

CANADA / JUDGMENT

685946 B.C. Ltd. v. 0773907 B.C. Ltd.

2024 BCSC 997

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 997 685946 B.C. Ltd. v. 0773907 B.C. Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

685946 B.C. Ltd. v. 0773907 B.C. Ltd.,

2024 BCSC 997

Date: 20240607

Docket: S211357

Registry: Vancouver

Between:

685946 B.C. Ltd.

Plaintiff

And

0773907 B.C. Ltd., 1036861 B.C. Ltd, 1129354 B.C. Ltd., and

Randeep Nijjar also known as Nick Nijjar

Defendants

And

Randeep Nijjar also known as Nick Nijjar

Third Party

Before: The Honourable Justice Girn

Reasons for Judgment

Counsel for the Plaintiff:

R. Morse

D. Boere, Articling Student

Counsel for the Defendant, 0773907 B.C. Ltd.:

M. Laity

Counsel for the Defendant, 1036861 B.C. Ltd.:

L. Williams

Counsel for the Defendant, Randeep Nijjar:

N. Ganapathi

(appeared on April 3-5, 11-14 and

June 12-16, 2023)

Place and Dates of Trial:

Vancouver, B.C.

April 3-5, 11-14, 2023

June 12-16, 2023

November 20, 22-23, 2023

Place and Date of Judgment:

Vancouver, B.C.

June 7, 2024

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Overview

- [1] This matter is a commercial dispute involving a number of companies that are controlled by individuals from the same family. It has a complicated history consisting of multiple actions and various applications in this Court. As all of the relevant parties involved in these proceedings share the same surname, I will refer to them by their first names. By doing so, I mean no disrespect.

- [2] The dispute before me involves a series of transfers of funds from one company to other companies, and alleged unpaid loans.
- [3] Specifically, the plaintiff, 685946 B.C. Ltd. ("5946") alleges that the defendants are liable for conversion or detainee, or both, with respect to the unauthorized transfer of the funds by Randeep Nijjar ("Nick") to bank accounts of the defendants, 1036861 B.C. Ltd. ("6861"), 0773907 B.C. Ltd. ("3907") and 1129354 B.C. Ltd. ("1129") as well for his personal use.
- [4] The plaintiff further alleges the defendants are liable for the tort of conspiracy in relation to these unauthorized transfers.
- [5] As well, the plaintiff alleges that the plaintiff loaned a total of \$400,000 to the defendants, Nick and 6861, which has not been repaid. The plaintiff's demand for payment went unanswered. Nick controlled 6861 at the time the loan agreement was made.
- [6] The defendants, Nick and 1129, deny the allegations as they relate to any alleged unauthorized transfers to 1129. They argue that the transfers were authorized by the plaintiff and made in furtherance of the business carried on by the "Nijjar Family Enterprise". As well, the defendants say that they did not enter into any loan agreement with the plaintiff, and as such do not owe any money. Nick asserts that he owns 5946 and therefore was authorized to make the transfers to the other companies and to himself.
- [7] The defendant 3907 takes a different position and submits that it had no knowledge of Nick purporting to transfer the amount of \$30,000 into its bank account.

History of the Proceedings

- [8] As I have noted, these parties have a history of proceedings in this Court. Some of the litigation is still before the Court, while some has concluded. While I do not intend to provide an extensive summary, I consider it appropriate to review to a limited extent the various applications I have heard during this trial.
- [9] The trial was scheduled to commence on April 3, 2023, for seven days. On the first day of the trial, an agent for Nick and 1129 attended on behalf of counsel of record, Mr. Ganapathi, seeking to adjourn the trial. Plaintiff's counsel received no advance notice of the application to adjourn and thus opposed it. This was the second time the defendants sought to adjourn the trial. Nick and 1129, then self-represented, were successful in having the first trial, before Justice Mayer on December 5, 2022, adjourned.
- [10] After hearing submissions for two days on the adjournment application, I concluded that the trial would commence on April 11, 2023. At that point, it became clear that additional time would be required to complete the trial.

- [11] The plaintiff commenced the calling of its case on April 11, 2023. Five additional days were added, commencing on June 12, 2023. The plaintiff called two witnesses, its principals, Bhupinder Nijjar ("Bob") and Rajinder Nijjar ("Raji"). Numerous documents were tendered, as were transcripts from Nick's examination for discovery.
- [12] Nick and 1129 advised that an additional 21 days would be required because they intended to call some 22 witnesses at trial. The plaintiff advised they had not been provided with a witness list nor these witnesses' will-say statements. I note that Nick or his counsel failed to attend any of the scheduled trial management conferences and did not file trial briefs. On April 14, 2023, I heard submissions on whether Nick and 1129 ought to be permitted to call these additional witnesses. I rendered my judgment on May 29, 2023, wherein I permitted the defendants to call Nick and two additional witnesses, and not the 22 they wished to call: 685946 B.C. Ltd. v. Nijjar, 2023 BCSC 1037.
- [13] To allow the trial proceed in a more orderly fashion, I exercised my discretion and permitted Nick to represent 1129 while he himself was represented by counsel.
- [14] During the trial, Nick and 1129 brought an application that I recuse myself due to an apprehension of bias. This application was later withdrawn.
- [15] The trial continued on June 12, 2023, for another five days. By the end of this week, the plaintiff had closed its case and the defendants, Nick and 1129, commenced calling evidence of their case. Rajeev Nijjar, Nick's brother ("Rajeev"), was the first witness called by the defendants. His direct examination did not complete and the trial did not conclude. Consequently, two additional weeks were scheduled commencing November 20, 2023.
- [16] I also granted leave for Nick and 1129 to bring an application to amend their pleadings. The plaintiff vehemently opposed. Once again, in exercising my discretion, a hearing was scheduled for July 7, 2023. However, Mr. Ganapathi unilaterally cancelled this date claiming that I was biased. I note that a new application on bias was never brought forward by Nick and 1129.
- [17] When the parties appeared before me for a judicial management conference on August 3, 2023, Mr. Ganapathi advised that he still intended to bring an application to amend pleadings despite cancelling the previously scheduled date.
- [18] On September 22, 2023, I heard submissions of counsel. On September 28, 2023, I declined to permit the defendants, Nick and 1129, to bring another application for leave to amend their pleadings: 685946 B.C. Ltd. v. Nijjar, 2023 BCSC 1847.
- [19] On October 11, 2023, Nick filed a notice of intention to act in person, replacing Mr. Ganapathi. Nick then began representing himself and 1129.
- [20] On the morning of November 20, 2023, Nick failed to attend court for the continuation of the trial. A family member telephoned Supreme Court Scheduling advising that Nick was ill and could not attend. The plaintiff's counsel was not advised in advance, and only became aware

of this when court commenced. The plaintiff opposed any adjournment of the trial arguing that this was yet another strategic move by Nick to delay the trial and wear down Bob and Raji, Nick's elderly parents. Relying on Rule 12-5(76) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, the plaintiff implored the Court to continue with the trial in Nick and 1129's absence.

- [21] After carefully considering all of the circumstances, on November 23, 2023, I concluded that the trial must continue in the absence of Nick and 1129. No other evidence was heard from the defendants, Nick and 1129. As well, 3907 did not lead any evidence at trial. 6861 is in receivership and was previously excused from the trial. The plaintiff proceeded with their final argument.

Background Facts

- [22] Due to the number of companies and individuals involved, it is important to provide details to provide proper context.

The Parties and Companies

- [23] The plaintiff 5946 is owned by Bob and Raji. They are an elderly married couple. Bob has ongoing health issues. They have three children: Karen Nijjar ("Karen"), Rajeev Nijjar ("Rajeev"), and Nick. Nick is the youngest child. Rajeev and Karen are not involved in this specific litigation, although Rajeev is a party in another proceeding in this Court involving these family members and their companies.
- [24] Bob and Raji testified at the trial. I have considered the oft-cited factors in assessing credibility as summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398, *aff'd* 2012 BCCA 296:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

- [25] Ultimately, I found both Bob and Raji to be credible and reliable witnesses. It could not have been easy for them to launch proceedings against their youngest son. This was evident during Raji's testimony. She was emotional in providing evidence about working full time while raising her children without family support and finding themselves now embroiled in this litigation against Nick.
- [26] Both Bob and Raji were good historians. They did not embellish the facts, but rather provided their evidence in a matter of fact way.
- [27] Bob and Raji immigrated to Canada in the 1970s. Bob worked for Air Canada, while Raji initially worked as a receptionist and then at a bank. She then worked as a real estate agent, when the children were young. Eventually, she went on to work as a notary public.
- [28] While working at their day jobs, Bob and Raji also began investing in real estate, developing land and building homes. Later, Bob and Raji moved into purchasing and operating hotels in both Canada and the United States. Through hard work and good investments, they were able to build significant wealth both through real estate developments and the hotel business. Their children benefitted immensely from their parents' hard work.
- [29] Both Bob and Raji testified that they have had many businesses and companies over the years, each incorporated for a specific project. I will only provide details on the companies relevant to this litigation.

685946 B.C. Ltd.

- [30] 5946 is a company duly incorporated in British Columbia. It currently owns and operates the Quality Hotel in Richmond, British Columbia. It is also referred to as the Quality Hotel Company. Raji and Bob incorporated 5946 in 2004, after successfully building and selling homes for many years, and making their first hotel purchase in Vancouver with two partners in 2001.
- [31] Bob and Raji assert that they are the sole shareholders and directors of 5946. Nick disputes this, and says that he also has an interest in 5946. Share certificates for 5946 were tendered into evidence, which show Bob and Raji each have 100 Class A common shares. As well, the central securities register, also tendered as evidence, lists Bob and Raji as the only shareholders as of January 26, 2004.
- [32] Raji testified that when 5946 was first incorporated, it was a shell company. However, over the years, 5946 has purchased and operated a number of hotel businesses, including purchasing the Chieftain Hotel in Squamish in 2005. Bob and Raji testified that they alone financed the purchase of this hotel, and Nick did not contribute anything nor did he manage the Chieftain Hotel. In fact, he was still in university at the time of the purchase and a manager was hired to run the operations.

- [33] Bob testified that he did not have any discussions with Nick about Nick sharing profits or ownership of 5946. Bob asserted that this company belongs solely to him and Raji. Raji confirmed this. Neither witness was shaken in cross-examination on this issue, and there is no other admissible evidence to the contrary.
- [34] Nick was a director for a period of time when 5946 was initially incorporated and operated as a shell company. However, corporate records show that he was replaced with Raji when the Chieftain Hotel was purchased. Raji testified that, since then, only she and Bob have been the shareholders and directors of 5946. There is no admissible evidence to the contrary.
- [35] In 2008, 5946 purchased the Quality Hotel in Richmond. The purchase was financed by 5946, Bob and Raji. Once again, both Bob and Raji testified that Nick did not provide any money to purchase the Quality Hotel.
- [36] Bob testified that a hotel manager, Mr. Khanna, was hired to take care of the day-to-day management. After he completed university, Nick was then hired as the general manager at the Quality Hotel. Bob and Raji had hoped this opportunity would assist Nick in learning about the hotel business. Nick was paid \$5,000 per month for this position and it was expected that he would work full time. However, Raji testified that Nick did not do so, and that Mr. Khanna continued to take care of the day-to-day management of the Quality Hotel. Nick worked at the Quality Hotel from 2008 until late 2010 or early 2011.
- [37] In 2013, the Chieftain Hotel was sold. The only hotel currently owned by 5946 is the Quality Hotel. Bob and Raji own a number of other hotels in the United States with other partners.
- [38] Bob and Raji also own a property with their eldest son, Rajeev. Although Rajeev is a lawyer, he began investing in real estate with Bob sometime in 2004 when they jointly purchased an apartment building. Currently, Bob and Rajeev jointly own another hotel in the Lower Mainland.

1036861 B.C. Ltd.

- [39] 6861 was incorporated in May 2015 by Bob for the purpose of developing land purchased by Bob on Dunbar Street in Vancouver into two single family homes: 3953 West 32 Avenue and 4788 Dunbar Street (the "Dunbar Properties"). Bob testified that he wanted Nick to learn the business and placed Nick in charge of the construction. Two companies were incorporated for this purpose: 6861 and 1037043 B.C. Ltd.
- [40] Although the project was funded by Bob, Nick and Bob held equal shares in these two companies. A formalized partnership agreement was created wherein Bob agreed to purchase the land for \$1,815,717.55, and Nick agreed to manage the construction of the homes. Bob testified that Nick did not invest in the projects that Bob had involved Nick in. Bob and Nick agreed to divide profits equally once the completed houses were sold.

[41] Bob wanted Nick to assume responsibility for the project. So, in February 2016, Bob resigned as a director of 6861, leaving Nick as the sole director. However, after learning that Nick withdrew almost all of the money including sale proceeds from the two houses, on October 12, 2022, Bob successfully obtained an order for an appointment of a receiver over these two companies. Grant Thornton is the receiver and they have been excused from this trial.

1129354 B.C. Ltd.

[42] Nick is the sole shareholder of 1129. According to Raji, Nick told her that this company was used to purchase land in Abbotsford for a cannabis business in order to grow, process and distribute cannabis. Neither Bob nor Raji are involved in this company, nor have they invested any money in this company.

0773907 B.C. Ltd.

[43] 3907 was incorporated by Bob in 2006. He has been the sole shareholder but made Nick a director in February 2016. According to Bob, he added Nick because he wanted Nick to learn how to run a business. The company does not have any current active businesses or investments.

[44] After Bob learned that Nick had taken money from 5946, he removed Nick as a director of 3907. On April 18, 2021, Bob filed a Notice of Change of Directors in which he removed Nick and named himself as the sole director and shareholder.

[45] In its response to the notice of civil claim, 3907 says it had no knowledge of the unauthorized transfer to its bank account and that the allegations relate to Nick's conduct acting in his capacity as the sole director at the time of the transfer.

[46] 3907 has brought a third-party claim against Nick seeking a declaration that it is entitled to contribution and indemnity from Nick for any amount owed to the plaintiff. While 3907 was represented at the commencement of the trial, it was no longer represented by the time the trial concluded, due to delays and costs of the action. As such, I have no evidence that allows me to make a determination on this issue.

The Loans

[47] The plaintiff alleges that two loans of \$200,000 each were made to Nick and 6861 by Raji in February and June 2019.

[48] By February 2019, the Dunbar project had still not completed. Raji testified that Nick told her that he was not able to complete the Dunbar project due to a cash shortage and that he required an additional \$200,000 to complete the project. Raji agreed (on behalf of the plaintiff) to loan the money to Nick and 6861 on the condition that the loan would be repaid when the Dunbar Properties were sold. Raji wrote a cheque on which she wrote "Loan to the 1036861 B.C. Ltd." Raji also testified that she did not tell Bob she lent this money to Nick. Bob also confirmed that he was unaware of this loan to Nick.

- [49] In his examination for discovery, which was read into evidence, Nick acknowledged that he received \$200,000 on behalf of the 6861 and stated he used it for "his personal and company purposes", including his mortgage payment and living expenses. Nick also stated that "it was my businesses, and I used my business funds for my business and myself."
- [50] Raji testified that in June 2019, Nick asked her for further cash to finish the Dunbar Properties. Once again, she agreed to lend Nick and 6861, a further \$200,000 on the same terms as the February loan. On her cheque, Raji made the same notation: "Loan to the 1036861 B.C. Ltd." Once again it appears that Bob was unaware of this loan.
- [51] Both cheques were tendered into evidence which were authenticated by Raji. Her evidence of having written the notations concerning the amounts as being loans was corroborated by these cheques.
- [52] The two houses on the Dunbar Properties were finally completed and sold in late 2019 and early 2020. Bob testified that the sale proceeds from these two houses were approximately \$1.9 million. However, Nick failed to share the profits with Bob as agreed upon. After the second house sold, Raji testified that she asked Nick to repay the loaned amounts back to 5946, but that Nick told her that he required the money for another project.
- [53] After learning that Nick had taken almost all of the sale proceeds from the Dunbar Properties, on January 8, 2021, a demand letter was sent by the plaintiff to Nick and 6861 for repayment of the loans. To date, the loans have not been repaid. Nick confirmed non-payment in his examination for discovery.

Unauthorized Transfers

- [54] The plaintiff alleges that throughout 2019 and in early 2020, Nick caused various transfers to be made from the plaintiff's bank account to 6861, 3907, 1129, and to himself.
- [55] The plaintiff alleges that because Nick had access to the plaintiff's online banking information, he was able to make multiple transfers to these various companies and to himself.
- [56] The online transfers varied but did not exceed the online limit of \$25,000 per day. Nick acknowledged in his examination for discovery that he had access to the plaintiff's online banking and its daily transfer limit.
- [57] Raji testified that she and Bob gave Nick access to the plaintiff's online banking because the company's accountant, Mr. Leung, was not making timely bill payments. They asked Nick to set up automatic payments for the bills. The plaintiff alleges that Nick took advantage of the access and used it to make the numerous online transfers.
- [58] As well, the plaintiff alleges that Nick, purporting to act on behalf of 5946, wrote a cheque to 3907, a company he controlled. Finally, the plaintiff alleges that Nick made online transfers for payments to 1129's credit card and Nick's personal credit cards, and to purchase a

vehicle.

[59] As the sole directors of 5946, both Bob and Raji testified that they did not authorize any of these transfers or cheques, and that Nick did not ask for permission to make these transfers or write these cheques. Both Bob and Raji testified that at the time the transfers were made by Nick, they did not use online banking. As well, they both testified that only Bob and Raji were authorized to withdraw from 5946's bank accounts. Nick was not authorized to do so.

[60] On this point, Bob stated:

Well, he had access to the account, but he was not authorized to transfer money out to other companies. He was not authorized to transfer money and all that. That -- that authorize to the account was given when we were away or something. At that time, Raji have given him access to that account. Otherwise, there was no reason to give the account. I always sign the cheques, and she always, you know, looks after the account.

[61] Bob also testified that at the time the transfers were made in 2019 and 2020, Nick no longer worked for 5946.

[62] On January 31, 2020, Mr. Leung resigned from his position. After taking over the finances of 5946, Bob and Raji discovered that the company's financials contained numerous irregularities including missing documents. As a result, they ordered all of their historical bank statements from 5946's banks in order to conduct a comprehensive review of the company's finances.

[63] I pause here to note that Bob and Raji allege Mr. Leung stole millions of dollars from the plaintiff. The plaintiff has commenced legal action against Mr. Leung which is currently before this Court. As such, it would be inappropriate for me to make any comments on the veracity of the claims alleged by Bob and Raji against Mr. Leung.

[64] Bob and Raji only learned of the multiple transfers to Nick and the defendant companies when they were reviewing their bank statements.

Transfers to 6861

[65] It is alleged that Nick made twelve online transfers of \$25,000 from the 5946 bank accounts to a 6861 bank account, totalling \$300,000. They were made on the following dates:

- a. February 13, 2019;
- b. November 1, 2019;
- c. November 4, 2019;
- d. November 25, 2019;
- e. November 26, 2019;
- f. December 2, 2019;

- g. December 4, 2019;
- h. December 31, 2019;
- i. January 6, 2020;
- j. January 18, 2020;
- k. January 28, 2020; and
- l. January 29, 2020.

- [66] Regarding the first transfer on February 13, 2019, Raji testified that Nick told her that he required money for the Dunbar Properties, and that he had transferred \$25,000 from the plaintiff's bank account. She told him that he could not simply withdraw money from 5946's bank account and that it had to go through the proper channels. That is when she agreed to loan Nick the first \$200,000.
- [67] Nick's evidence from his examination for discovery is that he used the funds to pay for expenses on his own house including his mortgage and for general living expenses. Nick also confirmed that none of the transfers have been paid back to the plaintiff, claiming that the transfers were legitimate.
- [68] Bob and Raji both testified that they had no discussions with Nick regarding these transfers and they did not authorize Nick to make them.

Transfer to 1129

- [69] It is alleged that on October 27, 2019, Nick and 1129 made an online transfer for \$25,000 from the 5946 bank account to 1129's bank account. This transfer was used to make a payment on 1129's credit card ending in *1433.
- [70] Once again, Bob and Raji testified that they did not authorize Nick and 1129 to make this transfer.

Transfer to 3907

- [71] The plaintiff alleges that on July 31, 2019, Nick purported to act on behalf of 5946 and wrote a cheque to 3907 in the amount of \$30,000. In Nick's examination for discovery, he acknowledged that he had day-to-day control of 3907 between February 2016 and April 2021, was its only director, and that he wrote this cheque.
- [72] The plaintiff asserts that Nick was not authorized to write this cheque on behalf of 5946. Furthermore, in July 2019, 3907 was not engaged in any ongoing business. Bob and Raji testified that they were the only persons who had signing authority to write cheques on behalf of 5946.

Unauthorized Transfers by Nick for Personal Use

[73] The plaintiff alleges that Nick made the following online transfers from its bank account for his personal use to pay his personal credit card:

- a) October 15, 2019, a transfer of \$10,900; and
- b) October 27, 2019, a transfer of \$25,000.

[74] I note that a spreadsheet created by Nick was tendered at trial wherein Nick identifies this specific credit card as belonging to him.

[75] Bob and Raji testified that they did not know about these transactions and neither of them told Nick that he could pay his credit card with funds from the plaintiff's bank account.

[76] Finally, the plaintiff alleges that, on October 29, 2019, Nick issued a bank draft for \$11,800 from the plaintiff's bank account to Tesla Motors for the purchase of a Tesla vehicle.

[77] There is no dispute that this draft was made for a Tesla vehicle that Nick purchased. In his examination for discovery, Nick acknowledged that he used these funds to purchase his vehicle but claimed that Bob and Raji authorized it. Bob and Raji testified that they did not authorize the transaction and in fact did not know about it; only learning of it when they reviewed the plaintiff's bank statements after Mr. Leung's resignation. Once again, Bob and Raji testified that they were the only persons who were authorized to withdraw money from the plaintiff's bank accounts.

Nijjar Family Enterprise

[78] In his response to the plaintiff's claim, Nick asserts that the alleged transfers and loans were legitimate inter-company transactions made in the ordinary course of carrying on the business of what he refers to as the "Nijjar Family Enterprise".

[79] Bob and Raji dispute Nick's assertion. Bob testified that there is no such Nijjar Family Enterprise and there was no agreement that Bob, Raji, Nick and Rajeev would share in the profits generated by such an enterprise.

[80] Bob specifically dealt this in his testimony:

There is no Nijjar family enterprise. Right from day 1 when I start doing the business when the kids were growing up, we never have that - that system of business that all family together work on that different -- at one company. We always deal one project at a time with one company. And whoever the partner is, the way I deal with my sons as partners, the way I deal with other people as partners.

So just for example, if I have partnership with my other son Raj, we -- when we split 50-50, I just consider him just like any other partner. If the \$200 comes in there, he takes hundred; I takes hundred. If he put in a cash call, if you have to bring in hundred thousand dollar, I strictly go to him, "you got to bring in 50,000; I got to bring in 50." So I'm very, very articulate on that thing, that 50-50 means 50-50.

[81] Bob denied ever allowing their children, including Nick, to share in the profits of the companies owned by Bob and Raji. Bob testified:

We have no agreement with any of our kids to share any of the businesses. Unless that kid is a part of the business, the way he was in Knight Street and way he was in Dunbar Street, the way Raj is in the hotel business. And there's no other agreement between my sons and my daughter on any other business for sharing a profit.

Legal Framework

[82] The plaintiff alleges that as a result the series of unauthorized transfers in 2019 and 2020, totalling \$402,700, the defendants are collectively liable in conversion, detainue, unlawful means conspiracy, and breach of contract for the unpaid loans totalling \$400,000.

Conversion

[83] The tort of conversion concerns the "wrongful interference with the goods of another, such as taking, using or destroying these goods in a manner inconsistent with the owner's right of possession": *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727 at para. 31, 1996 CanLII 149.

[84] As described by this Court in *Ast v. Mikolas*, 2010 BCSC 127 at para. 126, to make out the tort conversion, the plaintiff must establish the following:

- (a) a wrongful act by the defendant involving the goods of the plaintiff;
- (b) the act must consist of handling, disposing, or destroying the goods; and
- (c) the defendant's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.

See also *Ishrat v. Anwar*, 2023 BCSC 1838 at para. 247.

[85] Historically, and it appears currently in some other jurisdictions, the tort of conversion has applied only to interference with specific personal property, being "specifically identified or identifiable chattel": *Kew v. Konarski*, 2020 ONSC 4677 at para. 22(c); see *Lewis Klar et al, Remedies in Tort* (Toronto: Thomson Reuters, 2021), Online: Westlaw Canada at § 4:8.

- [86] However, the courts in British Columbia now recognize that the subject matter of a claim in conversion may properly "take the form of either 'goods' or 'funds'": *Ishrat* at para. 247. Other cases of conversion involving funds include *Ast*; *Kassam v. Dream Wines Corporation*, 2022 BCSC 1069; *Pang v. Zhang*, 2021 BCSC 591; *0923063 B.C. Ltd. v. JM Food Services Ltd.*, 2019 BCSC 553; *Reliable Mortgage Investment Corp. v. Chan*, 2016 BCSC 405; and *Columere Park Developments Ltd. v. Enviro Custom Homes Inc.*, 2010 BCSC 1248.
- [87] Additionally, in *Canivate Growing Systems Ltd. v. Brazier*, 2020 BCSC 232, Justice Baker recognized that "intangible property" can be the subject of conversion, and went so far as to find that the defendant in that case was liable for conversion of a "website and email addresses": at paras. 72-76.
- [88] In other words, under the test for conversion, "goods of the plaintiff" may encompass funds or intangible property.
- [89] Conversion is a strict liability tort, such that even an innocent third party who is the recipient of wrongfully taken property may be liable: *Ast* at para. 127; *Insurance Corporation of British Columbia v. Palma*, 2011 BCCA 51 at para. 9. Further, where a corporation is involved, if "the conduct of the sole officer and director of a corporate defendant is intentional, willful and deliberate", then "both the individual and the company may be jointly liable for conversion": *Pang* at para. 48.
- [90] Where a defendant claims that property was transferred as a gift, that defendant must demonstrate a gift was intended: *Ast* at paras. 117-121, citing *Pecore v. Pecore*, 2007 SCC 17 at paras. 24-26.

Detinue

- [91] The tort of detinue concerns the "improper retention of goods": *Neill v. Vancouver Police Department*, 2005 BCSC 277 at para. 29. In *Welander Estate v. Hayton*, 2022 BCSC 1941, this Court set out the applicable law as follows:
- [24] In *Neill v. Vancouver Police Department*, 2005 BCSC 277 [Neill] at para. 29, cited in *P.S. Sidhu Trucking Ltd. v. Elima Enterprises Ltd.*, 2020 BCSC 1062 [P.S. Sidhu Trucking Ltd.] at para. 130, the Court summarized the elements of detinue:

A final order for the return of specific property must be framed in detinue in this province. Any improper retention of goods is actionable in detinue. The elements of detinue are: the property is specific personal property, the plaintiff has a possessory interest in the property, and the defendant has refused to return the property (*Lewis and Klar, Remedies in Tort*, (Toronto: Carswell) 1987 at para. 46).

- [25] In *Oh v. City of Coquitlam*, 2018 BCSC 986, at para. 40, Justice Milman also made it clear that an essential aspect of a claim in detinue is evidence of a "proper demand" and a failure or refusal to deliver up the property without lawful excuse after such demand:

[40] The elements of that potential cause of action were set out in *Schaffner v. Insurance Corporation of British Columbia*, 2016 BCSC 1186 at para. 11, in which Crawford J. cited Salmond on the Law of Torts, 16th ed. (London: Sweet & Maxwell, 1973) at 113, to the effect that:

A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them, and who, upon proper demand, fails or refuses to deliver them up without lawful excuse.

[Emphasis added.]

[26] The tort of detinue is a continuing wrong for which the cause of action may be defeated by a return of the chattel at any time before judgment: *Columere Park Development Ltd. v. Enviro Custom Homes Inc.*, 2010 BCSC 1248 [Columere Park] at para. 31.

[92] The torts of conversion and detinue are closely related, and their tests are comprised of similar elements. Unlike the tort of conversion, though, it does not appear that this Court has addressed whether funds or intangible property may properly be the subject of a detinue claim. To that end, the plaintiff submits that, given that funds can be subject to a conversion claim, it would be unreasonable or unprincipled to hold that those same funds could not be subject to a claim in detinue. As noted later on, it is ultimately unnecessary to decide in this case whether a claim in detinue can properly apply to funds.

[93] While the torts are very closely related, they have an essential difference in the principles behind their respective remedies. As noted, a conversion claim involves the interfering with a plaintiff's right to property through its being handled, disposed of, or destroyed, whereas detinue involves the failure or refusal to deliver the property to the plaintiff after it has been requested. In other words, detinue is primarily rooted in a claim for the return of the specific good, whereas conversion is largely a claim for the value of the asset which has since been handled, disposed of, or destroyed. As the Ontario Court of Appeal explained in *2105582 Ontario Ltd. (Performance Plus Golf Academy) v. 375445 Ontario Limited (Hydeaway Golf Club)*, 2017 ONCA 980:

[61] Conversion is a strict liability tort. If established, a tortfeasor will be forced to purchase the converted asset from the plaintiff. The general measure of damages is the market value of the converted asset as of the date of conversion: *Asamera Oil Corp. v. Sea Oil & General Corp.*, 1978 CanLII 16 (SCC), [1979] 1 S.C.R. 633, [1978] S.C.J. No. 106, at p. 652 S.C.R.

[62] Conversion is distinct from its companion tort -- detinue. Whereas conversion is a single wrongful assertion of dominion over personal property, detinue is the continuous wrongful detention of personal property: *General and Finance Facilities Ltd. v. Cooks Cars (Romford) Ltd.*, [1963] 1 W.L.R. 644 (E.W.C.A.), at p. 648; *Simpson*, at p. 711 D.L.R.; *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, 1996 CanLII 149 (SCC), [1996] 3 S.C.R. 727, [1996] S.C.J. No. 111, at paras. 31-32; and *Musson v. Memorial University of Newfoundland*, [2002] O.J. No. 668, 2002 CarswellOnt 629 (S.C.J.), at para. 85, affd 2002 CarswellOnt 3336

(C.A.).The general remedy in detinue is the return of the asset (or damages for its market value as of the end of trial) plus damages representing the "rental" of the asset by the tortfeasor during the detention: *Asamera*, at p. 652 S.C.R.

[Emphasis added.]

[94] However, in many cases including this one, the distinction between conversion and detinue may be moot. Where the elements of conversion are made out, it may be unnecessary to consider those of detinue. For instance, in *Sui v. Chitiz*, 2022 ONSC 2989, the Court found that as conversion was established, it was "not necessary to address the tort of detinue": at para. 190.

Conspiracy

[95] There are two actionable forms of conspiracy: predominant purpose conspiracy, and unlawful means conspiracy: *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at paras 73-74 [*Pro-Sys*].

[96] To establish the tort of predominant purpose conspiracy, the plaintiff must prove that the "predominant purpose of the defendant's conduct is to cause injury to the plaintiff using either lawful or unlawful means, and the plaintiff does in fact suffer loss caused by the defendant's conduct": *Pro-Sys* at para. 74. The plaintiff must also prove that two or more parties agreed to act in concert to that end: *Pro-Sys* at para. 72; *Golden Capital Securities Limited v. Rempel et al*, 2004 BCCA 565 at para. 47. In other words, there cannot be a conspiracy of one.

[97] To establish the tort of unlawful means conspiracy, the plaintiff must prove the following elements:

- a) that two or more parties acted together;
- b) their conduct was unlawful;
- c) the conduct was directed towards the plaintiff (alone or with another);
- d) they knew or ought to have known that injury to the plaintiff was likely to result; and
- e) injury to the plaintiff did result.

See *Pro-Sys* at para. 80; *Watson v. Bank of America Corporation*, 2015 BCCA 362 at para. 56; *British Columbia v. McKinsey*, 2023 BCSC 1762 at para. 89.

[98] For conduct to be "unlawful", it must constitute an independent tort or some other actionable wrong such as a breach of contract, statute, or fiduciary duty: *XY, LLC v. Zhu*, 2013 BCCA 352 at para. 49. The plaintiff says that in this case, the alleged conversion of the funds constitutes "unlawful" conduct.

Breach of Contract

- [99] In addition to liability in tort, the plaintiff also claims that one of the defendants, 6861, is in breach of an oral loan agreement. The plaintiff claims that it agreed to pay 6861 \$400,000 in two \$200,000 instalments to fund construction of the Dunbar Properties. The plaintiff claims that the loans were payable on demand, that a demand was made, and that the \$400,000 remains owing.
- [100] To establish liability under a contract, the plaintiff must prove that an agreement existed, the terms of that agreement, and that those terms were breached. As is trite law, in establishing the existence of an agreement and its terms, "[t]he key question in all cases is whether an agreement has been reached on all essential terms, regardless of its form": *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303 at para. 323.
- [101] The plaintiff submits that where a loan agreement does not contain a specific term for its repayment, the debt is presumptively due and payable on demand: see *China Dragon Fund Ltd. v. FIC Real Estate Fund Ltd.*, 2010 BCSC 1698, at paras. 28-29. However, where a repayment term is not specified, a repayment timeline may also depend on other circumstances and terms of an agreement. For instance, in *Cultivate Capital Corp. v. 1011173 B.C. Ltd.*, 2021 BCSC 1258, the plaintiff had made the same argument based on *China Dragon* that a loan was due on demand: at para. 71. While the court did find the loan was due and payable, it only became "repayable upon demand made after a reasonable time expired following the collapse" of another transaction: at para. 80.

Discussion

The "Nijjar Family Enterprise"

- [102] I will begin by addressing Nick's reliance on the "Nijjar Family Enterprise" as a defence. In his response to the plaintiff's claim, Nick says that the loans are not enforceable debts but, rather, reflect Bob's decision to record inter-company transfers as debt in the financial records of the "Nijjar Family Enterprise".
- [103] Nick has also pled in his response that the alleged unauthorized transfers were legitimate inter-company transactions made in the ordinary course of carrying on the business of the "Nijjar Family Enterprise".
- [104] As I have noted above, the plaintiff argues the Nijjar Family Enterprise does not exist. As well, the plaintiff says that even if it did, it is not a defence and the facts have not been established in any event. Relying on *Sidhu v. Sidhu*, 2023 BCSC 449 at para. 217, the plaintiff argues that a joint family venture is not a cause of action on its own but arises only at the remedy stage of unjust enrichment, yet, in this case, Nick has not established unjust enrichment. I am inclined to agree with the plaintiff. There is simply no evidence to support this defence.

- [105] More importantly, a "family enterprise" is not a legal entity and I agree with the plaintiff that on this basis Nick's argument cannot succeed. I will note that Nick relied on the same argument in regards to the alleged family enterprise in seeking to join five actions, including this one, into one.
- [106] Justice Kirchner dismissed that application. On the issue of family enterprise, Justice Kirchner wrote:
- [58] A "family enterprise" is not a legal entity. As Justice Neilson stated for the Court of Appeal in *Grewal v. Grewal*, 2016 BCCA 237 at para. 80 [Grewal, 2016], "[w]hile the concept of a family economic unit has some descriptive value, it has no legal foundation". In that case, the trial judge had introduced the concept on his own initiative as a basis for trying to reconcile an asset allocation amongst several family members in vaguely-defined business and family relationships. On appeal, Neilson J.A. observed at para. 111 that the construct, which was outside the scope of that considered by the Supreme Court of Canada in *Kerr v. Baranow*, 2011 SCC 10 [Kerr], could not provide an acceptable legal foundation for the trial judge's conclusions.
- [59] Apart from confirming a "family economic unit" has no legal foundation, the decision in *Grewal* 2016 is a lesson in the need to exercise considerable caution in using an ill-defined concept of a family enterprise to define legal relationships.
- [60] The evidence in this application provides almost no factual support for the alleged Nijjar Family Enterprise. I acknowledge Nick is not required to lead evidence demonstrating the merits of his claim on this application, and he is certainly not required to prove that claim now. However, he is asking the Court to order that the Respondent Actions be tried together with Nick's Action because of this alleged Family Enterprise. That will have significant consequences for the Respondent Actions given the complexity and uncertainty of Nick's Action. In that context, I consider it appropriate to examine whether there is at least some substance to the claim of a Nijjar Family Enterprise so the factors the Court must consider on this application can be properly weighed.
- [61] As noted earlier, the Respondents have led evidence on this application denying the existence of a Nijjar Family Enterprise and explaining how their real estate development and hotel businesses are structured. Bob deposes that, except for specified projects in which he and Raji have partnered with Raj, none of his children have invested any capital in any of his and Raji's real estate or commercial projects. Bob deposes that his and Raji's practice is to incorporate separate companies for each of their projects and investments and Nick has no equity interest in those companies.
- [62] Both Bob and Raj depose that most of the companies and properties Nick claims form part of the Nijjar Family Enterprise belong to Bob and Raji, or to Bob, Raji and Raj on the equity structure discussed earlier (50% to Raj and 50% to Bob and Raji). Other companies are owned exclusively by Raj.

- [107] In this case, Bob and Raji both testified, which I accept, that they had separate companies and distinct agreements for each of their ventures. In their ventures with their son Rajeev, they had separate agreements to reflect their partnerships on those projects and each made equal financial contributions to the projects and shared profits equally.
- [108] Over the years, Bob involved Nick on a number of businesses and projects, but the evidence is clear that Nick did not financially contribute to any of these projects and he was compensated for the work he did. For example, when Nick worked at the Quality Hotel, he was an employee who was paid a monthly salary. On the Dunbar Properties, Bob and Nick had an agreement that Nick was to receive 50% of the profits once the houses were sold for the work he did.
- [109] In all of the circumstances, other than as between Bob and Raji, there is no evidence of mutual effort, economic integration, intention or priority of the family to support Nick's assertion that a joint family venture exists between the members of the Nijjar family: see *Kerr v. Baranow*, 2011 SCC 10 at para. 89.

Did Nick and 6861 Breach the Loan Agreement?

- [110] The plaintiff submits that a valid and binding oral loan agreement (the "Loan Agreement") was entered into when 6861 received funds in the form of two cheques of \$200,000 each. The plaintiff alleges that the loans were payable on demand and that Nick and 6861 failed to repay these sums despite a demand being made.
- [111] Based on the totality of the evidence, I am satisfied that there was in fact a binding oral loan agreement between Raji and Nick whereby the plaintiff agreed to loan 6861 \$400,000 total in two installments of \$200,000 to fund Nick's completion of the Dunbar Properties' construction. I am also satisfied that there was an agreement that the loans were payable once the properties sold.
- [112] I note that the cheques include the notation "Loan" on the memo line, which is further evidence that these were loans and not gifts made to 6861.
- [113] The plaintiff was not involved in the construction, nor the Dunbar Properties more generally. The plaintiff was in the business of operating the Quality Hotel. It does not make sense that the plaintiff would not expect repayment of the loans.
- [114] Raji was clear in her evidence that mingling and transferring of money from one business to another was not something that she and Bob did with their businesses. There is no evidence to the contrary, nor was Raji's evidence on this issue shaken on cross-examination.
- [115] Once the properties sold, based on the oral agreement, there was an expectation that the loans would be repaid. Bob and Raji proceeded on the basis that the cheques were loans, payable on demand. They demanded repayment which was not forthcoming.

[116] I find that when the plaintiff--through Raji as a director--loaned Nick and 6861 the \$400,000, there was an expectation of repayment upon sale of the Dunbar Properties. When that did not happen, the plaintiff demanded repayment. At the time of trial, Nick and 6861 have not paid back these sums. Accordingly, the defendants, 6861 and Nick, in his capacity as the sole director of 6861, are liable for breaching the terms of the Loan Agreement by failing to repay the loans.

Did the Defendants Convert the Plaintiff's Funds?

[117] The tort of conversion involves the wrongful interference by a defendant in the goods of the plaintiff, such as a taking, using or destroying those goods in a manner inconsistent with the owner's right of possession. It must be remembered that the tort is one of strict liability, so it does not matter if the act is committed unintentionally.

[118] I will begin with the issue of whether Nick has any ownership interest in 5946. Nick appears to suggest that he does and therefore was entitled to make the inter-company transfers and to write cheques to one of his other companies.

[119] I am unable to agree with Nick's assertion that he has an ownership in the plaintiff. The evidence simply does not support this.

[120] In cross-examination, corporate records were put to Bob and Raji, including a cancelled corporate securities register for 5946. This evidence was not authenticated by either Bob or Raji and was therefore inadmissible at trial.

[121] However, I am satisfied that the corporate documents tendered by the plaintiff are true and accurate. These records reflect that Bob and Raji are the only two shareholders and directors of 5946. I also accept that Bob and Raji were the only ones authorized to transfer funds from the plaintiff's bank account.

[122] Nick does not dispute that he made various transfers to the various companies and for his personal use. There is also no dispute that Nick had access to the plaintiff's online banking during the period when the transfers were made. Bob and Raji's evidence, which I accept, is that they did not make these transfers and did not authorize them.

[123] I find that all of the transfers made by Nick to the various companies and for his personal use were unauthorized. Accordingly, the first element of conversion is met because the defendants took the plaintiff's money without its consent and used the money for their own purposes. Furthermore, I am satisfied these transfers were for Nick's direct or indirect benefit. As a strict liability tort, they are liable for any money that they received by way of an unauthorized transfer from the plaintiff's bank account as a result.

[124] Regarding the second element of conversion, I am satisfied that the defendants' act consisted of handling, disposing or destroying the goods. This is supported by Nick's own admission during his examination for discovery, Bob's and Raji's testimony, and supporting documentary evidence including banking records. Nick had access to the plaintiff's online banking and he transferred the funds to the various companies he controlled and for his own personal use.

[125] Finally, I am satisfied that the third element of conversion has also been met. The defendants knew they were removing funds from the plaintiff's bank account and consequently would no longer have access to that money. In fact, they continue to be deprived of use of that money.

Are the Defendants Liable in Detinue?

[126] The plaintiff has pled the tort of detinue as an alternative basis of relief. Like the finding in *Sui*, noted above, given my conclusion on the tort of conversion, it is not necessary for me to address this alternative argument. As a result, it is ultimately unnecessary for me to find whether funds can be the proper subject matter of a claim in detinue.

Did the Defendants Conspire in the Conversion of the Funds?

[127] The plaintiff alleges that the defendants conspired to convert the funds. As noted, a conspiracy--of either predominant purpose or unlawful means variety--requires two or more individuals acting together. Any application of the test for conspiracy is complicated in this case, though, because Nick is the only person who effected transfers or wrote cheques, and accessed the accounts of the other corporate defendants at the relevant times.

[128] That said, it is unnecessary to decide on the substance of the conspiracy allegation, because the commission of the unlawful acts--the conversion--has been proved in this case. In other words, like in *Bank of Montreal v. Tortora*, 2009 BCSC 1140, *aff'd* 2010 BCCA 139, as described in *Waters v. Michie*, 2011 BCCA 364 at para. 62:

[M]erger precludes a claim of unlawful act conspiracy where the alleged unlawful acts are torts or other independently actionable claims that have also been pleaded, such that the conspiracy claim adds nothing.

[129] More recently, this Court described the concept of "merger" in *Compliance Coal Corporation v. British Columbia (Environmental Assessment Office)*, 2020 BCSC 621:

[120] One feature of an unlawful act conspiracy is that an allegation that defendants conspired to commit unlawful acts may add nothing of substance to the commission of the unlawful acts themselves. In such cases, if the case is proved, the defendants are held liable for committing the unlawful acts but not for conspiracy; the conspiracy is said to merge into the other tort or torts.

[130] Ultimately, having found the defendants are liable for conversion, any conspiracy has merged with that tort, such that it is unnecessary to make a finding on this claim.

Damages

[131] The plaintiff submits that it is owed damages of \$802,700 from the defendants by virtue of the above claims:

- a) \$402,700 as damages for the conversion; and
- b) \$400,000 as damages for breach of the Loans Agreement.

[132] In regards to the damages for the conversion, the defendants must pay the value of the property at the time it was wrongfully taken, together with the consequential loss: McKnight v. Hutchison, 2019 BCSC 944 at para. 172, citing Kostiuk (Re) (Trustee of), 2002 BCCA 410 at paras. 34, 66

[133] Regarding the breach of contract, the plaintiff should be placed in the same position as it would have enjoyed had the breach not occurred: Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc., 2009 BCSC 1303 at paras. 369-372.

[134] The plaintiff is also entitled to interest at the pre-judgment interest rate pursuant Court Order Interest Act, R.S.B.C. 1996, c. 79.

[135] Finally, based on all of the evidence, I agree with the plaintiff that the defendants are jointly and severally liable for the conversion, because each defendant aided and participated in the unauthorized transfers. The tort of conversion is, again, one of strict liability, such that even innocent third party recipients may be liable: Li v. Li, 2017 BCSC 1312 at para. 218. Nick orchestrated the acts of each corporate defendant in receiving the funds, and those corporate defendants, by receiving those funds, are liable.

[136] In coming to this conclusion, I have considered 3907's response to the claim that it had no knowledge of the funds transferred by Nick to its account. However, there was no evidence presented by 3907 to support its defence. As such, I am unable to find that 3907 is not jointly and severally liable for the cheque written by Nick to 3907 from 5946's bank account.

[137] Accordingly, the defendants 6861, 1129 and 3907 are jointly and severally liable with Nick in relation to the unauthorized transfers from the plaintiff's bank accounts.

[138] Nick is also personally liable for unauthorized transfers he made from the plaintiff's bank account for his personal use.

[139] As well, the defendant, 6861 is jointly and severally liable with Nick in relation to the breach of the Loan Agreement.

Punitive Damages

[140] In *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, the Court of Appeal summarized the factors set out in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, when considering a punitive damages award:

[78] In *Whiten* at para. 94, the Court set out the factors that should be considered when considering an award for punitive damages. The factors include:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
- d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
- e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and
- f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[141] In *Ojanen*, the Court noted that punitive damages are directed at punishment, and are only necessary if the total award is not yet sufficient to achieve the goals of denunciation, deterrence, and retribution: at paras. 75-76.

[142] The plaintiff submits that compensatory damages are not sufficient to meet those goals, and that punitive damages ought to be awarded. The plaintiff argues that Nick exploited his parents' vulnerability in converting the funds to his own use through unauthorized transfers. He knew how his parents operated, and took advantage of their giving him online access to the plaintiff's bank accounts. The plaintiff argues that Nick used his position of trust and control over the plaintiff's banking to facilitate the conversion.

[143] In all of the circumstances, though, I am not satisfied that the defendants' actions were high-handed, malicious, arbitrary or highly reprehensible conduct that departs to a marked degree from ordinary standard of decent behavior. In my view, the compensatory damages that I have ordered are sufficient to accomplish the objectives of denunciation, deterrence and retribution. Accordingly, I decline to award punitive damages.

Conclusion

[144] The plaintiff is entitled to a total of \$802,700 in damages:

- a) \$402,700 in damages for the conversion of its funds by the defendants, Nick, 6861, 3907 and 1129; and
- b) \$400,000 in damages for the breach of the Loan Agreement by the defendants, Nick and 6861.

[145] The plaintiff is entitled to pre-judgment interest at the pre-judgment interest rate pursuant Court Order Interest Act, R.S.B.C. 1996, c. 79.

Costs

[146] The plaintiff has sought leave to submit written submissions regarding costs after a decision has been rendered in this matter. Accordingly, the parties are granted leave to submit written submissions within 30 days of this judgment. However, submissions will not exceed ten pages, double spaced.

"Girn J."

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