

CANADA / JUDGMENT

Grewal v. Salanga

2025 BCSC 28

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2025 BCSC 28 Grewal v. Salanga

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grewal v. Salanga,

2025 BCSC 28

Date: 20250108

Docket: S158429

Registry: New Westminster

Between:

Avtar Singh Grewal and Jagdev Grewal

Plaintiffs

And

Johnson Castaneto Salanga and

Real Estate Compensation Fund Corporation

Defendants

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Plaintiffs:

A. Dhinsa

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K. Smiley

Place and Date of Hearing:

Port Coquitlam, B.C.

December 20, 2024

Place and Date of Judgment:

New Westminster, B.C.

January 8, 2025

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I. Introduction

- [1] This is an application by the plaintiffs in this action, Avtar Singh Grewal ("Avtar") and Jagdev Grewal ("Jagdev"), seeking judgment against the defendant, Real Estate Compensation Fund Corporation ("RECFC"), by way of summary trial.
- [2] The plaintiffs have already obtained a default judgment on their claim against the other defendant, Johnson Castaneto Salanga. It is not disputed on this application that, in March 2013, Mr. Salanga was a licenced realtor and that he fraudulently misappropriated three payments, totalling \$86,000, that he received from the plaintiffs.
- [3] It is also not disputed that on June 26, 2013, the plaintiffs duly sought compensation for their loss from the "special compensation fund" (the "Fund") pursuant to Division 1 of Part 5 of the Real Estate Services Act, S.B.C. 2004, c.42 [RESA]. Under that statutory scheme, all real estate licencees contribute to the Fund through their licencing fees to allow for certain kinds of

claims against licencees to be compensated. At the time, RESA stipulated that the Fund was to be administered by RECFC and that claims for compensation were generally to be adjudicated by a compensation committee of the Real Estate Council of British Columbia ("RECBC").

- [4] RECBC has since been dissolved and discontinued, effective August 1, 2021, by the Finance Statutes Amendment Act, 2021, S.B.C 2021, c. 2, with its operations, activities and duties transferred to the BC Financial Services Authority, and RESA has been amended to effect this and other changes. However, neither party argued that those legislative changes have any bearing on the outcome of this application.
- [5] After reviewing the plaintiffs claims in this case, RECBC determined, through the initial screening that was then mandated by RESA, that they were of insufficient merit to be referred to a committee. RECBC concluded, in summary, that the plaintiffs had failed to show that there was reason to believe that Mr. Salanga received the plaintiffs' payments "in relation to real estate services" so as to qualify their loss as a "compensable loss" entitling them to compensation under RESA.
- [6] The plaintiffs now seek to reverse that decision by means of a declaration of this court under s. 65 of RESA. At the time, that provision provided that if a claim for compensation under RESA is also the subject of a proceeding in this court, a final decision of this court on the matter (other than a consent or default judgment) was to be binding on the compensation committee (the current version is identical, except that the final decision of the court is stated to be binding on the current decision-maker under RESA, namely, the Superintendent of Real Estate).
- [7] RECFC opposes the application on both procedural and substantive grounds. First, RECFC objects to the procedure that the plaintiffs have followed in seeking declaratory relief in this action, arguing that the plaintiffs' only proper recourse was to seek judicial review of the decision of RECBC refusing to refer their claim to a compensation committee. Second, RECFC also argues that, in any event, RECBC was correct in concluding that the plaintiffs have failed to show that they suffered a compensable loss under RESA, even on the expanded record that is before me on this application.
- [8] It is common ground that the matter lends itself to summary disposition.
- [9] For the reasons that follow, I have concluded that the application should be allowed and the declaration granted.

II. Factual Background

A. The Plaintiffs' Dealings with Mr. Salanga

- [10] The plaintiffs are brothers. They work as longshoremen.

- [11] Several years before the events giving rise to this proceeding, Avtar met Mr. Salanga, who was then a licenced realtor working with Sutton Group - West Coast Realty. Avtar has given conflicting accounts as to when they first met. In his most recent affidavit sworn November 15, 2024 in support of the present application, he deposed that he has "known Mr. Salanga since on or about 2009" and that he believes that he "met him at an open house where he gave me his business card". However, when the plaintiffs were interviewed together on June 26, 2013 in connection with their claim for compensation under RESA, Avtar stated that he had known Mr. Salanga, at that time, for "eight, nine, ten years, at least".
- [12] In any event, it appears that Avtar engaged Mr. Salanga to assist him with various real estate transactions, both sales and purchases, between 2010 and 2013. In March 2013, Avtar had two properties on the market with Mr. Salanga as his listing agent. In addition, Avtar had a history of lending Mr. Salanga money. In his third affidavit, Avtar deposed that Mr. Salanga borrowed \$5,000 from him in February 2012.
- [13] Although Avtar has deposed that their relationship was confined to business, it appears clear from the text messages exchanged between them, some of which Avtar attached to his request to his RECBC claim form, that they were also close friends. In the interview, Avtar told RECBC that they were "like a family" and that he "trusted him".
- [14] The plaintiffs say that on March 13, 2013, Mr. Salanga approached Avtar with an investment proposal. Once again, the plaintiffs have provided conflicting accounts as to precisely what was proposed on that occasion. In their interview, they told RECBC that Mr. Salanga showed them a contract of purchase and sale dated March 13, 2013, pursuant to which Mr. Salanga, as purchaser, was to purchase a property on East 61st Avenue in Vancouver (the "61st Avenue Property") for a price of \$728,000, with a completion date of April 30, 2013. A deposit of \$100,000 was to be payable upon acceptance of the offer.
- [15] According to that earliest version of events, Mr. Salanga told Avtar that he was in the process of purchasing that property and that he had a partner who did not have enough money to complete the purchase with him, so he invited Avtar to do so. Avtar did not have any money, so he asked his brother, Jagdev, if he was interested. Jagdev agreed to participate and gave Mr. Salanga a cheque for \$50,000, made out to Mr. Salanga personally. Mr. Salanga promised to provide the plaintiffs with an assignment of the purchase contract, with a view to flipping the 61st Avenue Property and making a profit. Jagdev told Mr. Salanga that if Mr. Salanga could not complete the purchase, the plaintiffs could do so on their own without him.
- [16] However, in an affidavit sworn January 16, 2015, Jagdev presented a different version of those events, according to which the plan from the beginning was for Mr. Salanga to enter into the contract on Jagdev's behalf. The affidavit states as follows:

On or about March 13, 2013, my realtor at the time, Mr. Salanga proposed that I enter into a Contract of Purchase Sale for the property located at 1072 East 61st Avenue in the City of Vancouver, in the Province of British Columbia (the "Contract").

Mr. Salanga advised me and I believe that there was a "fire-sale" on the [61st Avenue Property] and that he would enter into the Contract and assign his rights in the Contract to me.

[17] In an affidavit sworn August 15, 2022, however, Jagdev reverted to the original version of events presented during the interview, except that now the plan was not to join with Mr. Salanga in the purchase, but rather to complete it in his name alone. According to that version of events:

- a) On March 13, 2013, Avtar asked Jagdev to meet him and Mr. Salanga at the 61st Avenue Property;
- b) Mr. Salanga showed them the 61st Avenue Property and the signed contract and told Jagdev that if Jagdev paid him half of the deposit, Mr. Salanga would assign the contract to him;
- c) Jagdev gave Mr. Salanga a cheque for \$50,000 the following day (March 14, 2013); and
- d) This was not a joint investment with Mr. Salanga or anyone else.

[18] Although Avtar recalls having told Mr. Salanga that he did not have enough money to participate in the proposed investment in the 61st Avenue Property, he was able, by the end of that same month, to pay him a total of \$36,000 in connection with another investment proposal. In one of his affidavits, Avtar deposed that he had to draw on his line of credit for this purpose.

[19] Avtar has deposed that on March 14, 2013, the same day that Jagdev gave Mr. Salanga the cheque for \$50,000, Mr. Salanga told him that he was also looking to invest in another property, this one "on Nanaimo Street & 55th Avenue" but was "vague on the details." According to Avtar, Mr. Salanga told him that he could "secure" the property for him if he gave him a cheque for \$23,000, which he did. The cheque that Avtar wrote was payable to Mr. Salanga personally and had the words "loan to be paid back" written on the memo line. In his affidavit attaching a copy of that cheque, Avtar deposed that he wrote those words on the cheque "[a]s I did not see any contract or other document." He also deposed that Mr. Salanga returned those funds to him "the next day or so", telling him that "the purchase of the proposed property on Nanaimo Street did not go through."

[20] Avtar has deposed further that Mr. Salanga called him again a few days later, on March 20, 2013, to advise that "he could get the property located at 2254 East 53rd Street (the "53rd Street Property") which was going to "go on the market very soon". In his most recent affidavit sworn November 15, 2024, he described that same property as being located at 2254 East 53rd Avenue.

- [21] In any event, after showing Avtar the 53rd Street Property, Mr. Salanga asked Avtar to give him a cheque for \$25,000, payable to him personally, which he would then deposit with his brokerage once he obtained a signed contract. He said he expected to arrange to purchase the 53rd Street Property "for under \$750,000." On the following day, March 21, 2013, Avtar wrote another cheque to Mr. Salanga personally, in the amount of \$25,000, but this time the memo line was left blank.
- [22] Avtar has deposed that on March 31, 2013, Mr. Salanga contacted Avtar again and told him that he would need to pay him another \$11,000 to secure the 53rd Street Property "as there were other buyers that were interested" but he could still get the 53rd Street Property "for \$800,000". Avtar gave him a cheque for \$11,000, as asked, and this time wrote the word "loan" on the memo line. He did this, he says, "as additional security because Salanga had not provided me with a contract for the East 53rd Street Property". In his most recent affidavit, he explained that he did this because:

I thought in case something happened and the deal fell through that writing 'loan' on the cheque would protect me and I would get the money back.

- [23] In the weeks that followed, Avtar says, he continued to chase Mr. Salanga for the paperwork assigning the purchase contracts for the 61st Avenue Property and the 53rd Street Property, but to no avail. In April 2013, he says, he began to suspect that Mr. Salanga had misappropriated the money that he and Jagdev had advanced. In the exchange of text messages between Avtar and Mr. Salanga during this period, Avtar repeatedly asked for a refund of their money, at one point asking that he at least pay Jagdev back, stating as follows:

just give our money back without int[erest]. my brother was asking me I felt so bad. I had nothing to say to [h]im.

- [24] Avtar has deposed that on or around April 17, 2013, Mr. Salanga told him that the owner of the 53rd Street Property had decided not to sell after all. Avtar says that he again asked Mr. Salanga for his money back and that Mr. Salanga came to his home and gave him a cheque for \$36,000, but the cheque later bounced. While he was there, Avtar says, Mr. Salanga asked to borrow some cash and Avtar's wife gave him \$600.
- [25] On June 12, 2013, Mr. Salanga's real estate licence was suspended. He was eventually charged criminally with having defrauded others. On March 9, 2016, he pled guilty to two counts of fraud and was sentenced to a term of imprisonment. He has since declared bankruptcy.

B. Procedural History

- [26] On June 26, 2013, the plaintiffs submitted to RECBC a Complaint Form and two Compensation Fund Claim Forms in relation to their dealings with Mr. Salanga. They were interviewed by two RECBC compliance officers on that same day.

- [27] Pursuant to s. 62 of RESA as it read at the time, RECBC was required to refer such claims to a compensation committee "if it considers that there is reason to believe that the person making the claim suffered a compensable loss".
- [28] On January 31, 2014, while the complaint process was underway before the RECBC, the plaintiffs commenced this action, initially against Mr. Salanga alone, seeking, among other things, damages in the amount of \$86,000. On February 2, 2015, they amended the claim to seek, in addition, a declaration under s. 65 of RESA that they had suffered a "compensable loss" within the meaning of RESA. On May 7, 2015, the plaintiffs and the RECFC agreed to a consent order in this action adding RECFC as a defendant pursuant to s. 67 of RESA. That provision allowed RECFC to become a party to an action that may result in a declaration of that kind.
- [29] By letter dated January 25, 2016, counsel for RECBC wrote to counsel for the plaintiffs to advise that her "preliminary view" was that they had not demonstrated that there was reason to believe that they had suffered a compensable loss under RESA and therefore she would not be referring the matter to a committee. She concluded the letter by inviting the plaintiffs to respond and provide further information if they wished to do so. She noted that if the claims were not ultimately referred to a committee, the plaintiffs were still "free to pursue their civil claim against Salanga". She then reproduced s. 65 of RESA, noting that "a final decision of the Court is binding upon the Compensation Committee if the criteria set out in that section are met".
- [30] By letters dated April 19, 2016 and June 10, 2016, the plaintiffs, through their counsel, provided more information to RECBC and sought to have it reconsider the preliminary conclusion set out in the letter of January 25, 2016.
- [31] By letter dated June 21, 2016, the Executive Officer of RECBC wrote to plaintiffs' counsel to advise that it had now formally decided under s. 62 of RESA not to refer their claims to a committee. The letter concluded with the following paragraph:

The Grewals are free to pursue their civil claim against Salanga. Section 65 of the RESA provides that a final decision of the court is binding upon the Compensation Committee if the criteria set out therein are met, namely that there is a finding on evidence. A default judgment is insufficient. Under the RESA, [RECFC] is entitled to be a party to the litigation (s. 67). If the Grewals pursue their civil claim in this manner, [RECBC] will of course consider the outcome.

- [32] On May 5, 2017, the plaintiffs obtained default judgment against Mr. Salanga in this action. Damages have yet to be assessed.
- [33] The plaintiffs filed this application on November 19, 2024. Although they originally sought a number of other items of relief, they now seek only a declaration under s. 65 of RESA that they have suffered a compensable loss of \$86,000.

III. The Relevant Provisions of RESA

[34] At the material time, s. 65 of RESA stated, in its relevant part, as follows:

- (1) If a matter that is the subject of a claim has also been the subject of a court proceeding in British Columbia, a final decision of the court that
 - (a) makes a finding on evidence that a person has suffered a compensable loss with the meaning of this Act,
 - (b) assesses the amount of a compensable loss within the meaning of this Act, or
 - (c) makes both such a finding and such an assessment,
 - (d) is binding on the compensation committee dealing with the matter.
- (2) For certainty, subsection (1) does not apply in relation to a default judgment or a judgment by consent.

[35] The term "compensable loss" was defined in s. 60 to mean:

loss suffered by a person in relation to real estate services that is the amount of money that

- (a) was held or received by
 - (i) a licensee from, for or on behalf of a principal in relation to real estate servicesand
- (b) was, as applicable,
 - (i) misappropriated or wrongfully converted by a person referred to in paragraph (a) (i) to (iv)
 - (ii) intentionally not paid over or accounted for, by a person referred to in paragraph (a)(i) to (iv),or
- (iii) obtained by fraud of a person referred to in paragraph (a) (i) to (iv)

[36] The term "real estate services" was defined in s. 1 to include "trading services". The term "trading services" was defined in s. 1 to mean:

any of the following services provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate;
- (b) making representations about the real estate;
- (c) finding the real estate for a party to acquire;
- (d) finding a party to acquire the real estate;
- (e) showing the real estate;
- (f) negotiating the price of the real estate or the terms of the trade in real estate;
- (g) presenting offers to dispose of or acquire the real estate;

(h) receiving deposit money paid in respect of the real estate

but does not include an activity excluded by regulation

[37] In the case of "trading services", a "principal" was defined to mean "a party to a trade in real estate." The term "trade in real estate" was defined to mean:

(a) a transaction for the purchase and sale of real estate, for the leasing of real estate or for any other form of acquisition or disposition of real estate, or

(b) a prospective trade in real estate within the meaning of paragraph (a).

[38] The current versions of these provisions are essentially the same, with two minor exceptions. First, the definition of the term "trade in real estate" cited above has since been amended to add, in addition to those sub-paragraphs, "an assignment of a contract for purchase, sale or lease of real estate, or a transaction in relation to such an assignment." Second, the term "compensation committee" in s. 65 has been replaced with the term "superintendent", which is defined in s. 1 to mean "the Superintendent of Real Estate "

IV. Discussion

A. Is the matter suitable for summary disposition?

[39] The test to be applied in determining whether an action lends itself, in whole or in part, to summary disposition was set out by the Court of Appeal in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.). There, the question was said to turn on the following factors:

- a) whether the requisite factual findings can be made on the evidence presently before the court; and
- b) whether it would be unjust, for some other reason, to decide the case by way of a summary application.

[40] In *Cepuran v. Carlton*, 2022 BCCA 76, the Court listed the following factors as potentially relevant to the analysis:

- a) the amount involved;
- b) the complexity of the matter;
- c) its urgency;
- d) any prejudice likely to arise from delay;
- e) the cost of taking the case forward to conventional trial in relation to the amount involved (described as "proportionality");
- f) the course of the proceedings;
- g) whether the evidence is sufficient to decide the dispute; and

h) any other relevant factors.

[41] The parties wish to have this matter resolved summarily at this time and on this record. The facts are generally not in dispute. What is disputed is the proper characterisation of the three payments that are the subject of the plaintiffs' claim. It is unlikely that requiring them to proceed to a full trial would assist in resolving that question, at least not enough to justify the extra expense and delay that such a trial would entail, having regard to the amount in issue. The plaintiffs first sought compensation from the Fund and then commenced this action a decade ago. The events in issue took place in March 2013, now nearly 12 years ago. I agree that the matter should be resolved expeditiously now.

[42] For those reasons, I have concluded that resolution of this one outstanding issue by way of summary trial is appropriate.

B. Are the plaintiffs precluded from seeking declaratory relief under s. 65 for having failed to seek judicial review?

[43] In its written response to the application, RECFC asserted that the plaintiffs are precluded from seeking a declaration under s. 65 of RESA because they failed to seek judicial review of the decision of RECBC refusing to refer their claims to a compensation committee. In support of that assertion, RECFC cited *Annable v. Real Estate Council of British Columbia*, 2020 BCSC 2152 and *Annable v. British Columbia (Financial Services Authority)*, 2022 BCSC 695 [Annable 2022] as examples of cases in which such decisions were challenged in that manner (in one of those cases, successfully).

[44] RECFC argued further that s. 65, properly interpreted, applies only where RECBC, faced with a parallel civil claim, chooses to postpone its decision, or refuses to hear the matter pending the outcome of the court proceeding. Here, RECBC declined to refer the plaintiffs' claim to a committee, knowing that this action was extant. In these circumstances, it was argued, relief under s. 65 is not available.

[45] However, in RECFC's oral submissions at the hearing, its counsel acknowledged that in the letters of January 25 and June 21, 2016, RECBC specifically encouraged the plaintiffs to proceed to seek declaratory relief under s. 65 in this action if they disagreed with its decision, saying nothing about judicial review. RECFC's counsel also acknowledged that, having received that advice, the plaintiffs cannot now be faulted for having followed it.

[46] I am not persuaded that the plaintiffs are procedurally restricted in the manner urged by RECFC in its written application response. Not only would such a restriction be inconsistent with the advice previously given by the decision maker when the decision was imparted, s. 65 itself contains no such restriction. There is no privative clause suggesting that a decision refusing to refer a claim to a compensation committee, once made, is to be considered final. More importantly, there is no provision in RESA that operates to restrict an applicant from proceeding in court under s. 65 at any stage of the process, regardless of the steps that RECBC or, for that matter, a compensation committee may have taken. Had the Legislature

intended to prohibit parallel proceedings in these circumstances, it could have done so. Instead, it chose to allow for them expressly and, moreover, to stipulate that the outcome of the court proceeding would be binding on any compensation committee that considers the matter.

C. Are the plaintiffs entitled to the declaration sought?

- [47] The plaintiffs submit that they have shown that they have suffered a compensable loss within the meaning of s. 65 of RESA.
- [48] In support of that submission, they rely on their own accounts of their dealings with Mr. Salanga, as well as the contemporaneous text messages between Avtar and Mr. Salanga, which are said to show that they made the payments in issue with the expectation of acquiring an interest in real estate (namely, the 61st Avenue Property, in the case of Jagdev, and the 53rd Street Property, in the case of Avtar). They also cite a number of other cases in which other applicants, said to be similarly situated, were successful in their applications to RECBC under RESA for compensation from the Fund.
- [49] RECFC disagrees. It submits that the plaintiffs have failed to show that the payments in issue were made "in relation to real estate services". Rather, in RECFC's submission:
- a) Jagdev was in a business relationship with Mr. Salanga, and his payment was in the nature of a joint investment; and
 - b) Avtar's payments to Mr. Salanga were loans unconnected to any particular real estate purchase.
- [50] In support of that submission, RECFC emphasises the lack of any documentation to support the plaintiffs' version of events, as well as their evolving accounts as to what occurred.
- [51] In Jagdev's case, there was a contract of purchase and sale in evidence, but it showed Mr. Salanga alone as the buyer and there was no documentation to substantiate the suggestion that his interest as buyer was to be assigned to Jagdev or anyone else.
- [52] In Avtar's case, there was no documentation of any kind, other than the cheques themselves, one of which stated on its face that the payment was intended as a loan. Further support for that conclusion lies in the fact that Avtar had a history of lending money to Mr. Salanga and that, in one of his text messages to Mr. Salanga, Avtar suggested that the plaintiffs would be willing to forego interest in exchange for prompt payment. On the other hand, RECFC notes that the word "deposit" appears nowhere on the cheques or any of the text messages.
- [53] Moreover, RECFC notes that the plaintiffs chose to document these transactions differently from those in which Mr. Salanga was indeed acting as the plaintiffs' realtor. In those cases, the mechanics of the transactions were properly documented and the deposits paid into the brokerage's trust account, rather than to Mr. Salanga personally.

- [54] Finally, RECFC argues that the other compensation hearing committee decisions cited by the plaintiffs are all distinguishable for that and other reasons.
- [55] I agree with RECFC that the other cases cited by the plaintiffs are not particularly helpful in resolving the issue before me on this application. Those decisions are not binding on me and, in any event, each turned on its own facts. I disagree with the plaintiffs' submission that, in any of those cases, the facts were sufficiently analogous to bolster the plaintiffs' position significantly, even as persuasive authority.
- [56] I also agree with RECFC that the plaintiffs have provided inconsistent accounts of the central events that are in issue on this application, thereby undermining the strength of their claim. Avtar's various explanations for having written the word "loan" on the memo line of the cheque dated March 31, 2013 are less than entirely satisfactory.
- [57] Having said all that, there are, nevertheless, other considerations weighing in favour of the plaintiffs' position. This court has previously observed that Division 1 of Part 5 of RESA is remedial legislation intended to protect consumers from theft or fraud perpetrated by real estate licencees: Annable 2022, at para.17. Accordingly, the legislation should be given a broad and liberal interpretation in favour of those it is intended to protect, consistent with that objective.
- [58] Although the plaintiffs have, at times, provided inconsistent accounts of the relevant events in their interview and affidavits, and the text messages in evidence are cryptic and difficult to decipher, those factors also serve to highlight the fact that the plaintiffs are not sophisticated businessmen. It is common ground that they allowed themselves to fall victim to a fraud. The lack of proper documentation formed part of the means by which Mr. Salanga carried out that fraud. Another resource he appears to have exploited in doing so was his status as a real estate licensee.
- [59] Jagdev's \$50,000 payment, even if it was, as RECFC maintains, intended to serve as a joint investment, can fairly be said to have been made for the purpose of engaging in a "trade in real estate", as that term is defined under RESA.
- [60] Although there is evidence supporting RECFC's contention that Avtar's two payments were really loans, there is also support for his contrary assertion that, like Jagdev, he was promised and expected to receive an interest in the subject property in exchange for those payments, once a contract to purchase it was formed.
- [61] Although the text messages contain no mention of a "deposit", they do hint in places at the plaintiffs' expectation that they would be receiving an interest of some kind in real estate in exchange for their payments. For example, in a text message that Avtar sent on April 19, 2021, just after Mr. Salanga gave him the cheque for \$36,000 that later bounced, Avtar stated as follows:

I deposit ur cheque 2days ago for36thou.make sure it doesnot bounce.need cash.and how about the other house.brother is asking.

[Emphasis added.]

[62] This is strong evidence that, at the time, Avtar believed that he and Jagdev had advanced funds to Mr. Salanga in furtherance of two prospective real estate purchases that Mr. Salanga had promised to arrange for them, as they have deposed.

[63] Overall, I am satisfied that Mr. Salanga promised the plaintiffs, in exchange for their payments, that they would receive a right to purchase real estate or, at least some "other form of acquisition or disposition of real estate". That is sufficient to qualify their loss as a compensable one for the purpose of s. 65 of RESA, whether in its current form or as it read at the time.

V. Disposition

[64] The application is allowed. I am granting the plaintiffs judgment in the form of a declaration that their loss, in the aggregate amount of \$86,000, is a compensable loss for the purpose of s. 65 of RESA.

[65] If either of the parties wishes to seek an order as to costs, they may do so by delivering to the registry (directed to my attention and copied to the other party), supplemental written submissions on that issue, not to exceed three pages in length. Any such submissions must be delivered within 21 days. The other parties will have 10 days after receiving those submissions to submit, in the same manner, a brief reply of no more than two pages.

"Milman J."

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