily entered into this Agreement and have not been forced by anyone to sign this Agreement, and both the Parties confirm that they are in sound mental health.

...

LIVING SEPARATE AND APART

5. The Parties have lived separate and apart since January 1, 2013. Neither Party will attend the other's living space or work without invitation or approval.

...

SPOUSAL MAINTENANCE

7. Paul Charles Clark will pay spousal maintenance in the amount of \$1,416.66 monthly to Laurie Dawn Clark until December 31, 2014. Spousal maintenance payments will commence on January 1, 2013 and will be paid on the 1st day of each and every month.

MARITAL HOME

8. The marital home is located at: 74 Sunrise Lane, Mt. Uniacke, NS (the "Marital Home") and is owned by the Parties.
9. Paul Charles Clark will transfer his interest in the Marital Home to Laurie Dawn Clark.
10. Upon transfer of the Marital Home, Laurie Dawn Clark will be solely responsible to pay all encumbrances registered against the Marital Home.
11. Laurie Dawn Clark will indemnify and hold Paul Charles Clark harmless from any against all obligations, and expenses, including reasonable attorney's fees, arising out of or relating to the Marital Home.

ASSETS

12. The Parties acknowledge that they have agreed upon a division of all assets, owned or possessed by them as marital property or separate property. The Parties are in possession of all of those assets to which each is respectively entitled. Accordingly, neither makes any claim to any assets in the possession of the other.

...

ADDITIONAL CLAUSES

15. This agreement will be reassessed by Dec. 31, 2014 and any mutually agreed changes will be made on that date.

GENERAL PROVISIONS

16. The Parties will promptly sign and give to the other all documents necessary to give effect to the terms of this Agreement.

...

19. The Parties may only amend this Agreement in writing after both Parties have obtained legal advice on the changes.

...

23. The Parties agree to provide and execute such further documentation as may be reasonably required to give full force and effect to each terms [*sic*] of this Agreement.

[Emphasis added]

[35] Paul testified that although this agreement is dated January 1, 2013, and the signature page is also dated January 1, 2013, he signed actually signed the agreement in August 2014, while Laurie signed in the fall of 2013.

[36] When asked about the spousal maintenance provision, Paul Clark testified that he had a “verbal agreement” with Laurie Clark that as long as she was living in the in-law suite, he would deduct \$500 from the spousal maintenance payments which he would use to help him pay for his own apartment. He testified that he believed he was paying Laurie approximately \$18,000 per year.

[37] With respect to the marital property clauses, Paul Clark agreed that he and Laurie did not “own” the Property because they were not on title. When asked about his intention when he agreed to “transfer his interest in the marital home to Laurie Dawn Clark”, Paul Clark said he wanted to give Laurie “the comfort level that I wasn’t going to come and take the house from her.” He testified that he “transferred the interest in the home itself, but I did not transfer my financial part of it because with the \$500 a month I was getting from Laurie meant that I was keeping the

financial interest in the property”. He said he was “giving her the right to live in the house”, in exchange for paying her \$500 less out of his pension in spousal support.

[38] With respect to the provision dealing with the division of assets, Paul testified that at the time they executed the agreement, he and Laurie had already discussed who was taking what, and how they were going to split up their money. He said there were no transfers of property after the 2013 agreement.

[39] Paul said that in February 2013, he contacted Angela Ewing and told her he wanted to apologize for what happened on the telephone in December 2012. He said she accepted his apology. Paul Clark returned to Nova Scotia in the spring of 2013 and found a rental property to live. Shortly thereafter, on May 8, 2013, Paul said that he received an email from Angela saying that he was no longer allowed on the Property. Paul Clark said he did not understand why.

[40] The Court notes here that the Ewings sold the Property in December 2014 and gave Angela Clark \$50,000 from the proceeds. The Ewings gave Paul Clark nothing. Paul Clark testified that he was fine with Laurie Clark keeping the \$50,000 from the sale of the Property, because splitting it would not have given either of them enough money to put a down payment on a house.

[41] Paul Clark was shown another separation agreement between himself and Laurie, this one dated August 30, 2017 on the first page, and signed by him and Laurie on October 29, 2017. This agreement states:

The parties entered into a Separation Agreement dated January 1, 2013 (referred to as the "Separation Agreement") to address certain aspects arising from the breakdown of their marriage relationship, including spousal support for an indeterminate period.

The Separation Agreement provided at paragraph 15 that the Agreement will be reassessed by December 31, 2014, and any mutually agreed changes will be made on that date.

The parties affirm that they reviewed the terms of the Separation Agreement on or before December 31, 2014, and no changes were made to the Agreement at that time.

NOW THEREFORE IN CONSIDERATION of the mutual covenants contained in this Agreement, the parties agree as follows:

1. The Separation Agreement of January 1, 2013, continues in force with respect to all aspects of the Separation Agreement, including spousal maintenance.
2. The parties have complied with the terms of the Separation Agreement of January 1, 2013, as evidenced by the continuation of the payment of spousal maintenance by the Husband and the declaration of spousal maintenance as tax deductible payments made annually by the Husband to the Wife, duly reported on each other party's income tax return.

The terms of the Separation Agreement shall continue in full force and effect until amended by agreement of the parties, evidence in writing, or by a Court Order.

Independent Legal Advice

The parties acknowledge that each has had independent legal advice and;

- (a) understand his or her rights and obligations under the terms of the Affirmation of Separation Agreement and its nature and consequences,
- (b) acknowledge that this Agreement is fair and reasonable,
- (c) acknowledge that they are not under any undue influence or duress, and
- (d) acknowledge that both are signing this Agreement voluntarily.

[42] Paul explained that this 2017 agreement was drafted because CRA (Canada Revenue Agency) would not allow him to deduct spousal support maintenance payments he made after December 31, 2014. He said this was due to the provision in the 2013 separation agreement that stated, “This agreement will be reassessed by Dec. 31, 2014 and any mutually agreed changes will be made on that date.” Paul said CRA took the position that the 2013 separation agreement was no longer valid as far as taxes were concerned, and that he owed \$18,000 in income tax. Paul Clark testified that he had his lawyer in Ontario get together with Laurie Clark’s lawyer and write up the 2017 agreement. He said there were no negotiations with respect to Property at that time.

[43] Paul Clark was then taken to a third and final separation agreement dated February 26, 2019. The signature page indicates that Laurie Clark signed this document on February 26, 2019, while Paul Clark signed it on May 17, 2019. The 2019 separation agreement provides, in part:

1.3 The parties entered into a Separation Agreement dated January 1, 2013 (referred to as the “Separation Agreement”) to address certain aspects arising from the breakdown of their marriage relationship, including the equalization of their Net Family Property and spousal maintenance for an indeterminate period. The Separation Agreement was amended and affirmed by an Affirmation of Separation Agreement dated August 30, 2017.

...

1.6 This Agreement replaces all oral or written agreements made between the parties.

...

4.1 Laurie shall retain the total net proceeds of the sale of their daughter's home, being the sum of \$50,000.00.

4.2 Laurie releases any claim to an interest in any judgment obtained by Paul in a Court proceeding brought against their daughter, Angela Ewing and her husband.

...

6.2 In consideration of and on completion of the parties' mutual obligations in this Agreement, and except as otherwise provided in this Agreement, Paul and Laurie:

(a) release each other from all claims either may have against the other now or in the future under the terms of any statute, in equity or the common law, including all claims under the Divorce Act, the Family Law Act, and the Succession Law Reform Act, for:

...

(ii) ownership of property;

[44] Paul testified that around the third week of October 2014 he learned that Laurie Clark could no longer live in the in-law suite because it was being sold by the Ewings. He testified that, "It was pretty upsetting to think that someone's daughter would kick their mother out of their house." As for what it meant for him, he said he was losing the \$500 per month that he had been hoping to use to rent an apartment.

[45] Defence counsel took Paul Clark to the building permit application for the in-law suite where Paul wrote that the estimated cost of the renovations was \$60,000. Paul agreed that at the time of the application, he knew he was planning to spend more than \$60,000. He said he gave Andrew Ewing the \$60,000 figure to make the permit cost less. Paul indicated that he designed the building and agreed that Andrew Ewing's input was limited to his desire for the building to "fit" with the main house.

[46] Paul Clark was taken to the Scotiabank “gift letter”. He took the position that the \$35,000 referred to in the document was a “loan”, not a “gift”, because there were strings attached to it. He agreed that the letter says the money is a gift, but said he signed it because there was no option to indicate that it was a loan that did not require money to be paid back. He said the money was given with the understanding that the Clarks would have the right to build the in-law suite.

[47] Paul agreed that that understanding was based on his discussions with Angela Ewing. When asked if he ever had any discussions with Angela about the terms of the agreement beyond the Clarks having the right to build the in-law suite, Paul testified that there was no written agreement. They had gone to see a lawyer because they wanted to write up an agreement. Paul Clark agreed that he wanted a contract to make clear the terms of the agreement that he had with the Ewings, however no contract was ever made.

[48] Paul said that he felt that he had a good faith agreement with the Ewings that if he invested the money to build the in-law suite, he would have somewhere to live. He agreed that he advised Laurie Clark that he wanted to separate from her right after her mother died. When it was put to Paul that he had planned for some time to separate from his wife, he testified that he had told Laurie’s mother that he would look after Laurie while he was married to her. He said that if Laurie’s mother had

lived for another five years, he “likely would have hung in there for another five years.”

[49] Paul agreed that he had decided years before building the in-law suite that he would take care of Laurie Clark until her mother died. When asked whether he disclosed this information to the Ewings before they agreed to let him build the in-law suite, he said no, and, “I don’t think it made any difference. It was none of their business.” He agreed that he did not tell Laurie Clark that he planned to leave her once her mother died. He said, “I don’t think that’s the type of thing you tell your wife.”

[50] The following exchange then occurred:

MR. SCOTT: What you *did* tell your wife and your daughter and her husband was that the reason we were going to be building this garage was so that you and Laurie Clark could live there, for whatever period, until such time as you were going to move out. But really what you were doing is, you were setting up a scenario so that Laurie Clark would have somewhere to live when you left. Wasn’t that the plan?

MR. CLARK: I would think so. Like I said, her mother and Angela got along very good together, and they were closer to each other than I was with Angela. So it would be the ideal situation. I mean I could have built the place and died the next year, so..

MR. SCOTT: So you.. that way you would know Laurie was taken care of, and then once her mother passed away, you could go do whatever you wanted to do. You were going to spend more time down south, I understand?

MR. CLARK: [inaudible]. I had to do what I had to do, yes.

MR. SCOTT: But you didn’t share any of those plans with the Ewings?

MR. CLARK: No, because I don’t think it was relevant to us building the in-law suite there.

MR. SCOTT: So you withheld that information when you were having these good faith discussions about building this garage?

MR. CLARK: When we started, that was not my intention. When we started, there was no intention that I would be leaving as soon as I did.

MR. SCOTT: Right.

MR. CLARK: If her mother was still living today, I would likely still be with Laurie.

MR. SCOTT: How old was she when she died?

MR. CLARK: I don't know. You'd have to ask Laurie that. I don't know. I think 80, maybe? I don't know for sure.

[51] Paul Clark was referred to an undated letter he wrote to Angela after the Ewings sold the property. Paul Clark wrote:

Angela

I didn't think that I would need to write you a letter like this to my own daughter and I don't think most parents would want to either but when a daughter treats here [*sic*] own mother with such lack of decency and respect I think a letter like this maybe needs to be written.

At our last counselling session we talked outside in the hallway about you treating your mother fairly regarding the money you would be giving her from the sale of the house. I think that you have a little confusion regarding what being treated fairly is and what you can afford is.

First of all you came to us to ask us for help to buy the house you are in. We agreed to give you \$35,000 with the understanding that we would build an in-law suite as we did. We built the garage and apartment and put in \$160,000 building it so along with the down payment we gave you we invested \$195,000 to benefit you and Andrew.

When the house was assessed after the in-law suite was built the value jumped from \$263,400 to \$346,100 for an increase of \$82,700 directly related to the building of the garage and nothing to do with any work that you did later on your own house, that increase in value along with the down payment comes to a total value of \$107,700. Even if you were to take \$7700 off of that for using the washer and dryer, water etc. it still comes to a value of \$100,000 and you have to [*sic*] nerve to say you can only give your mother \$40,000 to \$45,000. Here you have your mother turning 60 years old and looking at having a mortgage because you want to kick her out of her house and get rid of her and don't want things thrown back in your face.

You have bought a new trailer and new car this year so maybe you should be looking at a cheaper house to buy so you can enable your mother to afford to buy something without a mortgage.

You have sold your house for over \$100,000 more than you paid for it and around \$140,000 than you actually put into it and you are taking advantage of the money we put into the property. That money should be going to your mother, not to you.

If your agenda is to stop having things thrown back in your face you surely are going the wrong way about it. Your mother mentioned that you had gone to see a lawyer before selling the house to see if you had any obligations regarding giving your mother any money from the sale. Maybe legally you don't but morally you surely do.

[Emphasis added]

[52] Paul confirmed that he wanted the Ewings to give Laurie money out of the proceeds of the sale of the property. It was put to him that he was focused on Angela Ewing treating Laurie fairly, rather than treating *him* and Laurie fairly, because it was Paul's view at the time that any interest in the in-law suite belonged to Laurie and not to him. He responded, "No, I was out money too. I was out \$500 a month for five years." Paul maintained that he transferred the in-law suite to Laurie, but kept his financial interest by getting "that \$500 per month". Paul agreed that the "agreement" about \$500 was not in the 2013 settlement agreement. He said it was "written on an email" that he had provided to his lawyer.

Laurie Clark

[53] Laurie Clark testified under subpoena.

[54] Laurie Clark was shown the 2013 separation agreement. She called it their "kitchen table separation agreement" because they did it at their kitchen table. She

said the agreement was done without a lawyer. Laurie indicated that she ultimately retained a lawyer because “with Paul’s lifestyle”, she needed more security. She explained that Paul wanted to pay her half of his pension himself, from his bank account. However, Laurie wanted her payments deducted at source, by Paul’s union. She said, “With Paul’s lifestyle in Thailand or wherever he was, I wasn’t comfortable, maybe not getting it, and not being able to afford things.”

[55] Laurie Clark testified that the purpose of the 2013 separation agreement was to make her feel better, knowing that Paul would give her some money to get by without going to lawyers and spending lots of money.

[56] Laurie Clark testified that she could not remember when Paul started talking with the Ewings about building the in-law suite. When asked if she had discussions about it with Paul, she said he “said a little, but not a lot.”

[57] Laurie was asked what she understood about the in-law suite, based on her conversations with Paul. She testified that they were going to build a home there, go to Florida for six months, come back and be near their granddaughter. Laurie said that she lied on discovery when she said they had planned to stay there for 20 years. She added, however, that she expected to live there forever at the time.

[58] Laurie testified that Paul told her that the Ewings had asked for a loan to help with purchasing the Property. She did not know the amount of the loan. She did not know if there was ever anything in writing about the loan. She reiterated that she was not part of any discussions about money.

[59] When asked why she started this Action with Paul against the Ewings, Laurie said, "Because Paul wanted me to." As to whether she felt she was owed any money by the Ewings from the sale of the property, she said, "Yes. Some."

[60] Laurie could not recall exactly when she moved out of the in-law suite. She said she needed to move because Angela and Andrew Ewing had sold the house.

[61] Plaintiff's counsel directed Laurie to the spousal maintenance provision in the 2013 separation agreement and asked how much money she was receiving from Paul when they separated. She said she was not receiving anything from him; they were still both using the same joint bank account. She did not recall when that stopped. When asked if she was receiving \$1,416 from him, she said, "I wasn't receiving nothing. I was just living there and paying my bills there. From the joint account." Laurie said they were both putting money into the account. Paul's pension went into it, and she put money in as she sold things from the house. Laurie agreed that she

signed the separation agreement but said she was not receiving \$1,400. When asked why she signed the agreement, she said, “Because he asked me to?”

[62] Laurie Clark could not recall why the 2017 separation agreement was drafted, or whether she had a lawyer at the time. As to the 2019 separation agreement, Laurie said it was drafted because she wanted more security and she was trying to get the money Paul was sending her to come directly from his union. She had legal advice for the 2019 separation agreement.

[63] When asked the purpose of the \$50,000 payment to her from the Ewings, Laurie said it was from the sale of their home. As to her reaction to that payment, she said she was “a little shocked” and “a little disappointed that it wasn’t more.” She said she had to move and did not know what she was going to live off of at that time. She was scared. She did not know what she could get for \$50,000 or \$25,000 if she split it with Paul. She said Paul wanted his half “because we were splitting everything in our account.” Laurie testified that she did not split the \$50,000 with Paul.

[64] Laurie gave evidence that Paul sent her abusive emails after their separation. She was shown the following email from Paul, dated March 2, 2022:

I see that you didn't reply to my email from yesterday and that is fine but if you want to keep me out your [*sic*] and act childish like give me a stupid phoney mailing

then why 2 years ago were you asking Henry where I was? You are as stupid as the daughter that you live with. I can't wait until we get you on the witness stand at the trial. I should have left you as a cleaning lady at the motel.

[Emphasis added]

Laurie confirmed that this email was an example of the kind of abusive message she was talking about receiving from Paul.

[65] Laurie agreed that any information she had about the agreement to build the in-law suite came from Paul and that she was not directly involved in the process. Paul was the one in control of financial matters and he made all major decisions. Laurie said that she was not aware of the terms of the agreement with the Ewings, if there were any. She was not advised of the budget for building the in-law suite, nor did she have any real input as to what it would look like.

[66] Laurie agreed that she never had a discussion with the Ewings or with Paul to the effect that they intended to live in the in-law suite for 20 years. She said it was her understanding from Paul's email of May 29, 2016, that he was directing her to say things at discovery that were not true. She knew that she was lying, but she agreed to lie because she was afraid that there would be consequences if she refused.

[67] With respect to the 2013 separation agreement, Laurie said that the agreement was for the purpose of dividing up the assets initially between herself and Paul. She said that she signed the agreement voluntarily and of her own free will. With respect

to the statement at clause 9 that “Paul Charles Clark will transfer his interest in the Marital Home to Laurie Dawn Clark”, she said that she understood that she would retain the in-law suite and be responsible for any bills or upkeep on the building. Paul would find his own place to live. She confirmed that there was no agreement that Paul would be paid any money from the in-law suite.

[68] Laurie Clark confirmed that other than the three separation agreements, there were no other agreements or contracts between herself and Paul Clark pertaining to their separation and division of assets. She agreed that she withdrew from the litigation against the Ewings of her own free will and not due to any threats or pressure from anyone else.

[69] Laurie agreed that when the in-law suite was built, she understood that she and Paul would be living there for a number of years, and that she was looking to retire there. She agreed that there were never any discussions about living there full time. The understanding had been that the Clarks would be going to Florida for six months of the year and that they would live in the in-law suite together for the other six months. She agreed that she was not aware of any plans on Paul’s part to separate from her and leave her at the in-law suite.

[70] With respect to the 2019 separation agreement, the following exchange occurred between defence counsel and Laurie:

MR. SCOTT: You said with regard to one of the separation agreements that you were looking for security because of Mr. Clark's "lifestyle". What did you mean by that?

MS. CLARK: Well, he was, um, at the time, going to Thailand. And, um, there was a few incidents over there.. There was a point that I didn't know if I was going to get my money on time because he was tied up.

MR. SCOTT: Why would you not get paid on.. you mean your spousal maintenance payments?

MS. CLARK: Yes, yes, because it came from his bank account, not from what I have set up now. It came from him. He would send it to me. And if he was in Thailand, well, you know, you're just so far away, and banks, and... and just, his lifestyle, I just didn't feel secure enough to...

MR. SCOTT: My understanding is you were looking in the final agreement to have those payments paid at source, from his union...

MS. CLARK: That's correct.

MR. SCOTT: ... rather than having to rely on him...

MS. CLARK: That's correct.

MR. SCOTT: And your concern with him being in Thailand was simply the distance, and possible banking problems? Or were your concerns more specific?

MS. CLARK: Um... again, it was the incidents that happened.. that I heard of, that he was, he was in jail. And it just.. uh, you know, it kind of upset me a bit and I just felt that I needed to secure... myself better than relying on him.

MR. SCOTT: Because you were concerned that if he was in jail in Thailand, he wouldn't be able to make the payments?

MS. CLARK: That's correct.

[Emphasis added]

Andrew Ewing

[71] Andrew Ewing has been married to Angela for 13 years. They have one daughter, "M", who is 11 years old. The family has lived in Fletchers Lake, Nova Scotia, since December 2014. Before that, they lived at the Property.

[72] Mr. Ewing is a gas fitter. He completed the apprenticeship program for carpentry at NBCC (New Brunswick Community College) in Woodstock, New Brunswick, in 2001.

[73] Andrew testified that in 2009 he proposed to Angela and they decided to start looking for a house. They obtained a pre-approval for a mortgage in the amount of \$350,000, but they only wanted to spend \$200,000. Andrew said he did not seek any assistance from the Clarks in terms of financing the purchase of the house.

[74] The Ewings started actively looking at properties in spring 2010. Throughout the process, Paul Clark was very involved, helping them to inspect the houses.

[75] Andrew testified that at some point, Paul Clark proposed that the Ewings purchase a property on which the Clarks could build an in-law suite. Andrew said the Clarks had their house in Florida that they were wintering in and a new house in New Russell, and they liked the idea of being able to go to Florida in the winter and spend the summers with the Ewings.

[76] Andrew said they looked at a few properties with existing in-law suites but settled on the Property. Andrew testified that he and Angela met Paul Clark at the Property and they discussed putting in an offer. He could not remember the asking price for the property.

[77] When asked if he could recall any details of the agreement with the Clarks beyond the fact that the Ewings would build the in-law suite, Andrew testified that he and Angela would purchase the property, and “down the road”, the Clarks would build a garage with an in-law suite where they would stay for six months in the summer and spend their winters in Florida. He said no other details were discussed at that time. The terms were “loose”, and there was no date set as to when construction of the in-law suite would take place. Andrew reiterated that it was to be “down the road.”

[78] Andrew was asked about the meeting between Angela Ewing, Paul Clark, and lawyer, Brent Silver. He said he was not present at the meeting, but he knew that Angela and Paul Clark met with Mr. Silver to discuss options for writing up some sort of agreement. Andrew said no agreement was reached.

[79] Andrew was shown the Scotiabank “gift letter”. He said the document was signed to show that Paul Clark had gifted the Ewings \$35,000. He testified that he

did not ask to borrow money from Paul Clark; nor did he accept a loan from Paul Clark. He said Paul Clark offered to give the Ewings \$35,000 to have the right to build an in-law suite. Andrew said that they had the document drawn up to prove that the money was not a loan; it was a gift. Andrew rejected the assertion that the document was a “loan agreement” and denied ever having a loan agreement with the Clarks.

[80] When shown the agreement of purchase and sale for the Property, Andrew testified that the offer was in Paul Clark’s name for a couple of reasons. He said that Paul Clark wanted to use his real estate agent friend for the transaction. Andrew explained that he and Angela did not have a real estate agent of their own and they had made a cold call to the listing agent to view the Property. Paul Clark did not feel it was a good idea to use the listing agent as a buying agent. He preferred to use his friend so that she could get some commission as well. In addition, Andrew and Angela Ewing were both working full time, so Paul Clark offered to help and get the ball rolling on the purchase agreement.

[81] Andrew testified that he understood that the Clarks intended to reside in the in-law suite until they were no longer able to look after themselves and would have to find alternate living arrangements. He did not recall a conversation about a time frame of 20 years.

[82] Andrew said that he and Angela took possession of the house at the Property on June 30, 2010. At that time, no steps were taken with respect to the in-law suite. He said he and Angela were getting ready to be married. He was spending weekends at Paul Clark's house in New Russell, helping him finish off the house there and getting things ready because he and Angela were going to be married at the Clarks' property in August. There were no discussions about the in-law suite at that time. Andrew testified that "it was kind of in the back of our minds as we were planning our marriage and our new life together."

[83] The Ewings were married at the Clarks' property in August 2010. In October 2010, Paul Clark informed the Ewings that he had listed the house in New Russell. The house sold within a few weeks. After that, the Ewings helped pack the Clarks up and put their belongings in storage. The Clarks spent a few days with the Ewings, then proceeded to Florida for the winter. Andrew believed that the Clarks returned to Nova Scotia in March 2011 and stayed with the Ewings in their house. Paul Clark had started drawing up plans for the in-law suite over the winter.

[84] Andrew testified that there was no discussion of a budget for the in-law suite. It was up to the Clarks. As for Andrew's role in the initial planning stages, he said he had a "little bit of input on the exterior of the suite." He wanted it to match and look like it belonged with the main house.

[85] Andrew was shown the application for the building permit. He testified that he obtained the building permit using information given to him by Paul Clark. When asked to describe the design that was settled on, Andrew said the building was going to be 30 ft. by 40 ft., with a garage and a shop and an in-law suite above it. He testified that in order to have an in-law suite, there had to be a garage below it. The workshop was just part of the design.

[86] Construction began in May 2011. Andrew testified that he helped form up the concrete pad for the foundation of the in-law suite. He helped with grading and insulation, installing the in-floor heating and ceramic tiles, painting and building the deck. He said he helped because Paul Clark was his father in-law and he was trying to get along and build the relationship.

[87] With respect to the deck, Andrew said he understood that it was necessary for the in-law suite building to be attached to the main house in some way, and a deck was an acceptable means of attaching the two buildings.

[88] Andrew said there was no primary heat source to the in-law suite because the Clarks were not going to be there year-round. The building was not winterized. The water line was just a piece of pipe above grade that was open to the elements. It was not buried to a depth to prevent the water line from freezing.

[89] Andrew said he and Angela had access to the garage and workshop once construction was complete. He said they used the garage once in a while. Angela parked her car in there. They also stored a few boxes in the garage.

[90] Andrew testified that he did extensive renovations to the main house. He said that when they purchased the Property, the upstairs was the only finished living space. He resurfaced the front deck, rearranged the front steps and made a new walkway. He painted the entire main floor, installed a fully ducted heat pump system with electric backup, and installed a propane fireplace with a full floor-to-ceiling hearth. The basement was unfinished and used by the previous owners to store wood. Andrew had an electrician friend wire the basement for lights and plugs and a new heat pump. He installed safe 'n' sound insulation, vapour barrier, studs, drywall, flooring and trim. He created a second master suite for himself and Angela. He finished another living room space, a walk-in closet, and a workout space. He also put in the plumbing for a bathroom.

[91] Andrew was asked when he learned that the Clarks would be separating. He said he found out from Laurie in December 2012. He understood that Paul Clark would be leaving the Property and Laurie Clark would be staying at the in-law suite. Paul Clark stayed for about a week to help get things situated for Laurie, then they both went back to Florida. In spring 2013, the Clarks came back to Nova Scotia.

After that, Paul Clark came to the property to either pick things up or do repairs that apparently were needed.

[92] Andrew testified that Paul Clark moved out after the final week in December 2012 when the Clarks came back to sort out their living situations.

[93] According to Andrew, before Paul Clark moved out, the relationship between him and the Ewings had started to degrade. Paul and Andrew “buted heads a lot” and it put a strain on the relationship. After Paul Clark moved out, the relationship deteriorated “quite rapidly.” Andrew said that Paul Clark was “very angry” at the time, and after he was told by Angela Ewing that he was not allowed to come back on the Property, Paul wrote an email to Andrew explaining exactly what he thought of him, where he could go, and how he could get there. Andrew responded with an email to Paul Clark explaining what he thought of him, and that was the end of their conversations from there on out.

[94] When asked what Paul Clark was angry about, Andrew said he was angry about a number of things. Paul was angry with the Ewings because they were supporting Laurie Clark. He was angry with Andrew because he “wouldn’t bow down to him.”

[95] Andrew was asked why Paul Clark was told that he was not allowed to come back to the property. He responded:

MR. EWING: Mr. Clark can be very verbally and emotionally abusive and manipulative. And I got very tired of my wife getting off the phone with him being very upset with the things that he would say to his own daughter. And then, at one point he had called my wife to go over to the apartment to get a Turbo Tax CD, so that he could do his taxes. She was in the midst of doing report cards at the time so she didn't. So he called her, they got into a disagreement that he spoke of on the phone. Then he wrote an email after that, where it explains that he's not impressed with her, and that she was spoiled, and that he would disown her if it came down to it and if that meant he didn't have a relationship with "M", then he was ok with that. And I had had enough of his going-ons that that was the law straw for me. He would not have... he was not going to have the opportunity to continue to be abusive to my wife and he was never going to get the opportunity to do it to my own daughter.

[96] Andrew's evidence as to why he and Angela put the Property up for sale in 2014 was as follows:

MR. EWING: Because we needed to move on and live our life. And the situation that we were in was very strained. And it was what we felt was the way that we could ... salvage our relationship, and continue on. Because it was very.. it was a very negative environment around 74 Sunrise Lane.

MR. SCOTT: Why do you say that? Why was there a negative environment?

MR. EWING: Well, Mr. Clark still had control over Mrs. Clark. She would still do what he asked of her. It was made very clear that Mr. Clark was to have no contact with us or "M", and Mrs. Clark allowed a lot of that to happen. And I was clear with her that that was not acceptable. And it continued to happen. And so... we felt we needed to get out of the property to be able to move on with our life. We had just started it.

[97] Andrew said Angela spoke to her mother and let her know that they were listing the house. The Ewings decided to give Laurie \$50,000 after being told by their real estate agent and his broker that the in-law suite added \$50,000 to the value

of the Property. Andrew said they gave the money to Laurie Clark because they understood that she had obtained ownership of the garage, in-law suite and contents in the 2013 separation agreement.

[98] On cross-examination, Andrew agreed that a term of the \$35,000 payment from the Clarks was that they would have the right to build the in-law suite at the Property. He agreed that he knew the Clarks were spending their own money to construct the in-law suite, and that they planned to live there until they “became a burden.” He agreed that he and Angela did not consult Laurie Clark before listing the Property for sale.

[99] Andrew agreed that Paul helped build the deck that connected the main house to the garage building. He further agreed that he and his family used that deck. He confirmed that he and Paul fitted the side of the main house for French doors, and that that was an improvement to the main house.

[100] Andrew was shown a document with the title “Statement of Trust Funds and Disbursements” related to the sale of the Property. The closing date is listed as December 12, 2014. The document states:

Balance Due on Closing	\$340,276.70
...	
Discharge Registration Fee	\$100.00

Exit Real Estate Professionals (real estate commission)	\$8,918.75
Keller Williams Realty (real estate commission)	\$9,918.75
The Bank of Nova Scotia (mortgage payout as of Dec. 13/14)	\$163,600.60
The Bank of Nova Scotia (bridge loan payout)	\$60,983.36
Municipality of East Hants Tax Certificate (tax certificate)	\$60.00
PAID TO: Angela and Andrew Ewing	\$95,755.74

[101] Andrew confirmed that this document was in relation to the sale of the Property in December 2014. He could not recall the amount of the mortgage they took out when they purchased the Property but agreed that it was \$163,600.60 when they sold it. He did not remember whether the Ewings closed on their new Fletchers Lake house before they closed on the Property. He did not know what a bridge loan is. He agreed that if he had a bridge loan on the Fletchers Lake house that was paid with the proceeds of the sale of the Property, then that was a \$60,000 benefit to him and Angela.

[102] Andrew agreed that the purchase price of the Property in 2011 was \$235,000, and that the Property sold for \$345,000. He said the Property was on the market for about two weeks. They did not attempt to get a higher price than \$345,000. Andrew Ewing was taken to a document which indicated that the “assessed value” for the Property. He agreed that they sold the Property “well under the assessed value.” Andrew also agreed that he believed the Clarks would expect money from the sale of the house.

Angela Ewing

[103] Angela testified that she and Andrew began searching for a house together in 2010. Her father proposed that they come live with them at some point, and they decided to start looking at houses together. She could not recall exactly when that was. Angela believed they looked at three or four houses before finding the Property.

[104] Angela said her father knew of a realtor who would be able to do the transaction with them, so they agreed to have her represent them on purchasing the Property. Paul Clark was listed as the buyer on the agreement of purchase and sale because Angela and Andrew were both working, and Paul was acting on their behalf. Angela testified that it was inaccurate to say that the Clarks and the Ewings were buying a house together – she and her husband were buying a house together. She said they were pre-approved for a \$350,000 mortgage.

[105] Angela Ewing was referred to the Scotiabank “gift letter”. She said the document came to be because the Property exceeded the \$200,000 budget that she and Andrew had set for themselves, so her parents gave her the \$35,000 so they would not go over their budget. Angela testified that the money was a gift, with no obligations. When referred to her husband’s testimony that the \$35,000 was

provided in exchange for Clarks' right to build on the Property, Angela said that statement was inaccurate. Angela said she and Andrew knew the Clarks were going to build on the Property, but the \$35,000 was gifted to them "free and clear."

[106] Angela was asked about the evidence that she and Paul Clark had met with lawyer, Brent Silver. She confirmed that the meeting took place but could not recall the timing. She did not recall whether it was before or after the purchase of the Property. Angela testified that they went to see Mr. Silver to "discuss, I guess, just the ins and outs if we were to draw up a contract about any agreement we were going to come to." She said it was mainly herself and Paul Clark who participated in discussions about what the terms of the agreement would be. She said that Andrew and Laurie were not really involved. Angela said she never came to any agreement with her father, and that there were never any terms put on the table for anything to be signed. Angela testified that she knew Andrew would not be agreeable to signing any kind of contract.

[107] Angela agreed that she allowed her father to build the in-law suite. Her understanding was that her parents would reside in the in-law suite in the summer months, in between traveling and residing in Florida during the winter months. Angela said she had no input on the construction of the garage building with the in-law suite or how much would be spent on it.

[108] Angela testified that her father moved out of the in-law suite in December 2012. She found out that her parents were separating when they returned home from Florida for a week. Her mother was going to stay in the in-law suite, and her father was going to find alternate housing. Angela denied that she kicked her father out of the in-law suite. When asked about the timing of her maternal grandmother's death, Angela said she believed it was in the fall of 2011.

[109] Angela testified that in December 2012, after her father had moved out of the in-law suite, he asked her to get something from the unit for him. When she told him that she was not able to, "it kind of started a... string of phone calls and emails." The emails were "very malicious and unkind." Angela said that after that dispute, her father sent a "very unkind" email and they stopped communicating with one another.

[110] Angela was asked about her knowledge of Paul Clark being prohibited from coming onto the Property. She testified:

MS. EWING: That spring, I believe it was the spring 2013, he had planned on returning to Nova Scotia. I had helped him... we had begun corresponding at some point earlier, and I had helped him to secure a rental property for that spring/summer. And although I was once again in communication with my father again, Andrew was not, and we had some conversation with one another about what my future and ongoing relationship with Paul Clark would look like, and we agreed together that we could have a relationship if I so wished, but it didn't need to be on the property. So we sent him an email saying that we would not like him to come back onto the property.

[111] When asked the reason for her and Andrew's decision that Paul Clark should not be allowed on the property, Angela stated:

MS. EWING: Andrew was not happy with the way that my father treated myself and my mother and my sister, and, um, based on the emails that he had sent me as well as some emails that he had sent Andrew, there was just... it was just not a.. there was no relationship there. And, um, you know.. we decided that we should all be able to feel happy and safe in our own home and that having Paul return to the property would make Andrew uncomfortable.

[112] Angela was shown the undated letter Paul Clark wrote to her after the Ewings sold the Property. She said it was an email her father wrote to her in or around the fall of 2014. When asked what was going on that prompted the email, she said that she and Andrew had decided to sell the Property, which had upset her mother, and Paul Clark was upset that she was upset. The following exchange occurred between counsel and Angela:

MR. SCOTT: Why was your mother upset?

MS. EWING: Um, she had been told for 39 years of a marriage what to do and when to do it, and she has been at a time where she was trying to learn to.. um.. do things for herself. And it was a lot of change in a short period of time and she was very overwhelmed.

MR. SCOTT: Why did you decide to sell the property?

MS. EWING: Um, because we had become very overwhelmed with the fighting and the drama and the stress that... our relationship... I mean everything had basically come to a head and our relationship was um, feeling the strain, and we were quite exasperated at the time. We hadn't signed up for any of this, and we felt that it was the only way to remove ourselves from the situation.

MR. SCOTT: When you say you didn't sign up for this, what do you mean? What did you not sign up for?

MS. EWING: Um, we didn't sign up for the constant fighting between my father and myself, and my father and Andrew, and my father and mother. We certainly

didn't sign up to be in the middle of my parents' divorce. Um, arguments and deterioration of relationship with my sister. And then all of a sudden having to deal with having my mother having my mother going to be residing on the property 12 months a year.

MR. SCOTT: What, if any, knowledge did you have before the garage was built that your father intended to leave your mother?

MS. EWING: None, at that time.

MR. SCOTT: And if you had known that at the time, would you have agreed to allow them to build the garage?

MS. EWING: No.

[113] Angela testified that she first learned that her father planned to leave her mother in the fall of 2014. She said her sister advised her that her father had told her that he had planned it all along – that he planned to build the in-law suite and leave their mother. As a result of receiving that information, Angela confronted her father. When asked what she said to him, Angela stated, “That my sister had told me that he had planned this all along, and he agreed, and passed it off as if it was not a big deal.”

[114] When asked why she and Andrew gave her mother \$50,000 when the Property sold, she said they felt that she should be compensated for her financial contribution, but they also wanted her to have some money to find another place to live. They landed on the \$50,000 figure after consulting their realtor.

[115] On cross-examination, Angela could not recall whether the Scotiabank “gift letter” was necessary to obtain the mortgage on the Property.

[116] Angela confirmed that she was aware that her parents were using their own funds to construct the in-law suite. She agreed that she never discussed a budget with them because it was going to be their residence, not the Ewings' residence. She agreed that her parents expected to stay in the in-law suite longer than three years, and that that was not possible because she and Andrew sold the Property.

[117] Angela did not recall a conversation with her father that if she and Andrew sold the Property after a few years, the Clarks would get some money back. She was taken to her discovery evidence where she stated, "And my father suggested that if we were to do something along these lines, that, should something happen within a few years of purchasing the property, that some money would be repaid." Angela did not deny giving that evidence, but did not recall it, or the conversation with her father.

[118] Plaintiff's counsel asked Angela about her relationship with her mother in the fall of 2014. She said it was strained, due to constant issues and stress. Angela testified that, at the time she and Andrew put the Property up for sale, the relationship was strained "because [Laurie Clark] was constantly under stress because of the way my father was treating her, so her emotional state was constantly elevated." She said this made general dealings with her mother "very challenging."

[119] Angela agreed that the purchase price for the Fletchers Lake house was \$278,000. She denied that she was comfortable spending more for a house at that time because she had the proceeds from the sale of the Property. She attributed it to both her and her husband making more money at that time. When shown the “Statement of Trust Funds and Disbursements” from the sale of the Property, Angela did not recall having seen the document before. Angela did not recall whether they obtained a bridge loan to buy the Fletchers Lake house. She did not recall the amount of the mortgage on the Property at the time it was sold. Angela agreed that she did not actually know how much money she received from the sale of the Property. She agreed, however, that she only gave her mother \$50,000.

[120] Angela agreed she and Andrew listed the Property for \$349,900. She did not recall how long it was on the market. They accepted the first offer they received. She did not recall whether they made a counteroffer.

The Positions of the Parties

Paul Clark

[121] Paul Clark submits that the 2013 separation agreement, and the 2017 separation agreement which affirms it, are unenforceable. He says he never intended

to transfer his equitable interest in the in-law suite to Laurie Clark; he was merely attempting to give her exclusive possession of the in-law suite.

[122] Paul further submits that he maintained a financial interest in the Property by virtue of his agreement with Laurie Clark that he would give her \$500 less in spousal maintenance every month while she lived in the in-law suite.

[123] Relying on the valuation method used in *Taylor v. Wanless*, 2011 NSSC 25, Paul Clark values the Ewings' unjust enrichment, and his corresponding deprivation, at \$73,902. He says there is no juristic reason for the Ewings to retain the enrichment.

Angela and Andrew Ewing

[124] The Ewings say there is nothing in the 2019 separation agreement that would render the earlier separation agreements void *ab initio* or unenforceable. They submit that Paul Clark has no standing to advance a claim against the Ewings in unjust enrichment because he transferred any interest he had in the Property to Laurie Clark in the 2013 separation agreement, which was affirmed by the 2017 separation agreement. Although no lawyers were involved in preparing the 2013 separation agreement, Paul Clark testified that the 2017 separation agreement was prepared by his counsel and counsel for Laurie Clark.

[125] Moreover, the Ewings say Paul Clark is not entitled to an equitable remedy in any event, because he comes to the court with unclean hands. They argue that Paul entered into the agreement with them under false pretenses, and that they would never have agreed to let the Clarks build the in-law suite if they had known that Paul Clark planned to leave his wife as soon as her elderly mother died.

The Court's Findings

Credibility

[126] The picture that emerged of Paul Clark, through his own testimony and that of the other witnesses, is an unflattering one. Based on the evidence at trial, Paul Clark is a person who is willing to lie under oath, and to coerce others into lying under oath, to get what he believes he deserves.

[127] Paul Clark's attempts to minimize his own poor behaviour seriously undermined his overall credibility.

[128] Paul Clark's credibility was further undermined by the content of the May 29, 2016, email he sent to Laurie Clark about how she should answer certain questions at her discovery examination, and his reaction upon being questioned about it. Paul Clark was visibly surprised and irritated to see this email when it was put to him at

trial. He asked the Court whether the email would be considered privileged because it was between him and his wife. Paul Clark then asked defence counsel whether Laurie Clark had given him the email. Paul Clark testified that he was not suggesting in the email that his ex-wife should lie at discovery but was merely “reminding” her of their previous discussions.

[129] The Court finds, however, that Paul was asking Laurie Clark to lie under oath, and that she complied because she was afraid of the consequences if she refused. The Court further finds that Paul Clark’s own evidence that he specifically recalled discussions with Angela Ewing and Laurie Clark about living in the in-law suite for 20 years was a fabrication, designed to give him what he perceived to be an advantage in the litigation. Paul Clark was not a credible witness.

[130] The email Paul Clark sent to Laurie Clark on March 2, 2022 offered further insight into his approach to this litigation. Angry that Laurie had not responded to an earlier email from him, he told her that she was “as stupid as the daughter that you live with.” He also said, “I can’t wait until we get you on the witness stand at the trial” and, “I should have left you as a cleaning lady at the motel.” I find that this email was intended to intimidate and upset Laurie Clark, who would be testifying at trial under subpoena.

[131] It was clear that Laurie Clark did not want to be involved in this trial. She appeared to be reluctant to volunteer information that could upset Paul Clark and did so only when subjected to more pointed questions. Although Laurie Clark was cooperative, she had very little knowledge of the discussions that led to the construction of the in-law suite. She also had poor recall of the timing of specific events. On those topics where she could give evidence, I found her to be credible. I accept her evidence that Paul Clark made all the major decisions in their marriage, and that he had sent her verbally abusive emails since their separation.

[132] Andrew Ewing gave his evidence in an honest and straightforward manner. I found him to be a cautious but credible witness. Where his evidence conflicts with that of Paul Clark, I accept Andrew Ewing's evidence.

[133] I also found Angela Ewing to be credible in most respects. I do note, however, that she was less willing than Andrew Ewing to concede certain points, including that there were any strings attached to the \$35,000 payment. While Andrew Ewing testified that the \$35,000 was provided in exchange for the right to build on the Property, Angela Ewing said that her husband's evidence was inaccurate. She testified that she and Andrew knew the Clarks were going to build on the Property, but that the \$35,000 was a gift, "free and clear".

Factual Findings

[134] Based on all the evidence, the Court finds as follows:

- In late 2010 or early 2011, Andrew and Angela Ewing began looking for a house to purchase together.
- The Ewings were pre-approved for a \$350,000 mortgage but set a budget for themselves of \$200,000.
- At no time did the Ewings ask for or accept a loan from the Clarks to purchase a house.
- At some point, Paul Clark proposed that the Ewings purchase a property that could eventually accommodate an in-law suite for himself and Laurie Clark.
- The Ewings and Paul Clark viewed a few properties before finding the Property.
- The purchase price for the Property was approximately \$235,000, which exceeded the Ewings' \$200,000 budget. The Clarks therefore agreed to give the Ewings \$35,000 as a down payment with the understanding that they would be entitled to build an in-law suite on the Property at some point "down the road."
- Everyone involved understood that once the in-law suite was built, the Clarks would continue to spend six months of the year in Florida.
- Everyone involved understood that once the in-law suite was built, the Clarks would live there for six months every year until they "became a burden" and needed to move into a nursing home or other long-term care facility.
- No one but Paul Clark knew that he planned to leave Laurie Clark as soon as her mother died. At that time, Laurie Clark's mother was around 80 years old.
- Before giving the Ewings the mortgage, Scotiabank required them to obtain a signed "gift letter" indicating that the \$35,000 down payment from the Clarks would not have to be repaid.

- Although the gift letter was required by the bank, neither the Ewings nor the Clarks had any expectation that the \$35,000 would be repaid.
- The purchase of the Property closed on June 30, 2010.
- Although no concrete plans had been made for construction of the in-law suite other than that it would be some time “down the road”, in October 2010, Paul Clark informed the Ewings that he had decided to list the Clarks’ house in New Russell.
- The house in New Russell sold within a few weeks. The Clarks spent a short period of time living with the Ewings before heading to Florida.
- While in Florida, Paul Clark had plans drawn up for the in-law suite.
- The Clarks returned to Nova Scotia in the spring of 2011 and moved in with the Ewings.
- Construction of the in-law suite began in May 2011. Andrew Ewing told Paul Clark that he wanted the building to look like it belonged with the main house. The Ewings otherwise had no input on the design or the budget for the in-law suite.
- The Clarks moved into the in-law suite in September 2011. Paul Clark continued to do work on the interior after they moved in.
- In October 2011, the Clarks returned to Florida.
- In late April 2012, the Clarks returned to the Property. They went back to Florida at the end of October 2012.
- In December 2012, Paul Clark told Laurie Clark and the Ewings that he wanted to separate from Laurie Clark. Paul Clark returned to Nova Scotia with Laurie Clark for a week to make arrangements. Laurie stayed in the in-law suite, and Paul went to Florida.
- In spring 2013, Angela Ewing helped her father find a place to rent in Nova Scotia. When Paul Clark returned to Nova Scotia in May 2013, she sent him an email indicating that he was no longer welcome on the Property.

- At some point in 2013, Paul and Laurie signed the separation agreement dated January 1, 2013.
- In October 2014, the Ewings informed Laurie that they were selling the Property.
- The Property sold for \$345,000, which was approximately \$30,000 less than the 2014 assessed value.
- Before the sale of the Property closed on December 12, 2014, the Ewings obtained a bridge loan to enable them to purchase their new house in Fletchers Lake for \$278,000.
- After the sale of the Property closed, the Ewings gave Laurie Clark \$50,000.
- On October 22, 2015, the Clarks filed this Action against the Ewings. Discoveries took place in August 2016. Laurie Clark subsequently decided to discontinue her claim against the Ewings and signed a release in 2017. A Consent Dismissal Order was issued by the Prothonotary on April 24, 2019.
- In 2017, Paul Clark asked his lawyer to work with Laurie Clark's lawyer to affirm and update the 2013 separation agreement so that he could claim spousal maintenance payments made after December 31, 2014. The agreement was executed on October 29, 2017.
- On February 26, 2019, Laurie Clark signed the 2019 separation agreement.
- On May 17, 2019, Paul Clark signed the 2019 separation agreement.

Are the 2013 and 2017 Separation Agreements Enforceable?

[135] Before reviewing the law related to unjust enrichment, I will address the argument by Paul Clark that the 2013 separation agreement, and the 2017 agreement affirming it, should be deemed unenforceable. Paul Clark says the 2013 agreement was executed without legal advice, and he did not intend to convey his equitable interest in the property to Laurie Clark.

[136] Lack of independent legal advice can be a reason to set aside a separation agreement, but a failure to obtain legal advice will not necessarily result in an agreement being set aside. *Halsbury's Laws of Canada - Family (2022 Reissue)* at HFA-277 states:

Role of independent legal advice.

The lack of independent legal advice will be a factor in determining whether the courts will intervene and set aside or vary a domestic agreement, although it generally will not be determinative by itself. The Supreme Court of Canada has held that when vulnerabilities have been compensated for by the presence of professionals, the agreement should be respected. Given that vulnerabilities are almost always present in these negotiations, the parties' genuine wish to finalize their arrangements should, absent psychological exploitation or misinformation, be respected. One way to help attenuate the possibility of such negotiating abuses is undoubtedly through professional assistance. But exploitation is not rendered anodyne merely because a spouse has access to professional advice. It is a question of fact in each case.

Two principal concerns. Generally, whether or not someone requires independent legal advice will depend on two principal concerns: (1) whether that person understands what is being proposed and (2) whether that person is free to decide according to their own will. The first is a function of information and intellect, while the second will depend, among other things, on whether there is undue influence.

Burden of proof. There is no presumption that the courts will be hesitant to enforce a pre-nuptial agreement. The burden is on the party seeking to escape the effect of the agreement to show that there are grounds for setting it aside. The lack of independent legal advice is a factor for the court to consider along with all the other circumstances.

[137] The setting aside of separation agreements is also dealt with at s. 29 of the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275:

29 Upon an application by a party to a marriage contract or separation agreement, the court may, where it is satisfied that any term of the contract or agreement is unconscionable, unduly harsh on one party or fraudulent, make an order varying the terms of the contract or agreement as the court sees fit.

[138] In this case, Paul Clark says that when he downloaded a separation agreement from the internet and edited it to state “Paul Charles Clark will transfer his interest in the Marital Home to Laurie Dawn Clark” he did not intend to transfer his equitable interest in the in-law suite to Laurie Clark. He says he intended only to give Laurie exclusive possession of the home. He points to Laurie Clark’s testimony that she expected to have to split the \$50,000 proceeds with him as evidence that she too understood that he had only given her exclusive possession.

[139] In this Court’s view, the evidence establishes that Paul Clark intended to convey his entire interest in the marital home, i.e., the in-law suite, to Laurie Clark when he prepared the 2013 separation agreement. By the time the 2013 separation agreement was signed, the couple had reached agreement on the division of all their assets. Paul Clark agreed that there were no transfers of property after the 2013 agreement was executed. In other words, the purpose of the 2013 separation agreement was to clarify ownership of all the assets. There was no evidence that the marital home was an exception, with its ownership to be revisited at a later time.

[140] Moreover, when Paul Clark came up with the plan to build the in-law suite, he did not expect to reside there with Laurie Clark over the long term. The Court finds that Paul Clark’s plan was to leave Laurie Clark with the Ewings as soon as Laurie’s mother passed away. When Paul Clark signed the 2013 separation

agreement, he expected that Laurie Clark would continue to reside at the Property until she became a burden and needed to move for health reasons. Put differently, Paul Clark believed that giving Laurie Clark ownership of the marital home would provide her with security for the duration of her retirement, and that he could walk away knowing that she was taken care of.

[141] Paul apparently did not anticipate that the Ewings, who had invested time and money on extensive renovations to the main house, might sell the Property and put that security in jeopardy. As such, Paul Clark would have felt no need to reserve some form of interest in the Property.

[142] Paul Clark's conduct after he learned that the Ewings had sold the Property, but before he commenced this Action, was consistent with a belief that any interest in the in-law suite belonged to Laurie Clark alone. In the email he wrote to Angela Ewing in the fall of 2014, he referred only to Angela Ewing treating Laurie fairly by giving her enough money from the sale proceeds to enable her to afford to purchase a new property without a mortgage. Paul wrote:

You have bought a new trailer and new car this year so maybe you should be looking at a cheaper house to buy so you can enable your mother to afford to buy something without a mortgage.

You have sold your house for over \$100,000 more than you paid for it and around \$140,000 than you actually put into it and you are taking advantage of the money we put into the property. That money should be going to your mother, not to you.

[Emphasis added]

[143] Paul Clark’s message to his daughter is clear – the money the Clarks put into the property should be going to Laurie Clark. Nowhere in the email does he suggest that the Ewings owed him a share of the proceeds from the sale of the Property. It was only when the Ewings ignored his wishes and gave Laurie Clark “only” \$50,000 that Paul Clark took the position that he is entitled to compensation from the Ewings for the money the Clarks put into building the in-law suite.

[144] Having found that Paul Clark was not mistaken in his understanding of the terms of the 2013 separation agreement, I am not satisfied that there is any reason to conclude that the agreement is unenforceable.

[145] I also reject Paul Clark’s argument that the provision in the 2019 separation agreement that it “replaces all oral or written agreements made between the parties” somehow reverses any transfers of property made in the 2013 separation agreement. Paul Clark has not cited any authorities to support that interpretation. Moreover, the parties were represented by legal counsel when the 2019 separation agreement was drafted and executed. Paul Clark was aware that the Ewings were relying on the transfer of interest in the 2013 separation agreement to assert that he had no claim against them in unjust enrichment. If the Clarks had wished to clarify or somehow unwind the transfer of interest in the marital home in the 2013 agreement (assuming,

without deciding, that such a thing could be done), their lawyers could have inserted language to that effect. Instead, the 2019 separation agreement provides only that Laurie Clark shall retain the \$50,000 payment from the Ewings and that she releases any claim to any interest in any judgment obtained by Paul Clark in this Action. These provisions do not revive an interest in the marital home that Paul Clark had previously given up.

[146] Finally, I reject Paul Clark's argument that he somehow maintained an interest in the Property through his agreement with Laurie Clark that he would deduct \$500 from her spousal maintenance payments while she lived at the in-law suite. Other than his own testimony, there is no evidence that such an agreement ever existed. Even if it had, however, it would not maintain or revive an interest in the marital home.

[147] Having found that Paul Clark transferred his interest in the marital home to Laurie Clark in 2013, I will go on to consider whether he has a valid claim against the Ewings in unjust enrichment.

Unjust Enrichment

Clean Hands

[148] Before determining whether the test for unjust enrichment is met in this case, I will address the Defendants' argument that Paul Clark is not entitled to an equitable remedy because he comes to the court without clean hands.

[149] Unjust enrichment is an equitable doctrine. In *Canada (Attorney General) v. Collins Family Trust*, 2022 SCC 26, the majority, per Brown, J., discussed the most fundamental premise of equity:

[9] I turn first to a limiting principle of equity -- indeed, the most fundamental premise of that domain, found in its origins. Equity developed to alleviate results under "an unyielding common law" that called for the relief as a matter of "conscience" and "greater fairness" (J. Berryman, *The Law of Equitable Remedies* (2nd ed. 2013), at p. 2). Equitable principles "have above all a distinctive ethical quality, reflecting as they do the prevention of unconscionable conduct" (I. C. F. Spry, *The Principles of Equitable Remedies: Specific Performance, Injunctions, Rectification and Equitable Damages* (9th ed. 2014), at p. 1).

[10] This broad scope for courts of equity to give relief also defines its own limits (hence a "limiting" principle): transactions that do not call for relief as a matter of conscience or fairness are properly outside equity's domain. This is reflected in some of equity's maxims, including that a person who comes to equity must come with "clean hands" and "he who seeks equity must do equity" (Spry, at pp. 5-6; Berryman, at pp. 16 and 18; *Snell's Equity* (34th ed. 2020), by J. McGhee and S. Elliott, at paras. 5-009 to 5-010).

[Emphasis added]

[150] The evidence in this case established that four people were involved in the transaction related to the building of the in-law suite. The Ewings and Laurie Clark went into the arrangement with the same expectations: the Clarks would give the Ewings \$35,000 toward the purchase of the Property and, at some point down the

road, they would build an in-law suite on the Property. The Clarks would live together in the in-law suite for six months of the year until they became a burden, at which time they would move into a nursing home or other facility. Unbeknownst to the others, Paul Clark had a different set of expectations. He had no desire to live in the in-law suite with Laurie Clark until they needed to move into a care facility. Instead, he planned to leave Laurie Clark as soon as her elderly mother died.

[151] Paul Clark's expectation was that once he left Laurie Clark, she would live in the in-law suite on the Ewings' property year-round. It was, in his own words, "the ideal situation." He never disclosed his intention to the Ewings because he did not think it was "relevant" to building the in-law suite. However, it would certainly have been relevant to the Ewings. Angela Ewing testified that if she had known that her father planned to leave her mother, she would not have allowed them to build the in-law suite on the Property. I accept that evidence.

[152] In my view, if Paul Clark is unhappy with how things played out after he left the Property, he has no one but himself to blame. While Laurie Clark might have had a valid claim that she was entitled to a larger share of the sale proceeds, there is nothing about Paul Clark's current situation that calls for relief as a matter of conscience or fairness. Paul Clark's hands are not clean, and he cannot look to equity for relief.

[153] In the event that I am wrong and Paul Clark’s conduct does not disentitle him from seeking an equitable remedy, I will consider whether the elements for unjust enrichment have been made out.

The Test for Unjust Enrichment

[154] The parties agree on the law of unjust enrichment. The test was set out in *Garland v. Consumers’ Gas Co.*, 2004 SCC 25:

[30] As a general matter, the test for unjust enrichment is well established in Canada. The cause of action has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment ...

[155] In *Moore v. Sweet*, 2018 SCC 52, the majority, *per* Côté, J., summarized the first two elements as follows:

[41] The first two elements of the cause of action in unjust enrichment require an enrichment of the defendant and a corresponding deprivation of the plaintiff. These two elements are closely related; a straightforward economic approach is taken to both of them, with moral and policy considerations instead coming into play at the juristic reason stage of the analysis ... To establish that the defendant was enriched and the plaintiff correspondingly deprived, it must be shown that something of value — a “tangible benefit” — passed from the latter to the former ... This Court has described the enrichment and detriment elements as being “the same thing from different perspectives” (*Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71, [2012] 3 S.C.R. 660 (“*PIPSC*”), at para. 151) and thus as being “essentially two sides of the same coin” (*Peter*, at p. 1012).
...

[43] In addition to an enrichment of the defendant, a plaintiff asserting an unjust enrichment claim must also establish that he or she suffered a corresponding deprivation. According to Professor McInnes, **this element serves the purpose of identifying the plaintiff as the person with standing to seek restitution against an unjustly enriched defendant** (M. McInnes, *The Canadian Law of Unjust*

Enrichment and Restitution (2014), at p. 149; see also *Peel*, at pp. 789-90, and *Kleinwort Benson Ltd. v. Birmingham City Council*, [1997] Q.B. 380 (C.A.), at pp. 393 and 400). Even if a defendant's retention of a benefit can be said to be unjust, a plaintiff has no right to recover against that defendant if he or she suffered no loss at all, or suffered a loss wholly unrelated to the defendant's gain. Instead, the plaintiff must demonstrate that the loss he or she incurred corresponds to the defendant's gain, in the sense that there is some causal connection between the two (*Pettkus*, at p. 852). Put simply, the transaction that enriched the defendant must also have caused the plaintiff's impoverishment, such that the defendant can be said to have been enriched at the plaintiff's expense (P. D. Maddaugh and J. D. McCamus, *The Law of Restitution* (loose-leaf ed.), at p. 3-24). While the nature of the correspondence between such gain and loss may vary from case to case, this correspondence is what grounds the plaintiff's entitlement to restitution as against an unjustly enriched defendant. Professor McInnes explains that "the Canadian conception of a 'corresponding deprivation' rightly emphasizes the crucial connection between the defendant's gain and the plaintiff's loss" (*The Canadian Law of Unjust Enrichment and Restitution*, at p. 149).

[44] The authorities on this point make clear that the measure of the plaintiff's deprivation is not limited to the plaintiff's out-of-pocket expenditures or to the benefit taken directly from him or her. Rather, the concept of "loss" also captures a benefit that was never in the plaintiff's possession but that the court finds would have accrued for his or her benefit had it not been received by the defendant instead (*Citadel General Assurance Co. v. Lloyds Bank Canada*, [1997] 3 S.C.R. 805, at para. 30). This makes sense because in either case, the result is the same: the defendant becomes richer in circumstances where the plaintiff becomes poorer.

[Emphasis added]

[156] Justice Côté explained the third element – an absence of juristic reason – as follows:

[55] This understanding of juristic reason is crucial for the purposes of the present appeal. The third element of the cause of action in unjust enrichment is essentially concerned with the justification for the defendant's retention of the benefit conferred on him or her at the plaintiff's expense - or, to put it differently, with whether there is a juristic reason for the transaction that resulted in both the defendant's enrichment and the plaintiff's corresponding deprivation. If there is, then the defendant will be justified in keeping or retaining the benefit received at the plaintiff's expense, and the plaintiff's claim will fail accordingly. At its core, the doctrine of unjust enrichment is fundamentally concerned with reversing transfers of benefits that occur without any legal or equitable basis. As McLachlin J. stated

in *Peter* (at p. 990), "It is at this stage that the court must consider whether the enrichment and detriment, morally neutral in themselves, are 'unjust'."

[56] In *Garland*, this Court shed light on exactly what must be shown under the juristic reason element of the unjust enrichment analysis - and in particular, on whether this third element requires that cases be decided by "finding a 'juristic reason' for a defendant's enrichment" or instead by "asking whether the plaintiff has a positive reason for demanding restitution" (para. 41, citing *Garland v. Consumers' Gas Co.* (2001), 57 O.R. (3d) 127 (C.A.), at para. 105). In an effort to eliminate the uncertainty between these competing approaches, Iacobucci J. formulated a juristic reason analysis that proceeds in two stages.

[57] The first stage requires the plaintiff to demonstrate that the defendant's retention of the benefit at the plaintiff's expense cannot be justified on the basis of any of the "established" categories of juristic reasons: a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations (*Garland*, at para. 44; *Kerr*, at para. 41). If any of these categories applies, the analysis ends; the plaintiff's claim must fail because the defendant will be justified in retaining the disputed benefit. For example, a plaintiff will be denied recovery in circumstances where he or she conferred a benefit on a defendant by way of gift, since there is nothing unjust about a defendant retaining a gift of money that was made to him or her by (and that resulted in the corresponding deprivation of) the plaintiff. In this way, these established categories limit the subjectivity and discretion inherent in the unjust enrichment analysis and help to delineate the boundaries of this cause of action (*Garland*, at para. 43).

58 If the plaintiff successfully demonstrates that none of the established categories of juristic reasons applies, then he or she has established a *prima facie* case and the analysis proceeds to the second stage. At this stage, the defendant has an opportunity to rebut the plaintiff's *prima facie* case by showing that there is some residual reason to deny recovery (*Garland*, at para. 45). The *de facto* burden of proof falls on the defendant to show why the enrichment should be retained. In determining whether this may be the case, the court should have regard to two considerations: the parties' reasonable expectations and public policy (*Garland*, at para. 46; *Kerr*, at para. 43).

59 This two-stage approach to juristic reason was designed to strike a balance between the need for predictability and stability on the one hand, and the importance of applying the doctrine of unjust enrichment flexibly, and in a manner that reflects our evolving perception of justice, on the other.

[Emphasis added]

[157] Justice Côté emphasized that the inquiry at the juristic reason stage is not whether there is a juristic reason for the defendant's enrichment, but rather whether

the enrichment of the defendant and the corresponding deprivation of the plaintiff occurred without a juristic reason: para. 61. She noted that each of the recognized categories of juristic reason “points to a relationship between the plaintiff and the defendant that justifies the fact that a benefit passed from the former to the latter”: para. 61.

[158] The Ewings submit that even if they were enriched by more than the \$50,000 they paid to Laurie Clark, which they deny, Paul Clark is not entitled to restitution from them because he did not suffer a corresponding deprivation. This Court agrees. Since Paul Clark transferred his interest in the marital home to Laurie Clark in 2013, she is the only one who could claim to have suffered a deprivation that corresponds to any enrichment of the Ewings related to the sale of the Property.

[159] Since there can be no finding of unjust enrichment without a corresponding deprivation to the Plaintiff, Paul Clark’s claim must fail.

Conclusion

[160] Paul Clark’s Action against the Ewings is dismissed with costs to the Ewings. If the parties are unable to agree on costs, I will accept written submissions within 20 calendar days of the release of this decision.

Smith, J.