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### ADMISSIBILITY OF HEARSAY EVIDENCE: *MANHAS V. MANHAS*

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In circumstances that raise the presumption of resulting trust, it can be challenging for the person attempting to rebut the presumption to bring the necessary evidence. Often, the transferor has died and cannot present evidence in court about their intention in making the transfer. Where documentation is not available to assist with rebutting the presumption, the transferee may be forced to present hearsay evidence to the court. This is what occurred in *Manhas v. Manhas*, 2024 BCSC 52.

Mr. Manhas bought his home in Victoria, BC (the “Victoria property”) in the 1980s. In 2005, Mr. Manhas’s son, Krishan, and Krishan’s family

moved into the top floor of the Victoria property, and Mr. Manhas occupied the ground floor. In 2016, Mr. Manhas was briefly hospitalized after a cancer diagnosis. When he was discharged from the hospital, he moved in with his daughter, Janik. In 2017, Mr. Manhas decided to sell the Victoria property, which forced Krishan and his family to move out. When Mr. Manhas received the proceeds from the sale of the Victoria property, he deposited them into his personal bank account, and then wrote a series of cheques to transfer the funds to an account that he held jointly with Janik. Mr. Manhas died in 2018. His will left his estate in equal shares to Janik and Krishan.

The issue in the case was whether the transfer of the sale proceeds to the joint account constituted a gift to Janik as the surviving joint tenant, or whether the proceeds were held in a resulting trust for the estate of Mr. Manhas. If the sale proceeds belonged to Janik by right of survivorship, there was nothing else to distribute under the estate of Mr. Manhas, and Krishan would inherit nothing.

Janik, as the defendant in this case, was able to successfully rebut the presumption of resulting trust, which depended in large part on the court’s acceptance of the admissibility of certain hearsay evidence.

Janik took the position that it was Mr. Manhas’s intention for the proceeds of sale in the joint account to be a gift to Janik. She testified that Mr. Manhas had told her at some time prior to the sale, “I want you to have the house money.” She further testified that when Mr. Manhas gave the cheques to her, he said, “these are to go into the joint account. I want you to have it.” It was also her evidence that Mr. Manhas intended for the funds to pay for his medical expenses and general care, but that he wanted her to have the balance.

Evidence was also presented by Mr. Manhas’s lawyer, Mr. Parhar. He had met with Mr. Manhas in 2017 when Krishan’s lawyer sent a letter to Mr. Manhas about the pending sale of the Victoria property. Mr. Parhar testified that Mr. Manhas had told him that the sale proceeds were to fund his future care and to take care of Janik.

The hearsay rule is that out-of-court statements are generally inadmissible to prove the truth of what was said, because the speaker cannot be cross-examined. However, if necessity and reliability can be established, the court may admit the hearsay evidence.

In this case, the court found that the necessity requirement was met simply because Mr. Manhas could not testify to the statements in court. On the reliability requirement, the court considered the reliability of the witnesses and found both to be credible. This finding was supported by the evidence that the actions taken by Mr. Manhas, such as opening the joint bank account, writing the cheques, and handing the cheques to Janik, were consistent with the statements presented by Janik and Mr. Parhar. As a result, the court determined that the statements were admissible into evidence. This formed the basis for an overall finding that Mr. Manhas's intention at the time of the transfer was to make a gift to Janik, and she was therefore successful in rebutting the presumption of resulting trust.

While documentation of intention is always recommended, the hearsay rule can be invoked where necessary to admit valuable evidence if reliability is not at issue.