

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lambrecht v. Lambrecht Estate*,  
2023 BCSC 114

Date: 20230125  
Docket: S127328  
Registry: Kelowna

Between:

**Christopher Emil Lambrecht in his own name and on behalf of the Estate of  
Cynthia Mary Lambrecht, Deceased**

Plaintiff

And

**Julia Anne Wilhelmina Lambrecht, Executor of the Estate of Cynthia Mary  
Lambrecht, Julia Anne Wilhelmina Lambrecht and David Maurice Lambrecht**

Defendants

Before: The Honourable Madam Justice W.A. Baker

## Reasons for Judgment

Counsel for Plaintiff:

T.M. McCaffrey  
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Counsel for Defendants:

S.T. Rule

Place and Date of Hearing:

Kelowna, B.C.  
June 29, 2022

Place and Date of Judgment:

Kelowna, B.C.  
January 25, 2023

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**Introduction**

[1] In 2004 Mrs. Cynthia Lambrecht transferred the family home into joint tenancy with her daughter, Julia. Mrs. Lambrecht passed away in 2019. The plaintiff, Christopher Lambrecht, argues a resulting trust in favour of his mother's estate was created when the joint tenancy was created, and his sister is not entitled to receive the family home through the right of survivorship associated with the joint tenancy.

[2] The parties to this litigation are all members of the Lambrecht family. Mrs. Cynthia Lambrecht had three children: David, Julia and Christopher. For clarity in these reasons, I will refer to the adult children by their first names.

[3] David takes no position in this action, and has filed no response to the notice of civil claim.

[4] There are two applications before me, both seeking final judgment. Julia seeks a dismissal of the action. Christopher seeks various orders and declarations relating to the shares of the three children in their mother's estate and in the family home owned by Julia as a result of the joint tenancy created by Mrs. Lambrecht.

[5] The primary issue in these applications is whether Julia holds the family home on a resulting trust in favour of the estate by virtue of the joint tenancy, or whether the legal and beneficial interests in the family home became solely Julia's on her mother's death.

**Background Facts**

[6] In 1965, Mrs. Lambrecht and her husband purchased the family home, situated on Patterson Avenue in Kelowna. Her husband died in 1996. Mrs. Lambrecht remained in the family home until her death on June 15, 2019, when she was 89 years old.

[7] In 1993 Julia returned to the family home, where she lived with her parents. In January 2000, Julia gave birth to her son Matthew, and they continued to live with

Mrs. Lambrecht until her death. Julia and her son remain in the family home at the time of these applications.

[8] When Julia moved back into the family home in 1993, she paid her parents rent of \$100 per month, and paid for most of the groceries. When Julia went back to school in 1997, her mother told her she was not required to pay rent. However, Julia says that she continued to pay for groceries and also paid the cable and internet bills.

[9] Mrs. Lambrecht was very involved in the care of Matthew. Julia says that Mrs. Lambrecht provided day care, and took Matthew to school and his activities. Christopher stated that in or around 2002, Mrs. Lambrecht complained to him that she had become Julia's "built-in babysitter". Christopher also stated that between 2002 and 2012, his mother complained that Julia worked more often than she was home.

[10] I place little weight on Christopher's evidence in this respect. I am satisfied on the whole of the evidence that Julia, her mother, and her son lived together as a happy family unit, each contributing in their own way to functioning of the household. In addition, Julia provided important daily care to her mother in the final years of her life, when her mother's health problems worsened.

[11] Mrs. Lambrecht was diagnosed with anal cancer in 2001, for which she was successfully treated. Her treatments were completed in February 2002. Mrs. Lambrecht suffered from a number of ailments in her life as she aged, including some bowel and digestion problems, a hernia repair in 2010, a gallbladder removal, some problems with her sight and hearing, and a total colostomy in 2014. In 2019 she was diagnosed with multiple myeloma.

[12] However, her physical problems were well managed and she continued to be very active until she was in her 80s. She was a regular skier into her 80s. I was provided with video evidence of her skiing in 2013 when she was 83 years old. She also rode horses throughout her life. I was provided with video evidence of her riding

a horse in 2014, when she was 84 years old. I was also provided with video evidence of Mrs. Lambrecht pedaling a paddle boat in 2016 when she was 86 years old.

[13] On March 3, 2004, Mrs. Lambrecht signed a Form A Transfer, transferring the home into a joint tenancy with Julia. Mrs. Lambrecht was 74 at the time of the transfer. The transfer was performed by a notary, but the parties were not able to locate the notary's file. There are no notes or written instructions as to Mrs. Lambrecht's intentions as communicated to the notary.

[14] The transfer was registered at the Land Title Office on March 12, 2004. Neither Mrs. Lambrecht nor Julia told Christopher about the transfer at the time it was made.

[15] On March 9, 2004 Mrs. Lambrecht met with a lawyer, Mr. Polley, regarding the making of a will. That will was executed on August 31, 2004.

[16] Mrs. Lambrecht made another will in 2014. In the 2014 will, her three children share in the residue of her estate. Both Christopher and Julia receive 40% of the residue, and David receives 20%. In her will, Mrs. Lambrecht explained her reasons for David receiving a smaller share of the residue of her estate.

[17] On June 15, 2019, Mrs. Lambrecht died at the age of 89. Julia is the executor under her mother's 2014 will. On October 25, 2019, Christopher filed a notice of dispute, claiming his mother did not have the requisite capacity to make her 2014 will, and claiming that his mother was subject to coercion, unconscionability, and undue influence in the making of the will. Christopher withdrew his notice of dispute on July 30, 2020. Julia applied for a grant of probate on August 7, 2020.

[18] On the hearing before me, Christopher confirmed that he was no longer pursuing a claim of undue influence.

[19] On her death, the estate of Mrs. Lambrecht was valued at approximately \$95,000. The family home passed to Julia outside the will by virtue of the joint tenancy. It is valued at approximately \$1 million.

**Issues**

**Are these applications suitable for summary trial?**

[20] The parties confirmed before me that neither takes the position these applications are unsuitable for disposition pursuant to the summary trial rule. I have considered the material before me, which includes affidavits from both parties, transcripts of examinations for discovery of both Christopher and Julia, and transcripts of the plaintiff's cross-examination of most of the affiants supporting Julia's application.

[21] Christopher argues that some of the evidence on this application, discussed in more detail below, cannot be properly assessed on the basis of affidavit evidence alone. I do not agree. I find that the transcripts of the cross-examinations and affidavit evidence provide me with a sufficient evidentiary foundation to properly assess the witnesses' evidence. In the result, I am satisfied that the evidence before me is adequate and allows me to fairly find the facts necessary to resolve the issues in dispute. I am satisfied that these applications are suitable for determination pursuant to R. 9-7.

**Was there a resulting trust?**

[22] The leading case addressing the creation of a resulting trust through the transfer of property from a parent to a child is *Pecore v. Pecore*, 2007 SCC 17. In *Pecore*, a father gratuitously placed all his monetary funds and investment accounts in joint accounts with his daughter. On his death, the daughter took ownership of the accounts through the right of survivorship. The issue at trial was whether the father intended to gift the beneficial ownership of the accounts to his daughter, or whether he intended his daughter to hold the interest in trust for the benefit of his estate. The court addressed the utility of the presumption of advancement between parents and

their independent adult children. The court found that, as between parents and independent adult children, the applicable presumption is that of a resulting trust:

36 ... First, given that a principal justification for the presumption of advancement is parental obligation to support their dependent children, it seems to me that the presumption should not apply in respect of independent adult children. As Heeney J. noted in *McLear*, at para. 36, parental support obligations under provincial and federal statutes normally end when the child is no longer considered by law to be a minor: see e.g. *Family Law Act*, s. 31. Indeed, not only do child support obligations end when a child is no longer dependent, but often the reverse is true: an obligation may be imposed on independent adult children to support their parents in accordance with need and ability to pay: see e.g. *Family Law Act*, s. 32. Second, I agree with Heeney J. that it is common nowadays for ageing parents to transfer their assets into joint accounts with their adult children in order to have that child assist them in managing their financial affairs. There should therefore be a rebuttable presumption that the adult child is holding the property in trust for the ageing parent to facilitate the free and efficient management of that parent's affairs.

[23] Julia does not dispute that a presumption of resulting trust arises in this case. However, it is a rebuttable presumption of law, determined on the balance of probabilities: *Pecore* at para. 43. Where a transfer is made for no consideration, as is the case before me, the onus is placed on the transferee to demonstrate that a gift was intended: *Pecore* at para. 24.

[24] As such, Julia bears the onus of establishing that, on a balance of probabilities, Mrs. Lambrecht intended to confer the home as a gift to her. The sole asset which is the subject of the claim of resulting trust is the family home. In determining Mrs. Lambrecht's intention in creating the joint tenancy, I may consider evidence that arises subsequent to the transfer if such evidence is relevant to the intention of the transferor at the time of the transfer: *Pecore* at para. 59.

[25] The caution expressed by the court in *Pecore* with respect to evidence of the continued use of assets by the transferor during their lifetime, is developed more fully in cases such as *Bergen v. Bergen*, 2013 BCCA 492, *Petrick (Trustee) v. Petrick*, 2019 BCSC 1319, and *McKendry v. McKendry*, 2017 BCCA 48. In *McKendry* the court explained:

[29] So long as the requirements of a binding gift are met, the owner of property may, during his or her lifetime, make an immediate gift of a joint tenancy, including the right of survivorship. This is so regardless of whether the donee of the gift is to hold it for the benefit of the donor while he or she is alive. When gifted *inter vivos*, the right of survivorship is a form of expectancy regarding the future. It is a right to what is left of the jointly-held interest, if anything, when the donor dies: *Simcoff v. Simcoff*, 2009 MBCA 80 at para. 64; *Bergen v. Bergen*, 2013 BCCA 492 at para. 37; *Pecore* at paras. 45-53.

[30] A donor may gift the right of survivorship, but continue to deal freely with property throughout his or her lifetime. In *Simcoff*, Steel J.A. explained why:

64 Simply, and conceptually, the fact that a “complete gift” may have been given and that this gift included a right of survivorship does not, *prima facie*, prevent a donor from dealing with the retained joint interest while alive. The right of survivorship is only to what is left. Accordingly, if one joint owner drains a bank account (in the case of personal property) or severs a joint tenancy (in the case of real property), there is nothing in the right of survivorship itself that somehow prevents this. In commenting on the issue of survivorship in *Pecore*, Rothstein J. wrote (at para. 50):

Some judges have found that a gift of survivorship cannot be a complete and perfect *inter vivos* gift because of the ability of the transferor to drain a joint account prior to his or her death: see e.g. Hodgins J.A.’s dissent in *Re Reid* [(1921), 1921 CanLII 534 (ON CA), 64 D.L.R. 598 (Ont. C.A.)]. Like the Ontario Court of Appeal in *Re Reid*, at p. 608, and *Edwards v. Bradley*, [1956 CanLII 32 (ON CA), [1956] O.R. 225] at p. 234, I would reject this view. The nature of a joint account is that the balance will fluctuate over time. The gift in these circumstances is the transferee’s survivorship interest in the account balance - whatever it may be - at the time of the transferor’s death, not to any particular amount.

[Emphasis in original.]

[26] While there are no joint accounts in the case before me, Mrs. Lambrecht continued to live in the family home, and pay bills for the family home. Mrs. Lambrecht’s continued use of the family home during her lifetime is not inconsistent with an intention to gift the family home to Julia on her death.

[27] If the evidence establishes that Mrs. Lambrecht intended a gift, the presumption has been rebutted and no resulting trust will be found.

[28] In the case before me, I must determine the intention of Mrs. Lambrecht when she signed the transfer documents to create the joint tenancy with Julia on March 4,



2004. While the transfer did not complete until March 12, 2004, I am satisfied that the relevant date for consideration of her intention is the date Mrs. Lambrecht executed the transfer documents, namely March 4, 2004.

[29] Christopher argues that Mrs. Lambrecht was subject to domination by Julia, and was persuaded by Julia to place the home in joint tenancy. He argues that his mother did not make the transfer of her own free will, and did not intend to gift her home to Julia at the expense of the other children.

[30] Hearsay evidence of Mrs. Lambrecht was relied on by both parties in determining the intention of Mrs. Lambrecht at the time she created the joint tenancy. Christopher challenges the evidence relied on by Julia, but he also relies on hearsay evidence of what his mother told him and others at different times.

[31] While hearsay evidence is *prima facie* inadmissible for its truth, it may be admitted if it meets certain exceptions to the exclusionary rule, including the exception for evidence of state of mind, or the principled exception where the evidence is necessary and reliable: *Harshenin v. Khadikin*, 2015 BCSC 1213 at paras. 28-36.

[32] In the case before me, necessity is established because Mrs. Lambrecht is deceased. Therefore, for most of the witnesses, the issue is whether their evidence of Mrs. Lambrecht's statements is reliable. I will now consider the evidence of each witness.

***Christopher Lambrecht***

[33] Christopher has very little evidence as to statements made by Mrs. Lambrecht regarding her intentions for her house, or her decision to place the family home in joint tenancy with Julia. In fact, he stated under cross-examination that his mother never talked to him about what she planned to do with her wealth upon her death. At the end of her life, Christopher asked his mother if she had her affairs in order, and she replied that she did. No details of his mother's plans were discussed with him.

[34] Christopher stated that Mrs. Lambrecht told him that Julia said that she, Julia, should be put on title and on Mrs. Lambrecht's bank accounts. This was to assist Mrs. Lambrecht in paying her bills and looking after her affairs. Christopher suggested to his mother that he should also be involved in her estate planning. However, Mrs. Lambrecht declined to involve Christopher in the preparation of her will, or in discussions about her finances.

[35] In his affidavit, Christopher recalled a conversation with his mother, around the time of her 89<sup>th</sup> birthday, where his mother told him that Julia thought she should get the house, and Christopher disagreed with that idea. His mother then became upset and did not want to talk about it.

[36] Christopher stated that his mother referred to the house as "her house".

[37] On his examination for discovery, Christopher agreed that he did not know until this litigation that his mother made a will in 2004, and that his mother never talked to him about estate planning at all.

[38] Other than these brief recollections, Christopher has no evidence of statements of his mother's intentions with respect to the house.

[39] Much of Christopher's evidence was double hearsay, speculative, argumentative, and based on assumptions and beliefs he held as to what he thought his mother ought to have done, or would have done. He swore an affidavit asserting some facts of which he had no actual knowledge. For example, Christopher swore in his affidavit that his mother created the joint tenancy because of her failing health and to assist in the management of her affairs, and he later admitted under cross-examination that this was simply speculation on his part.

[40] In assessing the reliability of Christopher's evidence as to what his mother told him, I have considered its inconsistency with other evidence that I have found to be reliable. I also find that Christopher has a self-serving motivation to recount the statements he says his mother made. In addition, his sworn affidavit contains other statements of fact which are actually simply statements of belief. On balance, I find

Christopher's recounting of his mother's statements that Julia sought to be put on title to the family home and to take control of her mother's financial affairs is unreliable.

***Julia Lambrecht***

[41] Julia says that Mrs. Lambrecht told Julia that she wanted Julia to inherit the family home, and she wanted Julia to have the home for herself and her son. Julia states Mrs. Lambrecht developed the intention to transfer the home on her own, and Julia at no time suggested it to her. Julia says that she drove her mother to the notary's office, where Mrs. Lambrecht instructed the notary. Julia has no recollection of the conversation between Mrs. Lambrecht and the notary.

[42] When Mrs. Lambrecht went to see a lawyer, Mr. Polley, in March 2004, Julia also attended. She heard Mrs. Lambrecht tell Mr. Polley that she had transferred the family home in joint tenancy with Julia.

[43] Julia says that her mother told her that she had given Christopher a greater share of the estate because Julia was going to get the family home.

[44] Julia did not have a full power of attorney over her mother's affairs, and had no joint accounts with her mother. She did have power of attorney for her mother's account at the Bank of Montreal, and occasionally performed transactions as directed by her mother, such as making RESP contributions for the children of Christopher and Julia, and repairing the roof on the house. Christopher has not proven that any transactions performed by Julia at Mrs. Lambrecht's request were improper.

[45] Julia did not have a power of attorney over Mrs. Lambrecht's other accounts at other institutions. While Julia assisted her occasionally, Mrs. Lambrecht generally did her own banking, and managed her own financial affairs. In his examination for discovery, Christopher agreed that he had no knowledge of his mother being unable to make decisions, or being unable to make her own financial decisions.

[46] Julia often took Mrs. Lambrecht to her medical appointments and stated that none of her care providers expressed any concerns with Mrs. Lambrecht's mental abilities.

[47] Julia denies she ever asked her mother to place the house in joint tenancy, and denies she sought control of her mother's accounts.

[48] I find Julia's evidence to be consistent with other evidence I find to be reliable, and I find her evidence generally to be fair and not overstated. I accept the evidence of Julia as to her mother's statements, and generally.

***David Polley***

[49] Mr. Polley is the solicitor who took instructions from Mrs. Lambrecht for the preparation of her will on March 9, 2004. The will was ultimately executed later in August 2004, but his notes of his first meeting with Mrs. Lambrecht regarding the will are dated March 9, 2004, which is five days after she executed the documents to transfer the property to Julia. Julia attended the meeting, along with her mother.

[50] At the March 9 meeting, Mr. Polley had no concerns with Mrs. Lambrecht's mental abilities. They discussed Mrs. Lambrecht's assets and Mrs. Lambrecht told Mr. Polley that she held her house jointly with Julia. Mr. Polley advised Mrs. Lambrecht that her home would not form part of her estate and her will would not apply to the home because it was held in joint tenancy with Julia. Mr. Polley and Mrs. Lambrecht discussed how the fact the house would not form part of the estate might affect the gifts in the will. Mrs. Lambrecht told Mr. Polley that she was going to consider whether Julia would get a smaller portion of her cash estate.

[51] Mrs. Lambrecht's 2004 will ultimately did give Julia a lesser share of the residue of her estate than she left Christopher: Julia received 35% of the residue, while Christopher received 45%.

[52] Mr. Polley made contemporaneous notes of his meeting with Mrs. Lambrecht. He stated that if there was any indication that Mrs. Lambrecht did not understand his

advice, or if she indicated she did not want the house to transfer to Julia through the right of survivorship, he would have made notes and given her further advice. He made no such notes, and gave no further advice on the issue. He stated that Mrs. Lambrecht appeared to understand and accept the ramifications of Julia's receipt of the house through the right of survivorship.

[53] Mr. Polley sent a draft will to Mrs. Lambrecht in April 2004, and she called his office to advise she would review it and call back with her comments. Mrs. Lambrecht requested no changes, and on August 31, 2004 she executed the will before Mr. Polley. Julia was not present when the will was executed.

[54] Mr. Polley also prepared a draft power of attorney, appointing Julia as her attorney, but this was never executed.

[55] Mr. Polley had no reason to be untruthful at the time his notes to file were made, or at the time his affidavit in this action was sworn.

[56] Mrs. Lambrecht was not rushed in the making of her will. She gave her instructions for the will in March 2004, received a draft in April 2004, and finally executed the will in August 2004. Mr. Polley had no concerns with Mrs. Lambrecht's competency or understanding, and witnessed no uncertainty in her decision to leave the house to Julia. Unlike the case of *Cowper-Smith v. Morgan*, 2016 BCCA 200, relied on by Christopher, there is no evidence before me that Mr. Polley was given false information by Julia, or that Mr. Polley took instructions from anyone but Mrs. Lambrecht. There is no evidence before me that Mrs. Lambrecht did not understand the nature of the transfer she made to Julia.

[57] While Julia was present at the first meeting, later Mrs. Lambrecht dealt directly with Mr. Polley without Julia being present. Her intentions did not change whether Julia was present or not.

[58] I accept Mr. Polley's evidence as reliable.

***Alisha Anne Jaffe***

[59] Ms. Jaffe was a long-time friend of Mrs. Lambrecht and Julia. She lived in Kelowna from 1990 to 1996, and again from 2014 to the present. From 1996 to 2014, she regularly visited both Mrs. Lambrecht and Julia.

[60] Ms. Jaffe recalls at least three instances when Mrs. Lambrecht stated she was leaving her house to Julia. Ms. Jaffe also recalls Mrs. Lambrecht stating she was in the process of changing title to the house to add Julia.

[61] Ms. Jaffe was cross-examined by counsel for Christopher, and her evidence did not change. When asked about the first time she remembered Mrs. Lambrecht raising the issue, she recalled a conversation in the early 2000s:

And she was talking about going and having the house -- Julia put on the title. So that was the first conversation because she wanted to make sure that Julia and Matthew had a home was what she said.

[62] Ms. Jaffe confirmed under cross-examination that the conversation happened in the presence of herself and Mrs. Lambrecht alone. Julia was not present. The conversation arose in the context of Ms. Jaffe asking Mrs. Lambrecht what her plans were for the week.

[63] Ms. Jaffe confirmed under cross-examination that she recalled another conversation after she had returned to Kelowna around 2014, where Mrs. Lambrecht stated that the house was Julia's after she died, and that Julia was taken care of. Finally, she recalled a conversation she witnessed between Julia and Mrs. Lambrecht when Mrs. Lambrecht was in the hospital just before her death. Ms. Jaffe recalls Mrs. Lambrecht telling Julia that "Chris would make a claim on the home and she was to stay strong".

[64] While the exact dates of the conversations were not recalled by Ms. Jaffe, she had a clear memory of the content of the conversations. The timing of the three conversations can be roughly understood to be: first, just before Mrs. Lambrecht added Julia as a joint tenant; second, sometime around 2014; and third, just before Mrs. Lambrecht's death.

[65] Christopher is critical of the fact that Ms. Jaffe does not have a recollection of the exact dates of the conversations she recalls. However, I do not find the exact dates to be materially significant, given that the conversations can be located in time relative to certain events recalled by Ms. Jaffe. The conversations recounted by Ms. Jaffe were spontaneous and unprompted.

[66] Christopher suggests that Ms. Jaffe is not reliable because she is a friend of Julia. I do not accept that Ms. Jaffe's friendship with Julia is a proper basis to infer that her evidence is false or unreliable. Ms. Jaffe has no interest in the outcome of this litigation. I find Ms. Jaffe's recollection of the statements made by Mrs. Lambrecht to be reliable.

***Barbara Hayden***

[67] Ms. Hayden was a friend of Mrs. Lambrecht since 1987. They worked together, and rode horses together. In 2014 Mrs. Lambrecht gave her horse to Ms. Hayden.

[68] Ms. Hayden described several conversations she had with Mrs. Lambrecht regarding the transfer of the home. The first conversation occurred when Mrs. Lambrecht was sick with anal cancer. While Ms. Hayden could not put a date to the conversation, the uncontroverted evidence is that Mrs. Lambrecht had anal cancer in 2001.

[69] In the first conversation recounted by Ms. Hayden, Mrs. Lambrecht indicated she wanted to sell her home and divide all but \$20,000 between Christopher and Julia.

[70] Ms. Hayden recounted a second conversation, one or two months after the first. Ms. Hayden said Mrs. Lambrecht changed her mind and wanted to give her house to Julia. Under cross-examination, Ms. Hayden recounted Mrs. Lambrecht's words being "Well, I've made my choice, and I'm going to put the --- Julia's name on it. She's been my support team. ... I'm putting Julia's name on the house."

[71] Under cross-examination, Ms. Hayden also recounted that she asked Mrs. Lambrecht about Christopher, and Mrs. Lambrecht replied, “Well, he’s got a house, and he hasn’t been that helpful to me in the last little while, anyways.”

[72] In her affidavit, Ms. Hayden also recounts a conversation a few years later where Mrs. Lambrecht said she had put the house into joint title with Julia. Under cross-examination, Ms. Hayden confirmed that the words used by Mrs. Lambrecht were that she had “put Julia’s name on the house”.

[73] Christopher argues that Ms. Hayden’s evidence is unreliable because Mrs. Lambrecht is not recounted to have used the words expressing a gift of the legal and beneficial interest in the home, and because the dates of the conversations cannot be precisely ascertained.

[74] I find that Ms. Hayden’s evidence is reliable. Ms. Hayden has no motivation to be untruthful about her evidence. Ms. Hayden’s memories of the language used by Mrs. Lambrecht to describe her intentions and her reasons for her decision, were clear and not successfully challenged under cross-examination. The fact that Ms. Hayden does not recall Mrs. Lambrecht using the technical language of “legal and beneficial interest” does not affect the reliability of her evidence.

[75] Ms. Hayden raised the question of Christopher’s entitlement to a share in the house, and she recalls Mrs. Lambrecht having a reason for not providing him with a share. While the precise date of the conversations was not established, I find the dates of the first two conversations were in or around 2001 when Mrs. Lambrecht was treated for anal cancer.

[76] I find the evidence of Ms. Hayden is reliable.

***Margaret Riviere***

[77] Ms. Riviere was a friend of Mrs. Lambrecht. They saw each other regularly, as they both rode horses and skied. Ms. Riviere recalled a conversation approximately three years before Mrs. Lambrecht passed away, where Mrs.



Lambrecht asked her if she thought it was fair for Mrs. Lambrecht to leave the house to Julia. Under cross-examination, Ms. Riviere recalled Mrs. Lambrecht telling her that Christopher had his own business, while Julia lived with Mrs. Lambrecht and did a lot for her. Mrs. Lambrecht told Ms. Riviere that she thought it would be fair to leave the house to Julia, and Ms. Riviere agreed with her.

[78] Christopher argues Ms. Riviere's evidence is not reliable because the date of the conversation was not established, and because the technical language of "legal and beneficial ownership" was not used. I reject these criticisms for the reasons expressed with respect to witnesses discussed above. I find the evidence of Ms. Riviere to be reliable.

***Linda McLeod***

[79] Ms. McLeod was a friend of Mrs. Lambrecht. She grew up on Patterson Street, across from the Lambrecht family home. While she moved away in the 1970s, she returned in 2008. After she returned to her Patterson Street home, she saw Mrs. Lambrecht two to three times a week.

[80] Ms. McLeod's father passed away in 2008. After her husband's death, Ms. McLeod's mother put the title of her house into joint names with Ms. McLeod and her sisters so that they would inherit the family home. During a conversation she had with Mrs. Lambrecht about the McLeod family affairs following the father's death, Ms. McLeod mentioned that her mother had transferred title of their home to her daughters. Mrs. Lambrecht then told Ms. McLeod that she had put the title of her house in joint names with Julia, and that Julia would get the house.

[81] While the exact date of the conversation was not established, Ms. McLeod related it to the period following her father's death in 2008. The evidence of Mrs. Lambrecht, as recounted by Ms. McLeod, was volunteered spontaneously. Ms. McLeod had a clear memory of the specific conversation. The credibility of Ms. McLeod was not successfully challenged under cross-examination. I am satisfied that her memory of the conversation is reliable.

***Lisa Nahirniak***

[82] Ms. Nahirniak is a friend of Julia's. She describes herself as Julia's best friend. From 2015 to 2018, Ms. Nahirniak came and stayed with Mrs. Lambrecht for one to two weeks, while Julia was away.

[83] On several occasions Mrs. Lambrecht told Ms. Nahirniak that she was leaving the family home to Julia. Mrs. Lambrecht told Ms. Nahirniak that she wanted to leave the house to Julia because Julia was there and helped her. Ms. Nahirniak was unable to describe with any certainty when these conversations happened, but thought they might have been in 2015 or 2016.

[84] While Christopher challenges the reliability of Ms. Nahirniak's evidence because she is friends with Julia and she stated under cross-examination that Julia may have been present during one or more of the conversations, having read the transcript of the cross-examination of Ms. Nahirniak, I am satisfied that she is credible and honest in her recollection. The fact Ms. Nahirniak is a friend of Julia's is not sufficient, in and of itself, to find her evidence is not credible.

[85] I find Ms. Nahirniak's memory of the conversations with Mrs. Lambrecht to be reliable.

***Nadine Weighill***

[86] Ms. Weighill met Julia and Mrs. Lambrecht in the late 1980s. Ms. Weighill's mother and Mrs. Lambrecht were close friends, and Ms. Weighill was friends with both Mrs. Lambrecht and Julia.

[87] Ms. Weighill remembers having Mrs. Lambrecht and Julia over for lunch one day in 2016. Ms. Weighill's mother told the group that when she could no longer live on her own, she would move in with Ms. Weighill. Mrs. Lambrecht responded that she (Mrs. Lambrecht) was already living with Julia in her house. Ms. Weighill's mother replied that she thought the house was owned by Mrs. Lambrecht. Mrs. Lambrecht replied to the effect that the house was already owned by Julia.

[88] Having read the transcript of the cross-examination of Ms. Weighill, I am satisfied that she was a credible witness. The statements made by Mrs. Lambrecht were spontaneously made in the context of a discussion about aging parents living with their children. While the exact day of the conversation is not known, Ms. Weighill was clear that it happened in 2016. I am satisfied that the evidence of Mrs. Lambrecht as remembered by Ms. Weighill is reliable.

***Tanya Pauls***

[89] Tanya Pauls was a friend of Mrs. Lambrecht, and knew her since the early 1990s. They saw each other frequently, rode horses together, and went to the ballet and theatre together. On their frequent outings, they would spend two to three hours together. Ms. Pauls stayed with Mrs. Lambrecht for two weeks, following her separation from her husband. Mrs. Lambrecht shared many details of her health issues over the years. Ms. Pauls commented under cross-examination that, even though she had various health complaints over the years, “she was just such an upbeat lady that nothing really brought her down. You know, she was always so chirpy and full of life. So she just, you know, carried on”.

[90] Tanya Pauls recalled being told many times by Mrs. Lambrecht that she wanted Julia to have her house. Under cross-examination, Ms. Pauls stated that Mrs. Lambrecht was going to put it in her will that Julia would have the house. She then clarified her evidence as follows:

- 134 Q. Cynthia did not say she was going to put it in her will that Julia was going to have the house, did she? You have just drawn some sort of inference based on other experiences in your life?
- A. No. I can't say a hundred percent that she said that, but now I'm thinking of that conversation -- I don't know a hundred percent that she said, "I want to put it in the will," but I got, by the way she said it, that she was very clear about the importance of Julia having her house. And I can't remember if exactly she said, "I'm going to put it in the will" or "I have already," but it was very clear to me that that was her express wish and she was not going to change her mind.

137 Q. Okay. So who told you that Cynthia had a will? It's not in your affidavit as far as I can tell, so who told you that?

A. Cynthia would have told me.

138 Q. Okay. But there's no reference in your affidavit to that knowledge coming into your possession.

A. I know. And now that knowledge is coming to me now, now I think about it. And -- like, but I'm not saying a hundred percent that when I think back about that time -- like, you know, we're talking many years here. And, like I said, I can't say a hundred percent that she said that word, but you know, when somebody says to you, "I want my daughter to have my house" -- and that's why I didn't put it in the affidavit because I didn't remember a hundred percent that she said that. But she was like -- that was pretty much -- like, that was kind of a given when somebody says that. They're not going to just mention it to somebody and not put it in the will. I mean, that's really -- I mean, if somebody says, "I want her to have my house," she is going to put it in the will.

139 Q. Okay.

A. So I'm not saying a hundred percent that she said that, but that's more just a given, and that's why I didn't put it in the affidavit.

140 Q. Okay. Now I'm unclear. Are you saying you're not a hundred percent sure that Cynthia said she wanted her daughter to have the house?

A. No, I'm not. Please do not put words in my mouth. I'm saying Cynthia a hundred percent told me that she wanted, with no -- with absolute clarity, she wanted Julie to have the house after all the years that she assisted her. So a hundred percent yes.

141 Q. Okay.

A. And she told me quite a few times.

142 Q. Okay. But she never told you what that meant?

A. Well, it's kind of clear that what means and --

143 Q. Okay. But do you understand the question? She either told you what it meant, or she didn't tell you what that meant. Did she tell you what that meant?

A. Well, she told me that it meant that Chris would not get half of the house like he probably expected, that Cynthia [sic] was going to get a hundred percent of the whole house. So -- yeah. That's what, you know ...

144 Q. So you're now saying, if I've got this right, that Julia said -- or Cynthia said to you that Julia was to have the house?

A. Exactly.

145 Q. And she also said at that time Chris was not going to get the house?

A. She did. Yes.

[91] Ms. Pauls' recollection of the timing of the various conversations she had with Mrs. Lambrecht was not precise, although she thought the conversations were a few years before Mrs. Lambrecht died. Ms. Pauls was unsure if Mrs. Lambrecht mentioned a will, and allowed that she might have just been assuming that was what Mrs. Lambrecht was talking about. However, Mrs. Pauls was absolutely certain that Mrs. Lambrecht told her that she wanted Julia to have the house after all the years Julia assisted her. Ms. Pauls was not shaken under cross-examination with respect to this evidence.

[92] In addition, Ms. Pauls stated under cross-examination that Mrs. Lambrecht told her that Christopher would not get half of the house like he probably expected.

[93] I am satisfied that Ms. Paul's evidence is reliable.

***Bela Jenei***

[94] Mr. Jenei was a co-worker and friend of Christopher's, and was a friend of Mrs. Lambrecht since approximately 1996. He stated that Mrs. Lambrecht always referred to the house as belonging to her and her husband, and did not mention Julia was an owner. He stated that Mrs. Lambrecht told him consistently between 2003 and 2012 that she intended to divide her property three ways between her children upon her passing.

[95] I have some concerns about the reliability of Mr. Jenei's recollections of Mrs. Lambrecht's evidence. First, Mr. Lambrecht died in 1996. On his death, the house was owned solely by Mrs. Lambrecht until 2004 when she added Julia as a joint tenant. The idea that Mrs. Lambrecht would continue to refer to the house as being owned by her deceased husband does not have an air of reality to it. Next, Mr. Jenei does not recount the specifics of any conversations about Mrs. Lambrecht's intentions with respect to her property. Unlike some of the other witnesses I have discussed above, Mr. Jenei does not describe the context in which these statements were apparently made, how the topic came up in conversation, or any details at all. In his statement about Mrs. Lambert's intention to divide her assets equally, he also does not distinguish between Mrs. Lambrecht's monetary assets and her house. Finally, in the wills executed by Mrs. Lambrecht in 2004 and 2014, she did not divide her monetary estate equally between her three children. Therefore, the statement that Mrs. Lambrecht consistently told Mr. Jenei of her intention to divide her property equally does not accord with the actual steps taken by Mrs. Lambrecht with respect to her estate.

[96] On balance, I do not find that Mr. Jenei's evidence with respect to statements made by Mrs. Lambrecht to be reliable, and I do not rely on his evidence.

***Sean Delaney***

[97] Sean Delaney is a friend of Christopher's, and a friend of Mrs. Lambrecht. He met the family in approximately 1974.

[98] Mr. Delaney stated that after Mr. Lambrecht died, Mr. Delaney told Mrs. Lambrecht to have the house registered in the names of her children. Mr. Delaney does not recount Mrs. Lambrecht's response. Mr. Delaney stated that in 2009 Mrs. Lambrecht told him that she had a good will and her children would be looked after, with the estate divided as per her will.

[99] Mr. Delaney stated that in 2019 Mrs. Lambrecht told Christopher, in Mr. Delaney's presence, that the house would be going to "them", which he inferred to mean her children.

[100] I do not find Mr. Delaney's recounting of Mrs. Lambrecht's statements in 2009 as unreliable. In 2009, Mrs. Lambrecht had in place the will she executed in 2004. That will was made after she transferred the title of her home into joint tenancy. Her statement to Mr. Delaney does not support a finding that she intended her house to form part of her estate. It simply supports a finding that she had a will in place that she was satisfied with.

[101] I do have concerns with respect to Mr. Delaney's statement regarding what Mrs. Lambrecht said in 2019. Under cross-examination, Christopher recounted no such conversation which, given the position taken by Christopher in this litigation, would have been an important conversation and one he would have been likely to remember, if it had happened. The only conversation about the house which Christopher recounts, is one in which his mother discussed Julia getting the entire house. Therefore, I find Mr. Delaney's evidence regarding Mrs. Lambrecht's alleged statements in 2019 to be unreliable.

**What was Mrs. Lambrecht's intention in placing the family home in joint tenancy with Julia?**

[102] The actual intention of Mrs. Lambrecht in transferring the house to Julia in joint tenancy has been well established on the evidence. That intention was to gift Julia the legal and beneficial ownership of the family home on her death. I am satisfied that Julia has, on a balance of probabilities, rebutted the presumption of a resulting trust.

[103] In his affidavit, Christopher stated that Mrs. Lambrecht was in "failing health" in 2004, and was suffering from a number of medical problems during her life. While it appears true that Mrs. Lambrecht had a number of medical problems during her life, she was clearly not in failing health in 2004 when she executed the transfer documents for the family home. She lived for another 15 years after the transfer was completed.

[104] Christopher's evidence does not contradict the evidence of Julia that her mother's cancer was successfully treated in 2001, three years before she completed

the transfer of the home. The video evidence of Mrs. Lambrecht in 2013, 2014 and 2016 shows a vibrant engaged woman, who appears far younger than her age. There is simply no evidence that Mrs. Lambrecht's health problems were not managed in a way that allowed her to live an active life.

[105] While her health clearly was failing in the two or three years before her death in 2019, when she transferred the property in 2004 there is no evidence that her health incapacitated her in any way. Similarly, the evidence of Mrs. Lambrecht's friends describe a vibrant women who continued to participate in many activities well into her 80s. None of these witnesses describe Mrs. Lambrecht as being incapacitated or in failing health in 2004, when she completed the transfer documents.

[106] Christopher argues the absence of any notes from the notary, means that there is no evidence Mrs. Lambrecht made the transfer of her own free and informed will. He says there is absolutely no evidence that Mrs. Lambrecht understood the legal ramifications of a right of survivorship.

[107] The parties were unable to produce evidence from the notary who prepared the transfer. However, there is ample evidence before me to establish Mrs. Lambrecht's understanding of the legal effect of a transfer to joint ownership during her lifetime and on her death.

[108] Mrs. Lambrecht attended at the law office of Mr. Polley just five days after she signed the transfer documents. Mr. Polley's evidence, which I accept, was that he discussed the ramifications of the joint tenancy, including that the family home would not form part of Mrs. Lambrecht's estate, and would not pass through her will. Mr. Polley was satisfied that Mrs. Lambrecht understood that Julia would receive the family home through the right of survivorship, and she was content with that outcome.

[109] Further, Mrs. Lambrecht had a number of months to consider her draft will, and ultimately executed it in August 2004. In the 2004 will, Julia received a smaller



share of Mrs. Lambrecht's estate, which is consistent with Julia receiving an asset in which her brothers did not share, as discussed with Mr. Polley.

[110] Mr. Polley's evidence is independent and reflects a point in time very close to the execution of the transfer documents. I am satisfied that his evidence lends very strong support for a finding that Mrs. Lambrecht intended to gift Julia the family home, through the right of survivorship.

[111] Ms. Jaffe described a conversation with Mrs. Lambrecht in the early 2000's, which I find to have been shortly before Mrs. Lambrecht completed the transfer documents. Mrs. Lambrecht discussed her activities planned for the upcoming week, which included putting Julia on title to her home. This statement by Mrs. Lambrecht was spontaneous and unprompted by Ms. Jaffe, and evidences an intention consistent with a gift of the right of survivorship, namely to ensure that Julia and her son would have a home.

[112] Ms. Hayden's evidence is that when Mrs. Lambrecht had anal cancer, which was established to be in or around 2001, Mrs. Lambrecht stated she had made the decision to place Julia on title to the house. Ms. Hayden stated that she asked Mrs. Lambrecht about Christopher, and Mrs. Lambrecht indicated that Christopher already had a house. I find this conversation supports a finding that Mrs. Lambrecht intended Julia to have the family home solely, and had a particular reason for not leaving the family home to Christopher. This is consistent with an intention to gift the right of survivorship to Julia.

[113] The evidence of Ms. Jaffe and Ms. Hayden which precedes the transfer may not be relied on to prove intention at the date of the transfer. I recount it simply to illustrate that Ms. Hayden's evidence of Mrs. Lambrecht's prior intention was consistent with the evidence of Mrs. Lambrecht's intention recounted by witnesses following the transfer. Mrs. Lambrecht had an unwavering desire to leave the family home to Julia.

[114] Ms. Riviere, Ms. McLeod, Ms. Nahirniak, and Ms. Pauls all recounted conversations with Mrs. Lambrecht which were consistent with Mrs. Lambrecht intending to gift the family home to Julia, to the exclusion of Christopher.

[115] The evidence of Ms. McLeod arose in the context of a discussion about the transfer of the McLeod family home into joint tenancy to facilitate the children inheriting the home. Mrs. Lambrecht stated that she already made such a transfer and Julia would get the home.

[116] The evidence of Ms. Weighill demonstrates that in 2016, Mrs. Lambrecht had a full understanding of the import of her decision to give Julia the right of survivorship in the family home. In a conversation in which Ms. Weighill's mother was discussing her plan to move in with her adult daughter when she could no longer live alone, Mrs. Lambrecht described Julia as already owning the family home. I find this statement to be consistent with Mrs. Lambrecht's intention to gift the family home to Julia.

[117] While Christopher suggests that Julia controlled Mrs. Lambrecht, there is simply no evidence to support such a finding. Christopher is suspicious of his sister because his mother did not consult with him before deciding to place the home in joint tenancy, and because he feels that Julia got a free ride for years in living with their mother.

[118] There is no obligation on a parent to consult with their children before making decisions about their estate. The evidence of Julia, which I accept, is that Mrs. Lambrecht made her decision about the family home without input from either Julia or Christopher. Similarly, Christopher's views about whether Julia pulled her weight in living with their mother are not material in deciding whether Mrs. Lambrecht formed the intention to gift the family to Julia. That was a decision Mrs. Lambrecht was entitled to make, whether or not Christopher believed Julia was a worthy recipient.

[119] I am not satisfied that Christopher has established, on a balance of probabilities, that Mrs. Lambrecht was in a relationship of dependency with Julia that allowed Julia to dominate her.

[120] On balance, the whole of the evidence establishes that in 2004 Mrs. Lambrecht understood she was gifting the family home solely to Julia through the right of survivorship. In many conversations with her friends in the following years, she clearly demonstrated an understanding of the gift she had made, stated her reasons for the gift, and acknowledged the gift would result in Christopher not receiving a share of the family home.

**Should any of the executor orders be made?**

[121] In her 2014 will, Mrs. Lambrecht named Julia as executor, and Christopher as alternate executor.

[122] In his application, Christopher sought various orders which would flow had I found that Mrs. Lambrecht had not intended to gift the family home to Julia. These included orders for such things as a declaration of trust, restraining Julia, transferring title to the family home, tracing funds received by Julia from the family home, etc. None of these orders are granted, as I have found Mrs. Lambrecht intended to gift the family home, and the presumption of resulting trust has been rebutted.

[123] Christopher also sought orders removing Julia as executor of the estate of Mrs. Lambrecht, and requiring Julia to pass her executor accounts.

[124] The concerns Christopher has with Julia remaining as executor flow from his position that she holds the family home on a resulting trust. He argues that if she is living in the house, which is an estate asset, that creates a conflict of interest.

[125] Christopher presented no evidence of malfeasance in the administration of the estate.

[126] Christopher has established no basis to have Julia removed as executor of the estate of Mrs. Lambrecht.

**Disposition**

[127] The claims of the plaintiff are dismissed.

[128] The Certificate of Pending Litigation filed on behalf of the plaintiff against the property at 876 Patterson Avenue, Kelowna, British Columbia, legally described as PID: 008-723-966, Lot A, District Lot 136, Osoyoos Division Yale District, Plan KAP46835, is cancelled.

**Costs**

[129] Julia sought special costs against Christopher on the basis that he advanced unfounded allegations of undue influence. Christopher submitted that further argument may be needed on costs following my decision.

[130] If they chose, the parties may submit written submissions on costs, through the registry, with Julia filing her submissions no later than 30 days after the date of this decision, Christopher filing his submissions no later than 20 days after Julia filed her submissions, and Julia filing her reply submissions no later than 5 days after Christopher's submissions.

[131] If the parties chose not to make further submissions on costs, I order ordinary costs to the defendant Julia Lambrecht.

"W.A. Baker J."