

COURT OF APPEAL FOR ONTARIO

CITATION: Lalli v. Lalli, 2026 ONCA 123

DATE: 20260226

DOCKET: COA-24-CV-1369

Roberts, Miller and Monahan JJ.A.

BETWEEN

Satnam Lalli and Jaswinder Kaur Lalli

Plaintiffs (Appellants)

and

Sukhvinder Lalli and Samardeep Lalli

Defendants (Respondents)

Pheroze Jeejeebhoy and Zenobia Romanin, for the appellants

Marryam Singh, Siyamson Pathmanathan and Tahmina Taraky, for the respondents

Heard: November 13, 2025

On appeal from the judgment of Justice Thomas A. Bielby of the Superior Court of Justice, dated November 18, 2024, with reasons at 2024 ONSC 6416.

B.W. Miller J.A.:

[1] When Sukhvinder Lalli purchased a house in which he would live with his wife and parents, his parents, Satnam Lalli and Jaswinder Kaur Lalli¹, supplied half of the large down payment. A dispute later arose as to what the parents' intentions

¹ For ease of reference, I refer to the parties by their first names and mean no disrespect by doing so.

were when they provided these funds. Notwithstanding that they were not registered on title, had they intended to become part owners of the property? Or, as Sukhvinder claimed, was their intention to help him purchase the property for himself by repaying monies they owed him since he was a child?

[2] The trial judge accepted Sukhvinder's account and dismissed his parents' claim to a beneficial ownership interest in the property. In the reasons that follow, I explain why I conclude that the trial judge made an error of law in coming to that conclusion and that the appeal should be allowed.

Facts

[3] The trial judge found all the parties to the action to be unimpressive witnesses, all lacking credibility to various degrees. Satnam's evidence in particular – and especially his evidence related to Sukhvinder's childhood employment – was found to be generally unworthy of belief. The trial judge accepted the following narrative.

[4] The appellant Satnam is the respondent Sukhvinder's biological uncle and adoptive father. When Sukhvinder came to Canada in 1992, at age 14, he lived with his uncle Satnam and his wife, the appellant Jaswinder. Satnam and Jaswinder supported Sukhvinder financially, saw to his education, and adopted him as their son. They functioned as a family.

[5] Sukhvinder worked a series of part-time jobs until the age of 17, mostly for family businesses owned or partly owned by Satnam. The trial judge accepted Sukhvinder's evidence that Satnam did not pay him for his work at the family's stall at a weekend flea market, or for a summer's work at a gas station in New Jersey in which Satnam had an ownership interest. When Sukhvinder worked for a clothing manufacturer in Toronto one summer, Satnam collected the wages, not Sukhvinder. The trial judge accepted Sukhvinder's claim that the total wages that Satnam withheld from him over the years amounted to \$47,280. The trial judge also accepted Sukhvinder's evidence that Satnam made him a promise in 1997 that he would pay Sukhvinder for his back wages in the future when he could, and that Satnam had borrowed \$10,000 from Sukhvinder in 2004.

[6] In 2004, Sukhvinder married in India, and the next year his wife Samardeep came to live with him at the appellants' home in Ontario. In 2006, the parties decided to look for properties to purchase. The appellants, although they were retired and had no income, had just received an insurance settlement and had funds to invest. The respondents had full-time jobs and were able to qualify for mortgage financing. The trial judge found that the respondents intended to purchase a large house for themselves, with the understanding that the appellants would come live with them, and the parties would also purchase some investment properties together.

[7] Satnam contacted a realtor, Harry Nanda, who located two condominium units to purchase as investment properties. The appellants supplied part of the down payment for the condos, but legal title was held solely by the respondents. The trial judge rejected the respondents' claim that the funds were a wedding gift from the appellants. The trial judge found instead that the condominiums were purchased by the parties together as a joint venture. That finding was not appealed.

[8] Mr. Nanda also located a suitable residential property at Farwell Crescent in Mississauga to serve as the family home ("Farwell"). When showing the property, Mr. Nanda understood the Lalli family to be his clients. To facilitate the purchase, Satnam advanced \$55,000 to Sukhvinder. The trial judge found that these funds were paid in satisfaction of a debt of unpaid wages owed to Sukhvinder by Satnam. Sukhvinder was registered on title as the legal owner.

[9] All went reasonably well at Farwell for several years. There were two basement suites that were rented out and the respondents collected the rent and applied it towards the monthly mortgage payment. The appellants paid for groceries for everyone and paid for long-distance phone charges.

[10] The arrangement eventually soured. Beginning in 2012, Samardeep's parents, her sister, and her sister's family in India all visited frequently and lived at Farwell for extended periods of time. When Samardeep's sister arrived on one

occasion in March 2014, she was pregnant with twins and gave birth the next month. On Satnam's evidence, the household had become extremely overcrowded and noisy. He also objected that Samardeep's family were not contributing anything towards household expenses while he purchased groceries for the entire extended household. He testified that in November 2015 he asked Samardeep's sister and family to find another place to live. This upset Sukhvinder and Samardeep, and in December 2015, Sukhvinder and Satnam had a series of acrimonious discussions about property ownership and the sharing of expenses.

[11] On September 4, 2016, Sukhvinder, Samardeep, and Samardeep's extended family vacated the house, leaving Satnam and Jaswinder in possession. When they unilaterally returned less than two weeks later, they locked Satnam and Jaswinder out. They have remained in sole possession of Farwell ever since.

[12] Satnam and Jaswinder commenced this action, seeking an order for the sale of Farwell and an equal share in its equity. They also sought an equal share in the equity of the condominiums, which had been already sold by the respondents. As mentioned above, they were successful with respect to their claim to beneficial ownership in the condominiums – on the basis of a joint venture – but not with respect to their claim to Farwell. Notwithstanding that the \$55,000 transfer of funds to Sukhvinder was timed to facilitate the purchase of Farwell, the trial judge concluded that the reason for the transfer was the satisfaction of a debt – the payment of wages that Sukhvinder earned as a child – and that Satnam never had

the intention of taking a beneficial ownership interest in Farwell when he advanced the funds.

The trial judge's reasons

[13] As framed by the trial judge, the salient question was: “what was the intent at the time the funds were transferred; to purchase an interest in Farwell or in payment of unpaid wages?”, although it is not entirely clear from the reasons whose intent the trial judge had in mind – the appellants’ alone or the intentions of all of the parties.

[14] Much of the evidence at trial focused on the question of whether Sukhvinder worked at various enterprises as a child without receiving wages, either because Satnam did not pay him, or because Satnam received Sukhvinder’s wages from a third party and retained them for his own benefit. The trial judge found that Sukhvinder was owed wages, and that after receiving an insurance payout, “the [appellants] were, for the first time, able to repay such debts and any other debt they owed Sukhvinder”. The appellants disputed this, but the trial judge found Satnam’s evidence on this matter to be particularly untrustworthy.

[15] Both Satnam and Jaswinder gave evidence that when they advanced the \$55,000, they did so intending to take a beneficial interest in Farwell. The trial judge had difficulties with the evidence of both appellants. The appellants, however, also led evidence from their realtor, Harry Nanda. Mr. Nanda’s evidence

was that he was first approached by Satnam to assist in the purchase of a family home and some investment properties. Mr. Nanda's evidence was that the parties' plan was that Satnam would contribute a large down payment for the family home, and that legal title would be held by Sukhvinder or Samardeep or both. This was unsurprising to Mr. Nanda, he said, because the appellants had no income and would not qualify for mortgage financing, and because it is common in Indian culture for children to inherit property from their parents. Mr. Nanda's understanding was that Farwell would be jointly owned, with the appellants holding a beneficial interest.

[16] The trial judge recognized the importance of this evidence. Mr. Nanda was the only third-party witness to the purchase of Farwell, and his evidence supported Satnam's position that Satnam's intention in advancing the funds was to take an ownership interest in Farwell:

The only third-party witness to the actual purchase of the properties was Harry. Harry's evidence supported the [appellants'] position that the properties were jointly and equally owned (50/50).

[17] However, the trial judge's treatment of this evidence is difficult to understand. The passage below suggests that he rejected the evidence on the basis that Mr. Nanda never met alone with Sukhvinder and "did not include any discussions he had with either of the [respondents] or any insight into their intentions":

However, a review of his affidavit and his answers under cross examination, suggest his evidence originated from the discussions he had, at the time, with Satnam. In his affidavit, sworn April 19, 2024, Harry deposed that he never met alone with Sukhvinder. His evidence did not include any discussions he had with either of the [respondents] or any insight into their intentions.

[18] Having made the finding that Sukhvinder was owed some unquantified amount of unpaid wages, the trial judge summarily concluded: “I am not persuaded, on a balance of probabilities, that the \$55,000 advanced by the [appellants] was advanced to acquire an equal ownership interest in Farwell. The [appellants] have not met their burden of proving an equal ownership interest in Farwell.”

[19] The trial judge thus dismissed the claim of resulting trust.

The appellants’ argument

[20] The appellants’ main argument on appeal is that the trial judge misunderstood the law of resulting trust, particularly that a presumption of trust arises when a person advances funds for the purchase of property and does not receive legal title. The trial judge accordingly erred, on this theory, by not applying the evidential presumption of resulting trust in favour of the appellants. On the appellants’ argument, the presumption arose from the fact that they advanced \$55,000 for the purchase of Farwell without receiving legal title.

[21] Had the trial judge applied the presumption, they argue, the onus would then have been on the respondents to rebut it by leading evidence that the appellants had intended the \$55,000 to be a gift or payment of a debt. The appellants argued that the respondents would not have been able to rebut the presumption on the record before the trial judge, particularly given Mr. Nanda's evidence.

[22] First, the appellants argue that the trial judge erred in his treatment of the evidence of Mr. Nanda. Although the trial judge noted that Mr. Nanda was the only third-party witness to the purchase, the trial judge discounted it because Mr. Nanda did not address any discussions he had with the respondents or provide any insight into their intentions. The appellants concede that the respondents' intentions were relevant with respect to determining whether there was a joint venture, but they argue that they were irrelevant to ascertaining the appellants' intentions, which was the only issue on the resulting trust claim.

[23] Further, the appellants argue that the trial judge erred in accepting into evidence impermissible hearsay tendered to discredit Satnam, in finding that Jaswinder had no first-hand evidence to give, and in rejecting the evidence of one of the appellants' witnesses, Mr. Pal Singh, as biased.

The respondents' argument

[24] The respondents take the position that the trial judge made no error in his articulation of the law of resulting trust or its application. Neither did the trial judge

err in his fact finding. He found that the appellants' intention in advancing the funds was to pay a past debt, and not to take an ownership interest in Farwell, and that finding was well supported by the evidence he accepted. The presumption of resulting trust did not arise. If it had, it would have been defeated by the respondents' evidence that there was a debt and Satnam's intention in advancing the funds was to pay it.

Analysis

[25] The common law doctrine of resulting trust is a complex body of law of ancient origin. In *Bosanac v. Commissioner of Taxation*, [2022] H.C.A. 34 (Austl. H.C.), 405 C.L.R. 37, Gordon and Edelman JJ. of the High Court of Australia prefaced their comprehensive survey of the doctrine by noting, at para. 92, Cromwell J.'s warning that "there is not much one can say about resulting trusts without a well-grounded fear of contradiction. There is debate about how they should be classified and how they arise, let alone many of the finer points": *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at para. 16.

[26] For the purposes of this appeal, however, it is not necessary to wade into the finer points of doctrine. As will be explained, the appeal must be allowed because of the trial judge's error in deciding that the evidence of Mr. Nanda was not relevant to deciding the resulting trust claim.

[27] Nevertheless, it will be useful to set out a few basic principles.

[28] There are many categories of resulting trust. This appeal concerns what is required to establish a purchase money resulting trust - a trust created when a transferor contributes purchase money towards the purchase of an asset without taking legal title and with the intention to take a beneficial interest.

[29] To establish the purchase money resulting trust in this case, the appellants ask the court to apply a presumption of resulting trust. This is the presumption that where a person pays the whole or a part of the purchase price of property, that person is presumed to have declared a trust over the property. In support, the appellants rely particularly on *Nishi v. Rascal Trucking*, 2013 SCC 33, [2013] 2 S.C.R. 438, at para. 1:

A purchase money resulting trust arises when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property. Where the person advancing the funds is unrelated to the person taking title, the law presumes that the parties intended for the person who advanced the funds to hold a beneficial interest in the property in proportion to that person's contribution. This is called the presumption of resulting trust.

[30] It should be noted that this statement from the opening paragraph of *Rascal Trucking* functions in the reasons for judgment as an overview or introductory statement that is further developed and qualified over the course of the judgment. It should not be taken as a comprehensive statement of doctrine, and in particular

should not be taken as standing for the proposition that courts are to presume a resulting trust without first assessing the evidence of the transferor's intent.

[31] In *Rascal Trucking*, Rothstein J. did not purport to depart from his earlier reasons in *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, where he emphasized, at para. 5, that what matters in the analysis is the "actual intention of the transferor". The presumption only arises, because it is only necessary, in situations where evidence of the transferor's intention is unavailable or uninformative.

[32] As LaForme J.A. set out in *Saylor v. Brooks* (2005), 261 D.L.R. (4th) 597 (C.A.), 203 O.A.C. 295, at para. 24, aff'd 2007 SCC 18, [2007] 1 S.C.R. 838:

Reliance on the presumptions has diminished because the courts are now examining all the evidence to determine the transferor's intent. That is to say, courts are tending to examine the evidence in its entirety, and base findings regarding intention on all the facts. It will only be where the evidence itself is unclear that reliance on presumptions becomes necessary.

[33] As set out above, the appellants argue that as they advanced the funds for the purchase but did not take title, the presumption arises, and the onus then rests on the respondents to marshal evidence to rebut it. The respondents counter that the presumption does not arise, because on the evidence accepted by the trial judge, the intention of the appellants was not to create a trust but to satisfy a debt.

[34] Although the appeal was argued over the application of the presumption, the operation of the presumption does not actually arise on the facts that were established before the trial judge. The presumption is not needed by the appellants to advance their claim in any event.

[35] Whether a presumption of resulting trust arises is determined on a factual inquiry: *Falsetto v. Falsetto*, 2024 ONCA 149, 171 O.R. (3d) 448, at para. 18; *Holtby v. Draper*, 2017 ONCA 932, 138 O.R. (3d) 481, at para. 53; *Schwartz v. Schwartz*, 2012 ONCA 239, 349 D.L.R. (4th) 326, at para. 43; *Saylor v. Brooks*, at paras. 24-25. The facts of a case give rise to one of three scenarios.

[36] First, where a plaintiff has led evidence to establish an objective intention on the part of the person who provided all or some of the purchase price to hold an equitable interest in the property, there is then a case for the defendant to meet: *Falsetto*, at para. 18; *Schwartz*, at para. 43; *Andrade v. Andrade*, 2016 ONCA 368, 131 O.R. (3d) 252, at para. 67; *Nussbaum v. Nussbaum* (2004), 9 R.F.L. (6th) 455 (Ont. S.C.), at paras. 20, 32; *Bosanac*, at para. 108. In this circumstance, there is no need to resort to an evidential presumption: *Andrade*, at para. 61; *Pisarski v. Piesik*, 2019 BCCA 129, 23 B.C.L.R. (6th) 312, at para. 46.

[37] A presumed intention to create a resulting trust could add nothing to the case and would serve no purpose. There is a case to meet, and the defendant can

meet it through objective evidence that at the time of the transfer the transferor did not intend to take a beneficial interest in the property.

[38] Second, if the plaintiff's evidence instead establishes an objective intention inconsistent with a resulting trust, then there is no case for the defendant to meet: *Bosanac*, at para. 109. Again, the presumption does not arise.

[39] The presumption of resulting trust only arises on a third scenario: where the evidence led by the plaintiff is “unpersuasive”, “neutral, truly equivocal, non-existent or uninformative” of the transferor's objective intentions at the time of the transaction: *Pecore*, at para. 23; *Bosanac*, at para. 110; *Saylor*, at para. 24; *Wu v. Sun*, 2010 BCCA 455, 91 R.F.L. (6th) 24, at para. 18; Sidney N. Lederman, Michelle K. Fuerst, & Hamish C. Stewart, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 6th ed. (Toronto: LexisNexis Canada, 2022) at § 4.51. It is only where there is an absence of evidence of the transferor's actual intentions – most commonly where the transferor is deceased or otherwise unable to give evidence – that there is any need for the presumption: *Pecore*, at paras. 5, 44; *Andrade*, at para. 61. In such scenarios, the presumption follows logically: absent a living transferor, the transferee is the party best situated to “bring evidence about the circumstances of the transfer”: *Pecore*, at para. 26. However, where there is clear evidence of actual intentions, no presumption is necessary.

[40] On the facts before the trial judge, the presumption did not arise. The appellants mounted evidence to establish that the monies were advanced with the purpose of taking a beneficial interest in the property. The respondents marshalled evidence to the contrary – that the appellants had no such intention, but instead intended to repay an old debt. As I earlier noted, unlike with respect to the purchase of the condominium units, no one argued that the appellants intended to make a gift of the \$55,000 amount or there was absence of evidence as to the appellants' intention. Thus, it was the trial judge's task to determine whether the plaintiffs met their persuasive burden.

[41] So, the appellants' appeal stands or falls on whether the trial judge made any reviewable error in determining whether the appellants established on the evidence a resulting trust. It is here that the trial judge's treatment of Mr. Nanda's evidence becomes problematic.

[42] Mr. Nanda's evidence was that he had been approached by Satnam to help locate properties to purchase, that one of the properties would be a residence for the two families, that he would provide funds for the downpayment, and that he would not be on title but would be an owner of the property. The trial judge was not obligated to find this evidence persuasive, and he was permitted to prefer contrary evidence. Nevertheless, his reasons do not suggest that he accepted the evidence but found it unpersuasive, but instead that he found it not probative of the questions he had to answer. In that, he was mistaken. It may well have been that Mr. Nanda's

evidence was not probative of the existence of a joint venture to purchase Farwell. But it was certainly probative of the objective intention of Satnam when he advanced the monies for the purchase.

[43] Mr. Nanda accompanied the parties during their search for properties, received instructions from Satnam and then Sukhvinder once it was decided that Sukhvinder would take title. The fact that Mr. Nanda gave no evidence as to what Sukhvinder's intentions were on purchasing Farwell was not a reason not to consider Mr. Nanda's evidence about Satnam's intentions.

[44] For the purpose of the resulting trust argument, it is not necessary to ascertain the intention of both parties at the time of the purchase. It is the "intention of the grantor or contributor alone [that] counts": *Andrade*, at para. 62; *Pecore* at para. 5; *MacIntyre v. Winter*, 2021 ONCA 516, 158 O.R. (3d) 321, at para. 24. It was only Satnam's intentions that were relevant. That is not to say that the respondents' evidence about Satnam's intentions was not relevant as well. It was. But it was an error to disregard Mr. Nanda's evidence for the sole reason that he was unable to give evidence as to Sukhvinder's intentions.

[45] Given the importance of Mr. Nanda's evidence as the sole impartial witness on the central question at trial, the trial judge erred by disregarding it. The issue of the appellants' ownership interest in the Farwell property must therefore be considered anew. Given the additional expense and delay, the appellants urge this

court to determine the issue of ownership of the Farwell property on the basis of the existing record, rather than sending it back for a new trial. I agree that this is a proper case to do so.

[46] Section 134(1)(a) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 permits this court to “make any order or decision that ought to or could have been made by the court or tribunal appealed from”. This includes, in a proper case, drawing inferences of fact from the evidence. In my view, this is a proper case for this court to do so because the record, including the trial judge’s findings that are not set aside, permits such a determination. It is also just to do so to avoid further expense and delay for the parties.

[47] The trial judge did not reject Mr. Nanda’s evidence as incredible or unreliable but disregarded it because of legal error. As I earlier noted, the trial judge found that: “Harry’s evidence supported the [appellants’] position that the properties were jointly and equally owned (50/50)”.

[48] Sukhvinder’s evidence does not support the trial judge’s finding that the \$55,000 was advanced to Sukhvinder as unpaid wages. The sums do not add up. Sukhvinder’s evidence was that he was owed a total of \$47,280 (being \$14,400 from wages from Unique, \$14,400 from the family flea market stall, and \$18,480 from the gas station). To this, Sukhvinder added a further \$10,000 as repayment of a loan he made to Satnam. Taken together, they would total \$57,280. But the

trial judge rejected Sukhvinder's claim that \$10,000 of the \$55,000 was a repayment of a loan. Standing on its own, the \$47,280 wage claim would leave \$7,180 unexplained. Sukhvinder emphasized in his cross-examination that the funds were not connected to the purchase of Farwell, and that although he chose to apply the funds to the downpayment, he could have used the funds for whatever he wanted. The decision to apply the funds to the downpayment was made by him and his wife after the purchase agreement was finalized, to reduce the monthly payment. But this evidence leaves the quantum of the payment unexplained. If the funds were not for the purpose of facilitating the purchase, and not for taking an equal beneficial interest in Farwell, why would Satnam advance an amount unequal to Sukhvinder's wage claim, but equal to Sukhvinder's own contribution to the downpayment?

[49] In addition to Mr. Nanda's evidence that the trial judge found supports Satnam's evidence about the appellants' intention, the \$55,000 amount paid on closing, which represented half of the downpayment and closing costs, also substantiates the appellants' claim that they contributed \$55,000 with the intention of taking a 50% ownership interest in the Farwell property.

[50] As a result, I would declare and order that the appellants are entitled to a 50% interest in the Farwell property.

[51] This court is not in a position, however, to order the sale of the property or the accounting as requested by the appellants. Those related remedies should be remitted to the Superior Court for case management and determination.

DISPOSITION

[52] I would allow the appeal, set aside the judgment and the costs order below. I would declare and order that the appellants are entitled to a 50% interest in the Farwell property and order the remedies of the sale of the property and the accounting requested be remitted to the Superior Court for case management and determination.

[53] Given my proposed disposition of the appeal, it is unnecessary to address the appellants' other grounds.

[54] The appellants are entitled to costs of the appeal in the amount of \$25,000, inclusive of HST and disbursements. If the parties cannot agree on the disposition of the costs of the trial, they may make brief written submissions of no more than two pages, plus costs outlines, within 7 days of the release of these reasons.

“B.W. Miller J.A.”
“I agree. L.B. Roberts J.A.”

Monahan J.A. (dissenting):

[55] I have had the benefit of reviewing the reasons of my colleague, Miller J.A., in which he would allow the appeal on the basis that the trial judge made a reviewable error in dismissing the appellants' claim that they are entitled to a 50% beneficial interest in the Farwell property.

[56] Respectfully, I come to a different conclusion. I see no error in the trial judge's analysis of the relevant legal principles governing resulting trusts, which was the basis for the appellants' claim of a beneficial interest.² Further, the trial judge's findings of fact, which led him to dismiss the appellants' claim to a beneficial interest in the Farwell property, were open to him on the record. Accordingly, I would dismiss the appeal.

I. GOVERNING LEGAL PRINCIPLES ON RESULTING TRUSTS

1. The presumption of resulting trust only arises in cases of gratuitous transfers

[57] A presumption of a resulting trust arises where one person voluntarily transfers property to a second person or when two parties contribute to the purchase of a property and only one of them takes title to it, referred to as a "purchase money resulting trust". In either scenario, the transfer is gratuitous

² I note that the appellants claimed at trial that they had a 50% ownership interest in the Farwell property by joint venture agreement and/or by way of trust. No appeal is taken from the trial judge's rejection of this claim.

because it occurs without consideration: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at para. 17.

[58] If the transferor did receive consideration from the transferee for the property transferred, then no presumption of resulting trust can or should arise in either scenario. The receipt of consideration means that the transfer is part of a reciprocal arrangement or bargain between the transferor and the transferee. The transferee has, in effect, paid the transferor for the property they have received. In these circumstances, it would be inequitable as against the transferee to award the transferor the additional benefit of a resulting trust in the transferred or purchased property.

[59] The fact that the presumption of a resulting trust only applies to gratuitous transfers has been repeatedly affirmed in the leading Supreme Court authorities, including *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, at para. 24, “[t]he presumption of resulting trust is a rebuttable presumption of law and general rule that applies to gratuitous transfers” (emphasis added) and *Kerr*, at para. 19, “a presumption of resulting trust is the general rule that applies to gratuitous transfers” (emphasis added).

[60] The same principle has frequently been confirmed by this court. For example, in *Holtby v. Draper*, 2017 ONCA 932, 138 O.R. (3d) 481, at para. 33, leave to appeal refused, [2018] S.C.C.A. No. 43, van Rensburg J.A. pointed out

that “[t]he first issue in a resulting trust analysis is whether the transferee gave consideration for the transfer” (emphasis added). Justice van Rensburg went on to conclude that, because the transferee had not given consideration for the interest she received in the property, the transfer was gratuitous, creating a rebuttable presumption of a resulting trust in favour of the transferor: at para. 37. Most recently, in *Falsetto v. Falsetto*, 2024 ONCA 149, 171 O.R. (3d) 448, at para. 17, Miller J.A. affirmed that “there is a rebuttable presumption of a resulting trust where one party makes a transfer of property to another for no consideration” (emphasis added).

[61] The appellants claim that *Rascal Trucking Ltd. v. Nishi*, 2013 SCC 33, [2013] 2 S.C.R. 438 altered this settled legal framework in the context of a purchase money resulting trust. The appellants rely in particular on the opening sentence of Rothstein J.’s reasons where he states that a resulting trust arises “when a person advances funds to contribute to the purchase price of property, but does not take legal title to that property.” The appellants interpret this statement to mean that the mere transfer of money to fund the purchase of property by the transferee gives rise to a presumption of a resulting trust, no matter the circumstances giving rise to that transfer. By this logic, the presumption applies and must be rebutted by the transferee even if the transfer discharged a pre-existing debt or obligation owed by the transferor to the transferee.

[62] This is an incorrect reading of the opening sentence of *Rascal Trucking*, for two reasons: first, it considers the relevant sentence in isolation from the remainder of Rothstein J.'s reasons, where he refers repeatedly to the presumption of a resulting trust only arising in cases of gratuitous transfers; and second, it is wrong in principle, since it runs contrary to the established principles on the doctrine and turns the presumption of a resulting trust on its head by unjustly enriching the transferor.

[63] When Rothstein J.'s reasons in *Rascal Trucking* are read as a whole, it is apparent that he did not intend to depart from the long line of authority (including his own reasons in *Pecore*) requiring a gratuitous transfer to engage the presumption of a resulting trust. The relevant passages include the following, at paras. 21, 26-27:

The purchase money resulting trust is a species of gratuitous transfer resulting trust, where a person advances a contribution to the purchase price of property without taking legal title. Gratuitous transfer resulting trusts presumptively arise any time a person voluntarily³ transfers property to another unrelated person or purchases property in another person's name (D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (4th ed. 2012), at p. 397).

...

³ A "voluntary" transfer is one made gratuitously, or without consideration. See Donovan W.M. Waters, Mark R. Gillen, Lionel D. Smith, *Waters' Law of Trusts in Canada*, 5th ed. (Toronto: Thomson Carswell, 2021), at pp. 414-18.

[T]he purchase money resulting trust has been a feature of the common law since at least 1788 and provides certainty and predictability in situations where a person has made a gratuitous advance.

[The trust-gift dichotomy in the resulting trust analysis] reflects the fact that when making a gratuitous transfer of property, the person who makes the transfer must have intended either to pass the beneficial interest (a gift) or retain it (a trust) [Emphasis added.]

[64] Further, at para. 29, Rothstein J. expressly relied on the fact that the transfer of funds from the transferor, Rascal Trucking, to the transferee, Edward Nishi, was made without consideration as the basis for finding that a presumption of resulting trust arose for the benefit of Rascal:

Rascal's contribution to the purchase of the property was made without consideration and Rascal and Mr. Nishi are not related. Therefore, the legal presumption of resulting trust applies. [Emphasis added.]

[65] Thus, Rothstein J.'s reasons in *Rascal Trucking* do not support the proposition that the mere transfer of money to another to fund the transferee's purchase of a property gives rise to a presumption of a resulting trust, even if the transferor received consideration for the money transferred.

[66] In any event, the appellants' reading of *Rascal Trucking* is wrong in principle. This can be illustrated by the following simple example. Suppose person "A", who has saved \$20,000, agrees to loan \$10,000 to person "B" on the condition that B repay the loan to A upon request. Some months later, A decides to purchase

property “Z” worth \$100,000, and requests repayment of the loan from B. B repays the \$10,000 to A, which A adds to his other savings of \$10,000 to make a \$20,000 down payment on Z. Later, B claims to be entitled to a beneficial interest in Z based on the fact that A used the \$10,000 transferred by B to purchase the property.

[67] It would clearly be inequitable to award B any such beneficial interest. This is because B received consideration precisely equal to the \$10,000 that they repaid to A through the discharge of B’s existing \$10,000 debt to A. Moreover, granting B a beneficial interest in Z would enrich B at A’s expense. At the outset, A had \$20,000 in savings to purchase Z, while B had none. Thus, in substance, the entire down payment was funded from A’s original \$20,000. Yet, on the appellants’ theory, B would be entitled to a substantial beneficial interest in Z, property entirely paid for by A, simply by having discharged their prior debt to A. B would effectively get to “double count” the \$10,000 paid to A by receiving the benefit of discharging their prior debt and the additional benefit of acquiring an interest in A’s property.

[68] Such unfairness is precisely why the presumption of a resulting trust only applies in cases where the transfer was without consideration. Bypassing this “without consideration” threshold inquiry is therefore not only contrary to established precedent but also wrong in principle.

2. Rebutting the Presumption

[69] If a transfer is gratuitous and the presumption of a resulting trust is engaged, it can be rebutted if the transferee provides evidence, on the civil standard of a balance of probabilities, of the transferor's contrary intention at the time the transfer was made. As Rothstein J. explained in *Pecore*, at para. 44, the trial judge will consider all relevant evidence on the issue of the transferor's intention, including evidence advanced by the transferee:

As in other civil cases, regardless of the legal burden, both sides to the dispute will normally bring evidence to support their position. The trial judge will commence his or her inquiry with the applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention.
[Emphasis added.]

II. APPLICATION OF GOVERNING PRINCIPLES

1. The trial judge's findings on resulting trust

[70] The trial judge indicated that there was no dispute between the parties over the applicable law regarding resulting trusts, including the fact that “[t]he presumption of resulting trust arises where a person transfers [their] property in another’s name and does so gratuitously.” On this basis, the trial judge found that the appellants were entitled to a beneficial interest in the condominium units, since their contributions to those units had been gratuitous, they had the intention of acquiring an investment property at the time, and the respondents did not rebut the presumption of a resulting trust. In making these findings, the trial judge relied

on the fact that the appellants' evidence was corroborated by other credible evidence, including the testimony of the realtor, Nanda. No appeal is taken from these findings.⁴

[71] The trial judge came to a different conclusion with respect to the Farwell property. The central issue in dispute in the resulting trust analysis was whether the appellants had received consideration for Satnam's \$55,000 transfer to Sukhvinder that formed part of the down payment for the Farwell property.

[72] The appellants claimed that the \$55,000 payment was made gratuitously. They denied that Satnam had a pre-existing debt owing to Sukhvinder and maintained that Satnam advanced the \$55,000 as an equal owner of the Farwell property. Since the appellants contributed approximately 50% of the money needed to purchase Farwell, the appellants maintained that they were entitled to a 50% beneficial interest in the Farwell property.

[73] In contrast, the respondents' evidence was that Satnam's \$55,000 payment to Sukhvinder primarily represented the amount Satnam owed Sukhvinder in wages for work Sukhvinder had performed from 1992-1997. The respondents alleged that, in 1997, Satnam agreed to pay Sukhvinder the wages he was owed at a later date. The respondents also claimed that Sukhvinder was owed \$10,000 as a result of a loan he had made to Satnam in 2004. Sukhvinder's evidence was

⁴ The trial judge principally found that the condominium units were acquired as part of a joint venture agreement.

that when he told the appellants of his plans to purchase the Farwell property, Satnam offered to pay him what he was owed since he could now afford to do so (having recently received funds from the Workplace Safety and Insurance Board).

[74] Given these diametrically opposed accounts, the trial judge was required to make credibility findings regarding the evidence tendered by the parties. While the trial judge noted concerns over the credibility of the parties generally, he ultimately preferred the evidence of Sukhvinder over that of Satnam, particularly given that it was corroborated by witnesses with no direct interest in the litigation. The trial judge therefore found that Satnam's payment of \$55,000 to Sukhvinder was made to reimburse Sukhvinder for his unpaid wages and discharge Satnam's debt. These findings meant that the appellants had failed to establish circumstances giving rise to a trust in the Farwell property, since Satnam's payment to Sukhvinder was not gratuitous.

2. The trial judge did not err in dismissing the appellants' claim for a resulting trust

[75] As discussed above, the trial judge proceeded on the basis that the presumption of a resulting trust only arises in cases where a transferor makes a gratuitous transfer to a transferee. My colleague finds that only the appellants' intention in paying the \$55,000 to the respondents was relevant, and that the trial judge erred in failing to consider Nanda's evidence, which was probative of the appellants' intention.

[76] Respectfully, I see no such error in the trial judge's analysis. As explained above, the threshold inquiry in any resulting trust analysis is whether the transferor made a gratuitous payment to the transferee. If, instead, the transferor received consideration for the payment (in the form of extinguishment of a debt obligation or otherwise), no resulting trust in the transferee's property can or should arise. Thus, far from erring in his analysis, the trial judge correctly recognized that, as a threshold matter, he had to determine whether Satnam's payment of \$55,000 to Sukhvinder had been made without consideration. Since the trial judge found that Satnam had received consideration for his payment, the appellants' claim to a beneficial interest in the Farwell property necessarily failed.

[77] The trial judge did not ignore Nanda's evidence in his consideration of this issue, noting that Nanda supported the appellants' position that the Farwell property was jointly and equally owned. In fact, Nanda's evidence was particularly important to the appellants' account, since "Satnam's evidence, standing on its own, lacked credibility". Moreover, the trial judge relied on Nanda's testimony in finding that the appellants were entitled to a beneficial interest in the condominium units. However, the trial judge noted that Nanda's evidence provided little insight into the "without consideration" threshold inquiry in relation to the Farwell property, since Nanda's evidence "originated solely from the discussions he had, at the time, with Satnam". Accordingly, Nanda had no knowledge of the circumstances giving rise to Sukhvinder's claim of a pre-existing debt owed by Satnam. This is a

straightforward analysis of the probative value of Nanda's evidence in relation to the live issues in relation to the Farwell property and discloses no legal error.

[78] The scenario discussed earlier in these reasons illustrates the injustice that would follow had the trial judge proceeded in the manner proposed by my colleague. By considering only the evidence that bears on the appellants' intention behind Satnam's \$55,000 payment to Sukhvinder, without first determining whether the payment was gratuitous, the appellants would be "double counting" Satnam's \$55,000 payment by both extinguishing Satnam's prior debt to Sukhvinder and acquiring a beneficial interest in the Farwell property.

3. Even if the trial judge erred in finding that no presumption of a resulting trust had been established, the error would not have affected the result

[79] Even if the trial judge ought to have found that Satnam's payment of \$55,000 gave rise to a presumption of a resulting trust in the appellants' favour, as the appellants' argued at trial and on appeal, this error is of no consequence since it would not have affected the ultimate result. This is because, as explained earlier, a presumption of a resulting trust is rebuttable by contrary evidence regarding the transferor's intention at the time of the transfer.

[80] In determining whether the presumption has been rebutted, a trial judge, considering the evidence as a whole, is entitled to prefer the evidence of the transferee over that of the transferor. This principle is illustrated by *Rascal*

Trucking. In that case, Hans Heringa (Rascal's principal), maintained that Rascal, the transferor, intended to create a beneficial interest in the property with his contribution, whereas the transferee, Nishi, presented evidence to the contrary. The trial judge preferred the evidence of Nishi over that of Heringa, and therefore found that the presumption of a resulting trust had been rebutted. The Court of Appeal in *Rascal Trucking* had overturned the trial judge on the basis that Nishi's evidence was irrelevant in determining Heringa's intention at the time of the transfer. Rothstein J. reversed the Court of Appeal and restored the trial judgment, finding that the trial judge was entitled to consider Nishi's evidence and could prefer that evidence over Heringa's in determining the latter's intention at the time of the transfer.

[81] Those are precisely the circumstances here. Based on his review of the entire record, including in particular the evidence of certain disinterested witnesses whose evidence tended to support Sukhvinder's version of events, the trial judge preferred the respondents' evidence that Satnam had paid Sukhvinder on account of amounts owing to him. These factual findings would be sufficient to rebut the presumption of a resulting trust, since they establish that Satnam made the \$55,000 payment in order to discharge his pre-existing liability to Sukhvinder.

[82] Thus, even if the trial judge had somehow erred in dismissing the appellants' resulting trust argument at the threshold stage, had the presumption applied, it

would have been subsequently rebutted and the ultimate result would have been the same.

[83] Although my colleague would not apply the presumption of a resulting trust, he nevertheless would find a purchase money resulting trust and concludes that the appellants are entitled to a 50% interest in the Farwell property on the basis that the wages that Sukhvinder claimed he was owed totalled only \$47,280 rather than \$55,000, leaving \$7,180 of the \$55,000 advanced by Satnam unaccounted for and not explained by the trial judge. This discrepancy, along with Nanda's evidence about the appellants' intention, supports the appellants' version of events and undermines that of the respondents. Therefore, the appellants are entitled to a 50% interest in the Farwell property.

[84] The trial judge was in the best position to assess the parties' credibility, weigh the evidence, and make findings of fact. It would certainly have been open to the trial judge to weigh the evidence differently and prefer the evidence of Satnam over that of Sukhvinder. But the trial judge did not do so and, as noted above, provided a sufficient explanation of why he preferred the respondents' evidence, particularly because Sukhvinder's evidence was corroborated by the independent evidence of a number of other witnesses. This led the trial judge to find as a fact that Satnam made the \$55,000 payment to Sukhvinder to discharge his pre-existing debts. Respectfully, I do not regard it as the role of this court to revisit the trial judge's credibility assessments and related findings of fact in order

to find that the trial judge ought to have preferred the evidence of Satnam over that of Sukhvinder.

III. DISPOSITION

[85] For the above reasons, I would dismiss the appeal with costs to the respondents in the agreed amount of \$25,000, all inclusive.

Released: February 26, 2026 "L.B.R."

"P.J. Monahan J.A."