

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Brar v. Gill*,  
2017 BCSC 186

Date: 20170203  
Docket: S103170  
Registry: New Westminster

Between:

**Narinder Kaur Brar also known as  
Narinder Kaur Gill**

Plaintiff

And

**Iqbal Singh Gill and  
Parminder Kaur Gill**

Defendants

- and -

Docket: S102615  
Registry: New Westminster

Between:

**Iqbal Singh Gill and  
Parminder Kaur Gill**

Plaintiffs

And

**Narinder Kaur Brar**

Defendant

Before: The Honourable Mr. Justice Grist

## Reasons for Judgment

Counsel for the Plaintiff and  
Defendant by Counterclaim,  
Narinder K. Brar:

K.S. Taunk

Counsel for the Defendants and  
Plaintiffs by Counterclaim,  
Iqbal S. Gill and Parminder K. Gill:

S.S. Grewal

Place and Dates of Trial/Hearing:

New Westminster, B.C.  
June 15-17, 19, 2015  
October 19-23, 2015  
June 6-10, 2016  
August 4, 2016

Place and Date of Judgment:

New Westminster, B.C.  
February 3, 2017

[1] The subject matter of this action is a house located on 88A Avenue in Surrey, British Columbia. The land title registration shows the property registered in the names of the three parties as joint tenants: Narinder Kaur Brar, also known as Narinder Kaur Gill (referred to herein as the plaintiff); her older sister, Parminder Kaur Gill, and her sister's husband, Iqbal Singh Gill (referred to herein as the defendants). Two actions have been filed raising issues relating to the parties' beneficial interest in this home: New Westminster Registry S.C. File Nos. S103170 and S102615. Iqbal and Parminder Gill commenced the first action by way of petition. Narinder Brar brought the second action by way of a notice of civil claim. Master Keighley made an Order dated May 28, 2015 which joined these two actions for trial together. Both actions concern whether the plaintiff is entitled to a one-third beneficial interest in the property, as indicated by the Certificate of Title. The action brought by Ms. Brar also asks for relief under the *Partition of Property Act*, R.S.B.C. 1996, c. 347, for a sale of the property and distribution of the proceeds.

### **BACKGROUND**

[2] The defendant, Parminder Gill, is five years older than her sister, Narinder Brar. In the early 1990s, arrangements were made for the sisters to marry two brothers, Iqbal and Aqualjit Gill. Parminder married Iqbal in 1992 and joined her husband in Montréal in 1993. Iqbal Gill had immigrated to Canada in 1987. Narinder lived with her mother in India and attended school until 1996, when she and her mother came to Canada. Parminder and Iqbal Gill sponsored their immigration. Parminder and Narinder's mother, Ranjit Brar, did not stay long in Canada and returned to India to see to other family obligations. From the fall of 1996, Narinder lived with her sister and brother-in-law and their two children until November 1997, when she returned to India to marry Aqualjit Gill.

[3] Narinder Brar returned to Canada after the marriage and the plan was for her to sponsor her husband's immigration so that he could join her. However, in September 1998, Aqualjit Gill died. Narinder and her brother-in-law, Iqbal Gill, left Canada to go to India to attend the funeral. Iqbal returned soon after the funeral but Narinder stayed in India until March 1999, to try to settle her entitlement to land her

husband had owned before he died. This became somewhat of a drama amongst the family members that went on for a number of years after her return to Canada.

[4] Narinder Brar returned to Canada to live with her sister and brother-in-law. In February 2000, Parminder and Iqbal Gill located the house which is the subject of this action.

[5] The parties purchased the house pursuant to an interim agreement prepared February 19, 2000. After some negotiations on price, the sale price was determined the next day at \$250,000. On acceptance of the offer a \$5,000 deposit was paid. The completion was to occur on March 31, 2000. The sale was subject to the purchaser arranging satisfactory financing by February 29, 2000. The sale contemplated that the sellers would continue to live in a part of the house for a period of time and pay rent while they remained in the premises.

[6] Ultimately, the parties secured a TD Canada Trust mortgage which provided them \$187,500 towards the purchase price and the “subject to financing” condition was removed. The balance required to complete was paid to the notary acting for the purchasers, Mr. Dhama Sahota, by a draft drawn on the defendants’ account with the Bank of Montreal in the sum of \$56,363.83. Mr. Sahota had prepared the transfer document listing all three parties as transferees. He also prepared the Form B mortgage document showing the three as mortgagors. The parties signed these documents in his office on March 29, 2000. The vendors signed the transfer documents and the transfer went ahead on March 31, 2000, the date set for completion.

## **THE EVIDENCE**

### **Evidence of the defendants**

[7] The defendants’ evidence relating to the purchase of the property was as follows:

1. the defendants had been looking for a residence for their family off and on for some time before they found the house on 88A Avenue in Surrey;
2. Parminder said she approached her sister Narinder sometime before Christmas 1999 to settle monies the defendants say the plaintiff owed them, beginning with the sponsorship fees the defendants paid when Narinder and her mother came to Canada. Parminder said they agreed that the expenses amounted to \$20,050 and that Narinder would pay \$20,000 to settle accounts;
3. on February 11, 2000 Narinder transferred \$20,000 from her account to a one-year GIC account in the name of Iqbal and Parminder Gill. The defendants cashed in this GIC account and transferred the funds to their Bank of Montreal joint account, upon which the draft was drawn to complete the purchase of the house;
4. also on February 11, 2000 Narinder transferred a further \$5,000 from her account to a one year GIC in her name. She cashed in the GIC account and remitted the funds to her account on March 20, 2000. On the same day \$6,000 was taken out of this account by Iqbal Gill, who apparently had access to it. Mr. Gill's evidence was that he borrowed the \$6,000 from Narinder for some other purpose than the purchase of the house, but he could give no details of what he used the money for;
5. the defendants became aware that the house on 88A Avenue was up for sale shortly before they made their original offer on February 19, 2000. The sellers rejected this offer and further negotiations settled the purchase price at \$250,000 on February 20, 2000. As earlier indicated, the interim agreement set a subject removal date of February 29, 2000 and a completion date of March 31, 2000. Originally the defendants only made page 3 of the interim agreement available in their evidence, a page that detailed the subjects to the offer. However, later in the trial

the earlier pages were located and put to the defendants in cross-examination. The full document showed the purchasers as Iqbal and Parminder Gill and an (unnamed) nominee;

6. at some point, the defendants applied to TD Canada Trust to determine their mortgage eligibility and learned that they did not qualify for the mortgage they needed to finance the purchase. The defendants say that the real estate agent acting for them in the transaction and the mortgage broker who was dealing with them in respect of the mortgage suggested they should have Narinder join in the application for financing. They submitted a letter referencing the terms of her employment for this purpose. TD Canada Trust approved the joint application and the subject referring to financing was removed;
7. a Notary Public, Mr. Sahota, took instructions and prepared the transfer document and the TD Canada Trust mortgage. He advised that \$56,363.83 was required to complete the transaction;
8. Parminder and Iqbal Gill accumulated enough funds in their joint account to complete the purchase. This included cashing in the \$20,000 placed in the GIC from Narinder's account. Iqbal Gill said he borrowed \$10,000 US from a cousin and two \$5,000 amounts from other cousins. Parminder Gill's evidence was that she cashed in RRSP accounts in her and her husband's name and monies they had deposited to accounts in their children's names. They introduced in evidence the page from their bank book showing account activity from February 21, 2000 to March 6, 2000 which showed a deposit of \$5,000 and a deposit of \$9,998.15 on March 1, 2000. The second deposit appears to have been the Canadian dollars received from an American currency exchange;
9. the balance in the defendants' joint account on March 6, 2000 was \$23,927.98. The next page of the bank book put into evidence showed

the transactions beginning March 29, 2000. On this date the balance was \$60,702.62 and the first entry was the \$56,363.83 withdrawn to purchase the draft required to fund the completion of the property purchase;

10. the parties attended at Mr. Sahota's office to complete the documentation. The transfer listed the plaintiff and the two defendants as transferees and the mortgage listed all three as mortgagors. Mr. Sahota's evidence was that his practice was to ask how multiple parties were to be listed on title, explaining the difference between joint tenancy and tenancy in common, in Punjabi if necessary. The three parties voiced no objection to the documentation and the conveyance was completed the next day.

[8] Following the purchase of the house, the parties moved into the basement suite and the vendors occupied the upstairs until the end of 2000. At that time the parties moved upstairs and rented out the basement suite for approximately \$600 per month.

[9] Iqbal Gill purchased a pizza take-out and delivery business in the summer of 2000 and he, Parminder, and Narinder were involved in its daily operations.

[10] In January 2002, Narinder Brar left for India. She returned in July 2002. Her sister, Parminder Gill, left for India in April 2002 and remained in India until April 2003. The reason that Parminder left Canada was far less than clear. She said she went to help settle her sister's entitlement to property owned by Aqualjit Gill at the time of his death. Narinder denied this and complained that the property in question ended up in her sister's name. The sisters' mother, Ranjit Brar also complained of Parminder's interference in dealing with land she had an entitlement to. In addition to these complaints, while Parminder was in India a further family dispute arose over allegations that Iqbal Gill and Narinder were involved in an affair.

[11] When Parminder Gill left for India in April 2002, her husband and two young children remained in the home in Surrey. The children were apparently cared for by their father, a family friend, and Narinder Brar on her return to Canada in July 2002. The children's maternal grandmother, Ranjit Brar, also cared for them for six to seven months.

[12] Parminder Gill said that while she was in India, her mother informed her that she had found Iqbal and Narinder in compromising circumstances. Parminder said that when she returned she confronted her husband, who admitted the affair to her.

[13] The allegation of the affair caused considerable conflict in the home and at the pizza business. This conflict carried over to India, when the family went to Narinder Brar's wedding to her second (and present) husband, which occurred on July 3, 2003.

[14] On Narinder Brar's return from the wedding in August 2003, she took a separate residence and the parties remained at odds.

[15] Somewhat coincident with these conflicts, the defendants say they first learned of the joint ownership of the 88A Avenue house with Narinder Brar. Iqbal Gill said in his evidence that he did not know of the joint ownership until he approached a mortgage broker to try and negotiate a better mortgage rate in March 2003. Iqbal said the mortgage broker pointed out the joint ownership and he was surprised his sister-in-law was on title. He said he telephoned his wife in India and informed her that Narinder was on title. When Parminder Gill returned in April 2003, she and Iqbal approached Narinder about it. The defendants said that the plaintiff also did not realize that she was on title and she agreed to transfer her interest. However, she did not want to deal with the transfer until after her wedding. The defendants approached another individual to act as a co-covenantor under the mortgage and had documents prepared, but nothing further transpired in this regard.



### Evidence of the plaintiff

[16] Narinder Brar's evidence was significantly different. She said she made a full contribution to the down payment for the house and denied she owed the defendants the money her sister claimed as outstanding in December 1999. She denied there was any agreement that she pay \$20,000 to settle accounts. Narinder also said the \$20,000 transferred to the GIC in the defendants' names, along with the \$6,000 that Iqbal Gill took from her account in March 2000, were funds she contributed to the down payment.

[17] Narinder Brar denied she had an affair with her brother-in-law, and denied she agreed to transfer her one-third interest to the defendants. She said, at one point, her brother-in-law asked her to sign some papers, which she would not do without reading them. Her evidence was that she was agreeable to settling her entitlement, but this was to include reimbursement for her contribution to the house purchase and a transfer back to her of the property in India. At one point in late 2003, she agreed to list the 88A Avenue property for sale but said her instructions to the real estate agent were that her one-third share should be kept in a separate account. The listing never went ahead.

## DISCUSSION

### The applicable law

[18] British Columbia has a modified Torrens system for land title registration. Under s. 23(2) of Part 3 of the *Land Title Act*, R.S.B.C. 1996, c. 250 the State of Title Certificate has the following significance:

(2) An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title

... .

[19] This section creates a statutory presumption in favour of the legal and equitable interest indicated by the Title. Specifically, in this case the presumption is that the plaintiff and defendants hold the property in fee simple as joint tenants. One

of the unities incumbent in a joint tenancy is unity of interest, meaning that the three parties share equal interests in the ownership of the property.

[20] The statutory presumption created by s. 23(2) of the *Land Title Act* can be rebutted in limited circumstances where the facts establish a right to equitable relief. In *Suen v. Suen*, 2013 BCCA 313 at para. 34, D. Smith J.A. outlined the issue in that case and the law applicable to its resolution as follows:

[34] The central issue to be determined by the trial judge was whether the statutory presumption of indefeasible title as to the joint ownership of Capstan Way was rebutted by either of the parties. This Court has endorsed three considerations for determining this issue:

- (i) the operation of a resulting trust which may be inferred where no value is given for a legal interest;
- (ii) the operation of an agreement between the parties that is contrary to the registered legal title; or
- (iii) taking into account the underlying equitable interests between the parties (e.g., considerations that arise in claims for unjust enrichment).

See *Bajwa v. Pannu*, 2007 BCCA 260, paras. 12-14, 18, and 23; and *Aujila v. Kaila*, 2010 BCSC 1739, paras. 31-36.

### **The defendants' arguments**

[21] In this case the defendants argue for the recognition of a resulting trust in their favour. They say that the plaintiff's listing on title was only for the purpose of securing financing and she can take no beneficial interest.

[22] The defendants' second argument is that the plaintiff agreed from the outset that she would hold no beneficial interest in the property and would transfer her legal interest when the defendants requested she do so. The defendants say she reneged on this assurance and refused to transfer the property when they had documents prepared for this purpose, and after assuring others close to the family that she would transfer her interest in the house to them.

[23] Lastly, the defendants' claim for unjust enrichment centres on the fact that they paid all of the required mortgage payments, taxes, and costs of insurance, upkeep and maintenance associated with the property. The defendants submit that

these contributions resulted in a benefit in favour of the plaintiff's interest and a corresponding deprivation suffered by the defendants, all without legal justification.

**Did the defendants gratuitously transfer Narinder Brar's interest to her?**

[24] The defendants bear the onus of rebutting the statutory presumption of indefeasible title in s. 23(2) of the *Land Title Act*. As a general observation, the evidence significantly challenges the defendants' argument that the creation of the plaintiff's interest gave rise to a resulting trust. First, it is inherent in a resulting trust that the legal owner's interest is a gratuitous one: *Pecore v. Pecore*, 2007 SCC 17 at paras. 20, 24 and 27. In this case the plaintiff is a co-mortgagor and jointly obliged to the mortgagee, TD Canada Trust. As in *Virk v. Pannu*, 2006 BCSC 921, this form of contribution to the acquisition of the property can be recognized as a contribution towards acquiring the property and support for the legal interest recorded on title. Further, the plaintiff says she contributed to the down payment, a contribution amounting to more than one-third of the funds required to complete the purchase.

[25] I will deal first with the defendants' argument that they gratuitously transferred Narinder Brar's interest in the property to her, giving rise to a presumption that she held this interest in trust for them. The defendants say the plaintiff gave them the \$20,000 to repay monies that she owed them and Narinder gave Iqbal Gill the \$6,000 as a loan for some purpose other than the down payment for the property.

[26] Parminder Gill's evidence of the meeting with her sister before Christmas 1999 referred to various expenditures she said she and her husband had paid for her sister since Narinder Brar came to Canada. These included:

	<b>Amount</b>	<b>Explanation</b>
1.	\$1,250	An immigration sponsorship fee the couple paid when Narinder first came to Canada in 1996
2.	\$1,800	The airfare Parminder said her husband paid for Narinder when the family travelled to India for Narinder's first marriage in November 1997
3.	\$2,000	The amount of a wedding gift given to Narinder by a family friend, which the defendants say they paid back after the bridegroom died
4.	\$1,500	The immigration fees the defendants said they paid on July 2, 1998, forwarded with the application for Aqualjit's immigration to Canada
5.	\$7,000	The amount the defendants said they transferred to Narinder's account in July 1998 to show funds in her account to bolster the application to sponsor

		Aqualjit
6.	\$1,700	The airfare the defendants said they paid for Narinder to attend Aqualjit's funeral in September 1998
7.	\$300	Cash which Parminder said she deposited into Narinder's account to cover an outstanding bill while Narinder was away in India
8.	\$4,500	Cash which Parminder said she deposited into Narinder's account on March 5, 1999, a date Parminder said was just prior to Narinder's return to Canada. Parminder said she paid the money into her sister's account because her sister wanted to move out on her own
	<b>\$20,050</b>	<b>Total</b>

[27] Parminder Gill said the parties agreed to settle the total of \$20,050 owing by a payment of \$20,000. There was no written listing of the items or memorandum of what was to be paid.

[28] Narinder Brar contested each of these items. She said there was no agreement that she would reimburse the defendants for the fees associated with her immigration to Canada in 1996. Her evidence, confirmed by her mother, was that the defendants had assured them that they (the defendants) would pay the sponsorship fee and neither Narinder nor her mother would have to repay anything for their entry into Canada.

[29] The airfare items were not backed by any invoices and Narinder Brar said she had earlier paid back any amounts owing. She also said that she had provided the funds needed to pay back the family friend and denied needing any money placed in her account to aid in the immigration application for her first husband. It also appears that the whole family and in particular, Iqbal Gill, supported Aqualjit Gill's immigration and it was unclear why Narinder alone would be responsible for any fee.

[30] Narinder Brar also denied receiving \$7,000 to bolster her bank account for immigration purposes. She said that this was money the defendants paid back to her after she lent them funds when they were in India for her wedding. Lastly, Narinder said that the \$4,500 deposit made to her account on March 5, 1999 was money she deposited to her account on her return to Canada.

[31] Dealing with these items in turn:

1. There is little evidence to support the defendants' contention that the plaintiff was to reimburse them for the immigration fee paid in 1996. Both Narinder Brar and her mother testified that the defendants assured them that they (the defendants) would be responsible for the fee.
2. The airfare amounts paid to travel to India are approximate numbers only. Mr. Randawa, a family friend, gave evidence that he paid for the flights to India in September 1998 and that Iqbal Gill reimbursed him. I accept this evidence, but it is unclear to me why the amount remained outstanding if Narinder Brar was to be responsible for it. She maintained a bank account balance of between \$11,500 and \$23,700 from January 1999 to January 2000, for example. It is difficult to understand how she accumulated these funds on the low wages and minimal employment she had during this time, but it is clear she had sufficient funds to have paid back any of these debts prior to the end of 1999, if she were in fact responsible for the repayment.
3. The immigration fee for Aqualjit Gill was \$1,475 and not the \$1,500 referred to; and the record of payment from the federal agency lists Narinder Brar as the person who paid the fee. There is a record of a withdrawal of \$1,500 from the defendants' account at the approximate time the fee was paid; however, the record of the withdrawal does not record that the money was transferred to Narinder's account, nor is there a record of her account activity at the relevant time.
4. There is no support for the payment of \$7,000 being required to bolster the appearance of assets to help with the immigration application for Aqualjit Gill. The evidence of Mr. Groos, a lawyer with experience in immigration matters, established that sponsorship depends on income, not assets. The amount held in the bank account would be irrelevant.

In any event, Narinder Brar's account had sufficient funds before December 1999 to repay this money, if in fact she agreed to do so.

5. Parminder said she deposited the \$300 into Narinder's account in February 1999 and the \$4,500 on March 5, 1999 to ensure there was enough in the account to pay an outstanding bill. Parminder also said the \$4,500 was to provide money for Narinder so she could move out when she returned from India. Parminder said she had the \$4,500 in cash at home, accumulated from her husband's cash tips from his work as a pizza delivery driver.

[32] Narinder Brar required neither the \$300 nor the \$4,500 for the reasons put forward by Parminder Gill. Narinder's account had an \$11,000 to \$12,000 balance when each of these payments was made. Further, there is no payment of a debt made from the account that might have corresponded with the \$300 deposit.

[33] There is a difference in the evidence as to when Narinder Brar returned to Canada, either March 1, 1999 or March 7, 1999. The immigration stamp on her passport is ambiguous as to which date is correct. Narinder says she returned on March 1, 1999 and deposited the \$4,500 after that.

[34] Ultimately, I can find no convincing evidence that the parties agreed that the plaintiff owed the defendants \$20,500 in December 1999, nor that they agreed that she would pay \$20,000 to settle the debt.

[35] The documented transfer of the \$20,000 held in the GIC was approximately two months later: eight days before the offer was presented on the 88A Avenue house, and during the time the defendants were actively searching for a property.

[36] The further \$6,000 came from Narinder Brar's bank account on March 20, 1999, prior to the closing on March 31, 1999. Of this amount, \$4,000 was apparently repaid sometime after the closing, but the balance was never accounted for.

[37] The defendants have left largely undocumented how the funds required to complete the purchase were accumulated. The incomplete bank book records presented by the defendants leave a gap from March 6 to March 29, 2000. During this time, the balance on deposit increased from approximately \$24,000 to \$60,700. The transfer of \$20,000 from the GIC would have added to the earlier account balance, but there is still an increase in the balance of \$16,700 which stands undocumented. The defendants say this increase was from the RRSPs they cashed in and monies held in their children's accounts. There is no record of RRSPs being contributed to in the defendants' prior tax returns or of any money held in children's accounts. In fact, looking at the tax returns of all three of the parties, it is difficult to understand how the household could have accumulated the large down payment (approximately \$61,000 of the \$250,000 sale price) on the minimal incomes that are recorded in the previous years. The tax returns showed the following:

	1998 Total Taxable Income	1999 Total Taxable Income
Iqbal Gill	\$125.41	0
Parminder Gill	0	\$15,304
Narinder Brar	\$7,766.21	\$3,322

[Note: Parminder Gill's income is taken from the references to spouse's net income in Iqbal Gill's returns.]

[38] As a further matter of undocumented evidence, there is no record of an application made to secure mortgage financing. The defendants say they did not qualify on their own and needed Narinder Brar's assistance to show sufficient income, but there is no record of when they made the original application, when the joint application was put forward, and what sum it qualified them to receive. The chronology of this would have aided in helping settle the vagaries in the evidentiary record.

[39] It is also worthy of comment that the defendants did not produce the entire interim agreement in their evidence. When questioned on cross-examination they first denied the interim agreement mentioned a nominee. When confronted with the

document, they fell back to asserting they had no intention of nominating anyone at the time. Their presentation during this aspect of the evidence was unconvincing.

**Did the parties agree that Narinder Brar would not take a beneficial interest in the property?**

[40] Both of the defendants say they did not know Narinder Brar had been placed on title to the property until early in 2003. Iqbal Gill was apparently shocked to learn of this. If so, this was the case even though the practice of Mr. Sahota, the notary, was to explain the nature of the joint ownership being created. In addition, the property tax information sent out each year showed all three parties as joint owners.

[41] The evidence of others associated with the family was that Narinder did not appear to know she was on title and appeared willing to transfer her interest when it became an issue. These individuals, were well-intentioned family friends, however, they did not have extensive knowledge of the interaction between the parties at the relevant times.

[42] In the initial affidavit sworn December 1, 2006 and filed after the defendants brought the first action by way of petition, Iqbal Gill stated at paras. 13 and 14:

13. That the Respondent was accordingly registered on title purely to facilitate and enable my wife and I to obtain a mortgage from the lending institution, TD Canada Trust.
14. It was always the intention and agreement between the parties that the Respondent would hold her share in trust for the Petitioners.

[43] These statements are inconsistent with the assertion at trial that the defendants never knew that Narinder Brar was on title and compromise the defendants' present contention that her interest was essentially a mistake, created without any material contribution on her part.

[44] Because of the lack of supporting evidence and the contradictions indicated above, I am not satisfied to the civil standard of proof that the circumstances of Narinder Brar appearing on title gave rise to a resulting trust in the defendants'



favour. Nor am I satisfied that the parties agreed at the time or afterward that the plaintiff would gratuitously transfer her interest to the defendants.

### **Paydown of the TD Canada Trust mortgage**

[45] The final matter relates to paydown of the mortgage. Prior to Narinder Brar leaving the house in August 2003, the parties lived in the same premises and worked in the same business. All three were responsible for the mortgage and held the joint account from which the mortgage payments were deducted. There is similar disagreement in respect of contributions to the household to this point in time, as exists on the other issues.

[46] Once Narinder Brar left, however, it is clear that the defendants paid all the taxes, insurance and mortgage payments without contribution by the plaintiff. The defendants also occupied the premises and received the rent from the downstairs suite, which I consider to be of comparable value to what they spent, except in respect of the paydown of the TD Canada Trust mortgage. Accordingly, I find that any paydown of the mortgage after August 2003 to have been attributable to their management of these expenses and a source of unjust enrichment with respect to the plaintiff's registered interest on title. Accordingly, any paydown in the outstanding mortgage from August 2003 to the present should be a credit to the defendants.

[47] In other respects the plaintiff is entitled to partition of her interest in the property, and if it comes to it, one-third of the net sale proceeds after accounting for the paydown of the mortgage debt indicated above.

“W.G. Grist J.”