

CANADA / JUDGMENT

## Jastram Properties Ltd. v. Tan

2019 BCSC 475

COURT

Supreme Court of British Columbia

DECIDED

2 April 2019

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2019 BCSC 475 Jastram Properties Ltd. v. Tan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jastram Properties Ltd. v. Tan,

2019 BCSC 475

Date: 20190402

Docket: S162335

Registry: Vancouver

Between:

Jastram Properties Ltd.

Plaintiff

And

Virginia Mary Tan, Patrick Eng Tien Tan,

Marcus Soon-Keen Tan, Letan Investments Management,

Letan 88 Enterprises Inc., TLD Investments Inc., 0994439 B.C. Ltd.,

TJ0700 Holdings Ltd. and TJ132 Ventures Ltd.

Defendants

Before: The Honourable Madam Justice DeWitt-Van Oosten

Reasons for Judgment

Counsel for the Plaintiff:

Paul R. Bennett

Mark W. Mounteer

Counsel for the Defendants Virginia Tan, Patrick Tan, Letan Investments Management and Letan 88 Enterprises Inc.:

John D. Whyte

Place and Date of Hearing:

Vancouver, B.C.

March 12, 2019

Place and Date of Judgment:

Vancouver, B.C.

April 2, 2019

## INTRODUCTION

- [1] The plaintiff, Jastram Properties Ltd. (JPL), applies to have this action certified as a class action under the Class Proceedings Act, R.S.B.C. 1996, c. 50 (CPA).
- [2] The application comes before me in my role as case management judge for more than 20 separate actions filed against Virginia Tan, Patrick Tan, Marcus Tan and/or companies in which they are (or have been) involved. See *RSC Enterprise Canada Inc. v. Tan*, 2018 BCSC 67. A comprehensive case management framework is in place for these actions. The claims made against Virginia, Patrick and Marcus Tan are diverse, including (but not limited to), bankruptcy proceedings, foreclosures, actions in debt and/or fraud.
- [3] All named defendants in the JPL action received notice of the application for certification. None has filed a response opposing the application, or seeking an adjournment.
- [4] This includes Virginia Tan and Patrick Tan, whose legal counsel advised the Court that prior to the Chambers hearing, he notified Ms. and Mr. Tan that he intends to withdraw as their counsel of record. He had no instructions on the certification application. As at the date of the hearing, neither Virginia nor Patrick Tan had filed a response to the stated intention to withdraw. They did not appear at the hearing to speak on their own behalf in response to the application for certification, or arrange for other counsel to attend.
- [5] JPL first provided counsel for Virginia and Patrick Tan with an unfiled copy of its Notice of Application and supporting affidavits by email on November 16, 2018. Two hearing days were scheduled, commencing March 12, 2019. On January 11, 2019, JPL provided a filed copy of the Notice of Application to counsel for Virginia and Patrick Tan, advising it was "in the same form as previously circulated". In my view, Virginia and Patrick Tan have had sufficient notice of the certification application, as well as opportunity to respond: s. 5(4),

CPA. Accordingly, I considered it appropriate to proceed with the matter, notwithstanding their counsel's intention to withdraw, and receive JPL's submissions.[1]

- [6] For the reasons that follow, I am satisfied that the application for certification must be granted.

## BACKGROUND

- [7] As explained in 2018 BCSC 67, the actions filed against Virginia, Patrick and Marcus Tan, as well as their related companies, arise out of an investment scheme for which Virginia Tan is said to have been the operating mind, actively supported by her husband and adult son. The scheme operated, in part, out of accounts held jointly by Virginia and Patrick Tan:
- [8] Bankruptcy orders were granted against [the defendants] Virginia Tan and Patrick Tan on April 29, 2016.
- [9] Virginia and Patrick Tan are alleged to have operated an investment scheme that involved soliciting and receiving investments into a non-existent enterprise, in exchange for promissory notes that they failed to honour.
- [10] It is also alleged that the funds received by them were fraudulently diverted to Marcus Tan, their adult son, and used to purchase assets and properties in the name of Marcus Tan, or for his benefit.
- [11] It is not disputed that Marcus Tan is the registered owner of six properties that were acquired in connection with a condominium development in Surrey. It is alleged that these properties were acquired using funds invested with Virginia and Patrick Tan.
- [12] It is also not disputed that Marcus Tan is an officer and director of two corporate entities that own 24 properties in Fort St. John. These properties are also alleged to have been acquired with funds that were invested with Virginia and Patrick Tan.
- [13] Virginia Tan has admitted to the British Columbia Securities Commission that the investment scheme was fraudulent.
- [14] In a publicly-available "Settlement Agreement" indexed at 2017 BCSECCOM 124, the following facts have been admitted:
6. From 2011 to 2015 Tan raised at least \$30 million from investors
  7. Tan issued promissory notes to the investors, which provided terms ranging from one month to two years and annualized rates of return of 16% to 21%.
  9. Many investors renewed their investment with Tan when their promissory notes matured. When investors renewed their investment, Tan issued them a new promissory note even though they did not provide any new funds.

13. since Tan earned no business income, she made interest and principal payments to investors with funds raised from other investors. Tan also comingled a relatively small amount of her personal funds with investor funds in her bank accounts, and used these accounts to make payments to investors.
14. Tan was ultimately unable to raise sufficient new funds from investors, or to inject enough of her own funds, to continue making the interest payments owing under the promissory notes. By late 2015, Tan was insolvent and she ceased to make further interest payments to investors.
15. many individual investors suffered substantial losses as a result of their investment with Tan.
18. By failing to inform investors that she had no factoring business and was not earning income from any other business, and by using other investors' funds to pay the investors' purported returns, Tan perpetrated a fraud on the investors
- [8] As noted in 2018 BCSC 67, Marcus Tan owns various properties in Surrey said to have been acquired with funds from the investment scheme. He is also an officer and director of all named corporate defendants, other than TJ0700 Holdings Ltd.
- [9] The defendants, Letan Investments Management and Letan 88 Enterprises Inc., are part of a group of entities that Virginia Tan is said to have used to carry out the investment scheme, including writing cheques to investors. She is the sole proprietor of Letan Investments Management. Virginia Tan, Patrick Tan and Marcus Tan are each officers and directors of Letan 88 Enterprises Inc.
- [10] The defendants, TLD Investments Inc. and 0994439 B.C. Ltd., own the properties in Fort St. John, also said to have been acquired with funds from the investment scheme. Marcus Tan is an officer and director of both companies.
- [11] TJI32 Ventures Ltd. and TJ0700 Holdings Ltd. are said to have been formed for the purpose of developing the Surrey properties. Virginia and Marcus Tan were directors and officers of TJ132 Ventures Ltd. Virginia Tan was also a director and officer of TJ0700 Holdings Ltd.
- [12] In November 2018, JPL obtained a forensic accounting report from James P. Blatchford Consulting Limited in relation to this matter. Blatchford Consulting is also providing forensic accounting assistance to the Trustee in Bankruptcy for both Virginia and Patrick Tan.
- [13] The accounting firm was asked for an opinion on whether it was "more likely than not that the Tans ran a Ponzi Scheme during the operative period leading up to [their] bankruptcies".
- [14] Among other things, Blatchford Consulting reported that:

- a preliminary examination of promissory notes issued to participants in the Tans' business affairs, as well as banking records from 2005 to 2016, revealed practices "characteristic of and consistent with their participation in a Ponzi Scheme";
- activities admitted to by Virginia Tan in settlement with the BC Securities Commission were "characteristic of and consistent with both the formal definition as well as an authoritative description of a Ponzi Scheme";
- banking activities for Virginia and Patrick Tan during the material time showed the routine withdrawal of "substantial sums of cash each month from their personal and corporate accounts via both "cash withdrawals" and cheques payable to "cash"". They also "routinely drew numerous cheques payable to themselves each month that, presumably when negotiated, could have been paid out by the banks as further cash proceeds". It was also apparent that "some cash withdrawals from their various bank accounts coincided with cash payments to participants [in the investment scheme], the timing consistent with [Virginia Tan's] notes" that were found on promissory notes made out to investors;
- with respect to the Surrey properties, the source of Marcus Tan's "funding to complete the purchase of at least one property came from funds advanced by various participants" in the investment scheme; and,
- with respect to the Fort St. John properties, the source of funding to complete the purchase of at least seven units "came from funds advanced by participants" in the investment scheme.

[15] The Trustee in Bankruptcy for Virginia and Patrick Tan has identified approximately 240 investors in the scheme. About 75 of them have received more in return than they invested as principal. The remaining investors have received less. It is alleged that the Tans obtained more than \$30 million through the scheme.

#### APPLICATION FOR CERTIFICATION

[16] JPL applies for certification to represent the following class:

All persons, other than the Defendants, who have provided funds to invest in the Tan Investment Scheme promoted by Virginia Tan and who have received payments from the scheme which are lesser in total amount than the total principal amount they invested.

[17] It is the plaintiff's position that its pleadings disclose viable causes of action for fraud, fraudulent conversion and fraudulent conspiracy, as well as a basis for the equitable remedies of constructive trust or an equitable lien.

[18] JPL also argues that investors in the scheme orchestrated by Virginia Tan, with benefits accruing to Patrick and Marcus Tan, form an identifiable class of persons whose claims against the defendants raise common issues of fact and law that can be most fairly and efficiently determined in a class proceeding.

#### LEGAL PRINCIPLES GOVERNING CERTIFICATION

[19] The statutory requirements for certification are found in s. 4(1) of the CPA:

4(1) Subject to subsections (3) and (4), the court must certify a proceeding as a class proceeding on an application under section 2 or 3 if all of the following requirements are met:

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of 2 or more persons;
- (c) the claims of the class members raise common issues, whether or not those common issues predominate over issues affecting only individual members;
- (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;
- (e) there is a representative plaintiff who
  - (i) would fairly and adequately represent the interests of the class,
  - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
  - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.
- (2) In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues, the court must consider all relevant matters including the following:
  - (a) whether questions of fact or law common to the members of the class predominate over any questions affecting only individual members;
  - (b) whether a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate actions;
  - (c) whether the class proceeding would involve claims that are or have been the subject of any other proceedings;
  - (d) whether other means of resolving the claims are less practical or less efficient;
  - (e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

[20] Counsel for JPL put a number of authorities before me that speak to the s. 4(1) requirements, their interpretation and application. I do not consider it necessary, for the purpose of these Reasons, to canvass all of the relevant cases.

[21] Instead, it is sufficient for me to generously reference *Finkel v. Coast Capital Savings Credit Union*, 2017 BCCA 361, which provides an authoritative review of the analytical framework I am bound to consider in determining JPL's application.

[22] On my reading of Finkel, I must consider the following general principles in resolving the matter before me:

- the class action procedure has three main goals: behaviour modification, judicial economy and access to justice: at para. 13;
- where a plaintiff (applicant) for certification satisfies the court that the statutory requirements for certification are met, the proceeding must be certified. It is mandatory: at para. 14;
- the court performs a gatekeeping function on certification applications. It is not the judge's role to determine the merits of the plaintiff's claim against the defendants, or weigh competing evidence on the application. The threshold for certification is low. However, the court must be satisfied that the statutory requirements for certification are met to a sufficient degree to avoid the matter failing when heard on its merits because the test for certification was not met: at para. 15;
- the first requirement for certification is that the pleadings disclose a cause of action. The test in making this determination is the same one applied on an application to strike - assuming the pleaded facts are true, the pleadings will be held to disclose a cause of action unless it is plain and obvious that the action cannot succeed. The court is duty-bound to read the pleadings generously and the plaintiff need only satisfy the court that the action is not bound to fail: at paras. 16-17;
- if the pleadings disclose a cause of action, the plaintiff must further demonstrate that there is a factual basis (or evidentiary foundation) for each of the remaining s. 4(1) CPA requirements. There must be some basis in fact that establishes an identifiable class; common issues; that moving forward as a class action is preferable to other options; and, the plaintiff is a suitable representative plaintiff. The plaintiff is not obliged to show that the case meets the s. 4(1) requirements on a balance of probabilities. The standard is lower than that, recognizing that a class action may be decertified if and when the statutory requirements are no longer met: at paras. 19-20;
- the requirement for establishing an identifiable class is governed by the principles outlined in *Jiang v. Peoples Trust Company*, 2017 BCCA 119 at para. 82, including: the class must be defined with reference to objective criteria that do not depend on the merits of the claim; the class definition must have a rational relationship to the common issues; and, the plaintiff's evidence must show that at least two persons could self-identify as class members, and later prove they are members of the class: as cited in Finkel at para. 21;
- in deciding whether the plaintiff has raised one or more "common issues", the court must ask whether resolution of the issues will avoid duplicative fact-finding or legal analysis; the issues form a substantial part of each class member's claim and must be resolved to resolve the claim; and, success for one class member on the issue will mean success for all: at paras. 22-23;

- in deciding whether a class action is the preferable procedure, the court must ask whether a class proceeding would be a fair, efficient and manageable method of advancing the claims, and, whether a class proceeding would be preferable compared with other realistically available means for resolution of the claims, including court processes or non-judicial alternatives. There is a substantive and procedural component to this analysis. The court must consider whether class members will receive a just and effective remedy if their claims are established, and, whether a class proceeding will provide members with access to a fair process: at paras. 25-26; and,
- finally, the plaintiff must show that as a representative plaintiff, it is able to fairly and adequately represent the proposed class, has a workable plan for advancing the action, and will vigorously represent the interests of the class, as a whole, without conflicts of interest on the common issues: at para. 27.

These principles are taken directly from Finkel at paras. 13-27. [Internal references omitted.]

See also Haghdust v. British Columbia Lottery Corporation, 2013 BCSC16 at para. 11.

## APPLICATION OF LEGAL PRINCIPLES

[23] The application for certification is unopposed. However, in light of the Court's gatekeeping function, it is incumbent upon me to consider the application, and its supporting materials, in light of the CPA requirements and independently satisfy myself that the test for certification as a class action is met.

### A. Whether the Pleadings Disclose a Cause of Action

[24] JPL filed an original Notice of Civil Claim on March 11, 2016. It has since been amended. Before me is an amended Notice of Civil Claim filed on November 14, 2017, under the CPA.

[25] I have reviewed the amended Notice. JPL pleads that from 2011 to 2016, Virginia Tan operated a fraudulent investment scheme in which she solicited funds from investors by representing that the funds would be used in a factoring or bridge loan business operated by her, and they would receive interest payments generated from that use.

[26] In exchange for the funds, Virginia Tan is said to have issued promissory notes for terms of six months or one year, with monthly interest payable at rates that varied between 12-24%. The promissory notes were typically accompanied by post-dated cheques to cover the interest payments.

[27] JPL pleads that once the promissory notes were due, Virginia Tan would encourage investors to renew or roll over their investments on the same terms. If they elected to do so, she would issue a replacement promissory note and a new series of post-dated cheques to cover the interest.

- [28] According to the Notice of Civil Claim, the factoring or bridge loan business did not exist. Instead, Virginia Tan was operating a Ponzi scheme. Investor funds were converted to her personal benefit and used, in part, to pay interest on the promissory notes.
- [29] The plaintiff pleads that Virginia Tan knew the representations made to investors were false. She knew the promissory notes and post-dated cheques were "a sham" and designed to induce investors into providing her with funds for her personal use, rather than representative of real investments. The funds obtained in the scheme are said to have flowed into accounts under the name of Virginia Tan, Patrick and Virginia Tan, or Letan Investments Management (of which Virginia Tan is the proprietor).
- [30] It is claimed that Patrick Tan and Marcus Tan knew the investment scheme was fraudulent and assisted Virginia Tan in raising funds and concealing the true nature of the scheme. This included repeating false representations made by Virginia Tan to investors, and converting funds provided by investors to the collective benefit of Virginia, Patrick and Marcus Tan.
- [31] JPL alleges that as a result of the defendants' conduct, investors have suffered loss and damages, including the principal amounts of funds they provided to Virginia Tan for investment, and, the return on those funds they would have otherwise earned if their money had been invested in legitimate investment opportunities.
- [32] Between May 2012 and March 2015, JPL claims that it invested \$6,612,000 with Virginia Tan through a series of installments. For each new investment, Virginia Tan delivered a promissory note to JPL, with interest payable at 12% per annum in 12 monthly installments. She also provided post-dated cheques for the interest. The monies provided by JPL are said to have been deposited into accounts under the name of Virginia Tan, Virginia and Patrick Tan, or Letan Investments Management.
- [33] When the true nature of Ms. Tan's scheme was exposed in 2016, JPL had received a total of \$1,798,566 return on its investments, meaning that \$4,814,034 of the principal provided to Virginia Tan remains outstanding. JPL is one of the largest investors in the scheme.
- [34] The Notice of Civil Claim alleges that Virginia and Patrick Tan conspired with their son, Marcus, as well as the defendant corporate entities, which are owned and/or controlled by each or all of them, to convert funds from the investors to their personal benefit, by acquiring properties or an interest in real property for Marcus Tan or themselves.
- [35] This realty is said to include six properties associated with a condominium development in Surrey, of which Marcus Tan is the registered owner in fee simple; 24 properties associated with a development in Fort St. John; and, an unknown property or development project on the Sunshine Coast.

- [36] Among other things, the Notice of Civil Claim seeks damages, including punitive, against each of the named defendants for fraud. The plaintiff claims that the defendants hold the invested funds and any derivative assets, including realty, as constructive trustees for the benefit of the plaintiff. JPL also claims certificates of pending litigation against the Surrey and Fort St. John lands; tracing orders; and interlocutory and permanent injunctive relief.
- [37] Based on a generous review of the Notice of Civil Claim, I am satisfied that if the facts stated by JPL are true, the pleadings disclose causes of action in fraud, fraudulent conversion and fraudulent conspiracy.
- [38] Civil fraud requires proof of four elements: (1) a false representation by the defendant; (2) knowledge of the falsehood on the part of the defendant (including recklessness); (3) the false representation must have caused the plaintiff to act; and (4) the plaintiff's actions must have resulted in a loss: *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at para. 21.
- [39] Conversion, a strict liability tort, "involves a 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.

[40] A conspiracy to commit fraud can arise in two ways:

342 There are two types of civil conspiracy in Canada: i) conspiracy to injure; and ii) conspiracy to use unlawful means. For the first type it is necessary to prove that the conspiracy was undertaken for the predominant purpose of injuring the plaintiff. For the second, regardless of the conspiracy's predominant purpose, it is necessary to prove that the defendants should have known that injury to the plaintiff would ensue: *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452 at 471-472.

343 For both types of conspiracy an agreement between the defendant and one or more others must be established either directly or by inference. The agreement need not be contractual. Rather, the plaintiff must show that a defendant combined or conspired with others to carry out a common design or a means of achieving a common objective, which, when implemented, injured the plaintiff: *Golden Capital Securities Ltd. v. Holmes*, 2004 BCCA 565 at ¶ 47.

**Soleil Hospitality Inc. v. Louie, 2010 BCSC 1183, aff'd 2011 BCCA 305. [Emphasis added.]**

- [41] On the facts, as pleaded, and with reference to the constituent elements of these torts, JPL has persuaded me that its action against the defendants is not bound to fail, thereby meeting the test under s. 4(1)(a) of the CPA. The pleadings allege false representations; reliance on those representations; the collective wrongful use and conversion of investment funds; and active and knowing participation in a deceitful scheme by all named defendants.

## B. Factual Basis for the Remaining Certification Requirements

[42] Once the pleadings are found to disclose one or more causes of action, the plaintiff must demonstrate there is a factual basis for each of the remaining requirements under s. 4(1) of the CPA.

### Identifiable Class

[43] In *Jer v. Samji*, 2013 BCSC 1671, appeal allowed in part, *Jer v. Royal Bank of Canada*, 2014 BCCA 116, Justice Gerow certified a class action arising out of an alleged Ponzi scheme involving a notary public. Like the action before me, the plaintiffs in *Samji* alleged a loss of funds after investing in a private investment opportunity that did not exist. Instead, Ms. Samji was alleged to have been "operating a fraudulent scheme where returns [were] paid to the investors from their own money or the money paid by subsequent investors, and not from profit earned by an individual or organization running an operation": at para. 2.

[44] The plaintiffs in *Samji* proposed the following class definition:

All persons, other than the Defendants, who have provided funds to invest in the "Mark Anthony Investment" scheme promoted by Samji and who have received payments from the scheme which are lesser in total amount than the total principal amount they invested.

At para. 103.

[45] Justice Gerow found that this definition contained objective criteria that satisfied "the requirement of defining a sufficiently narrow class, in that a person is a member if he or she invested in the scheme and lost money": *Samji* at para. 108.

[46] JPL has modelled its proposed class definition after the language approved of in *Samji*:

All persons, other than the Defendants, who have provided funds to invest in the Tan Investment Scheme promoted by Virginia Tan and who have received payments from the scheme which are lesser in total amount than the total principal amount they invested.

[47] Consistent with the conclusion reached by Justice Gerow, I am satisfied that JPL's proposed definition gives meaningful effect to the principles in *Jiang v. Peoples Trust Company*.

[48] The definition provides sufficient clarity to know who would be entitled to receive notice of the class action; who would be entitled to relief; and, who would be bound by the final judgment: namely, investors who provided funds to Virginia Tan for the purpose of investment and did not receive their full amount back.

- [49] I agree with JPL that whether someone falls within this definition is not dependent on the outcome of the litigation, and can be objectively determined with reference to the financial records of the defendants, as well as records of the proposed class members. Promissory notes, post-dated cheques and other financial records or documentation, maintained by both sides, reasonably carry the capacity to identify investors, the amounts paid in to the scheme, and amounts returned.
- [50] The evidence filed in support of certification establishes that the issuance of promissory notes and post-dated cheques formed an integral part of the investment scheme.
- [51] For instance, in an affidavit sworn by Lale Doetsch, director of JPL, she deposes that in May 2012, she made her first investment with Virginia Tan, wiring \$500,000 US directly to one of Ms. Tan's bank accounts. In exchange, Virginia Tan issued a promissory note for \$512,600 CDN. This amount was said to be payable in one year, with interest at 12% in monthly installments of \$5,126.
- [52] JPL continued its investments, with the last one occurring on March 19, 2015. JPL is said to have made approximately 20 distinct investments. In addition to the original promissory note, it received "renewal notes" from Virginia Tan. Post-dated cheques for interest earned also formed part of the document exchange. As deposed by Lale Doetsch:

All of our investments in the Tan Scheme were initially for [a] term of one year, as reflected in the promissory notes issued by Virginia Tan when each investment was made Virginia Tan would issue us a new promissory note for a one year term, as well as post-dated cheques for the interest due under the new note

I met Virginia Tan for the first time at the West Vancouver Hollyburn Club for dinner on July 22, 2012 Virginia Tan explained to me that she was providing bridge financing and she only lent money to people she knew who mainly operated businesses that were waiting to get paid for government jobs they had done. She said these businesses had to wait for a long time for their payment and they would need money for new projects. She said she had virtually no clients who defaulted and because of that the investments were very safe.

- [53] Attached to the affidavit of Ms. Doetsch are copies of banking records from the accounts of Virginia and Patrick Tan showing amounts that correspond to JPL's said investments; signed interest cheques; and copies of promissory notes. These documents exemplify the availability of information from which an assessment of class membership can be made.
- [54] It is also apparent from the forensic accounting report prepared by Blatchford Consulting that it is possible, through a review of the banking records of Virginia and Patrick Tan, as well as their related corporate accounts, to make determinations on the source of investment funds received by the Tans, the amounts returned, and their timing.
- [55] The proposed class definition clearly bears a rational relationship to JPL's proposed common issues. The common issues are addressed later in these Reasons, but they are focused on the structure and nature of the investment scheme operated by Virginia Tan, including her

receipt of funds; the use of those funds; representations made to investors; the knowledge and participation level of the defendants; and, liability for losses and damages sustained by investors. The proposed class consists of investors who paid into the scheme on the basis of representations made to them by Virginia Tan; lost money as a result; and, seek to recover from the defendants. The nexus is obvious.

- [56] Finally, it is readily apparent from the evidence that at least two persons could self-identify as class members and later prove they are, in fact, members. The Trustee in Bankruptcy for Virginia and Patrick Tan has informed JPL that approximately 240 investors with the scheme have been identified thus far, with approximately 165 of those investors receiving less money back from Virginia and Patrick Tan than the principal amount they invested. On the objective criteria articulated by JPL, *prima facie* all 165 investors would fall within the proposed class.
- [57] I am satisfied there is an evidential basis supporting an identifiable class of two or more persons as required by s. 4(1)(b) of the CPA.

#### Common Issues

- [58] The claims put forward on the certification application must raise common issues.
- [59] JPL proposes 16 common issues. They are modelled on the common issues certified in Samji and set out in Schedule "A" of JPL's Notice of Application. I will not repeat them here. I have reviewed Schedule "A" and the common issues address:
- the nature of the representations made to investors by Virginia Tan;
  - the existence (or non-existence) of a factoring or short-term loan business;
  - Ms. Tan's intention in soliciting, receiving and using funds from investors;
  - promissory notes and post-dated cheques as a feature of the investment scheme;
  - Virginia Tan's knowledge of the true source of funds for repayment on the promissory notes and interest;
  - the materiality of misstatements made by Virginia Tan, whether they constitute a material false pretence and were designed and intended to induce investors;
  - receipt of received funds from members of the defined class (Class members) under false pretences;
  - conversion of these funds by Virginia Tan for her own use and benefit, including repayment on principal investment amounts and interest;
  - Class members' entitlement to damages for fraud and fraudulent conversion against Ms. Tan;
  - Patrick Tan's and Marcus Tan's knowledge of the fraudulent nature of the investment scheme and assistance they provided in carrying out the scheme and converting related funds;

- Class members' entitlement to damages for fraud, fraudulent conversion or fraudulent conspiracy against Patrick Tan and/or Marcus Tan;
- Marcus Tan's receipt of investment funds (or their benefit) provided by Class members;
- Class members' entitlement to have Marcus Tan account for the funds or benefits received;
- use of Class members' funds in acquiring, or servicing debt on, the Surrey or Fort St. John properties;
- Class members' entitlement to a constructive trust or equitable lien against those properties;
- involvement of TLD Investments Inc. and 0994439 B.C. Ltd. in the wrongful conversion of investment funds;
- Class members' entitlement to claim liability against TLD Investments Inc. and 0994439 B.C. Ltd.;
- involvement of Letan Investments Management, Letan 88 Enterprises Inc., TJ0700 Holdings Ltd. and TJ132 Ventures Ltd. in carrying out the investment scheme and in converting funds; and,
- Class members' entitlement to claim liability against these defendants.

[60] Resolution of these issues would necessitate judicial findings on the structure of the impugned scheme; its allegedly fraudulent and deceptive nature; the individual and collective involvement of Virginia, Patrick and Marcus Tan and/or their companies; the defendants' level of awareness of the scheme's true nature, as well as their intention in that regard; the knowing conversion of investment funds for purposes ancillary to the scheme as represented to investors; the results of the conversion; the involvement of the named defendants in the conversion, including corporate; and, the Class members' legal entitlement to claim loss, damages and equitable remedies against the defendants.

[61] I agree with JPL that based on the evidence before me, the proposed common issues are ones that would necessarily play a substantial role in the determination of liability in favour of claimant investors that fall within the identifiable class, as against one or more of the named defendants.

[62] To prove their claims against the defendants, a Class member will have to establish the fraudulent nature of the scheme; the knowing involvement of each defendant; the wrongful conversion of funds; and a nexus between the investors' contribution, the scheme, the wrongful conversion and loss and damages sustained. Resolution of the proposed common issues for one Class member, with reference to the same scheme and modus operandi, will logically advance the claims of all Class members. Questions of fact and law about the structure of the investment scheme, its true nature, where the investment funds ultimately landed, and who was involved, will be answered.

- [63] I am satisfied that resolution of the common issues as articulated by JPL will avoid duplicative fact-finding or legal analysis. These are issues that would necessarily form a "substantial and necessary ingredient" of each member's claim, and, they would require resolution to determine liability against the defendants. As a result, success in resolution for one class member is likely to move the litigation forward: *N&C Transportation Ltd. v. Navistar International Corporation*, 2018 BCCA 312 at para. 92.
- [64] JPL is not required to show that resolution of the common issues in one case will be determinative of liability in every other case. The fact that contextual and evidentiary differences between cases may require "further individual actions on certain issues, such as damages or causation" does not preclude certification: *N&C Transportation Ltd.* at paras. 92-95.

## Preferability

- [65] JPL must show that a class action is the preferable procedure. In deciding this issue, I must consider whether this form of action will provide the Class members with a just and effective remedy if their claims are established, as well as access to a fair process.
- [66] Mindful of the factors delineated in s. 4(2) of the CPA, I am satisfied that the preferability requirement is met. I agree with JPL that resolution of the common issues, set out in Schedule "A", will likely determine the issue of liability for the proposed Class members against the defendants, leaving only the question of damages. In the circumstances of this matter, where investor complaints arise out of one scheme, alleged to have been perpetrated through a consistent and markedly similar pattern of conduct led by Virginia Tan, I am of the view that proceeding by way of class action is preferable to a multiplicity of individual actions that raise the same issues.
- [67] Thus far, as many as 165 investors identified by the Trustee in Bankruptcy for Virginia and Patrick Tan likely fall within the proposed class. To the best of my understanding, a significant proportion of these investors have not filed actions in relation to their losses. There may be myriad reasons for that, including the fact that Virginia and Patrick Tan are in bankruptcy. For these investors, a class action may provide them with access to recourse for recovery that they are otherwise not able to seek of their own accord.
- [68] In so holding, I recognize that no two claims will ever be exactly alike and there may be differences on legal and factual issues between claims put forward by Class members that necessitate individualized consideration, and resolution. However, in *Samji*, Justice Gerow noted at para. 213 that the CPA "provides for the resolution of common issues that is binding on all defendants and class members. [At the same time, it] also offers procedural flexibility for the resolution of any individual issues that remain after the resolution of the common issues". I do not consider the potential existence of differences between claims to defeat JPL's position on preferability.

- [69] The fact that multiple actions involving Virginia, Patrick and Marcus Tan are already under collective case management by this Court, notwithstanding their diverse forms, speaks to the benefits of proceeding as one where practicable, in recognition of the commonality of issues and the substantive and procedural benefits of avoiding duplication, inconsistent determinations and an inefficient use of judicial resources.
- [70] There are other forms of action outstanding against the Tans, including bankruptcy and foreclosures. These actions, if successful, will not provide remedial relief of the nature sought by JPL and the proposed Class members. In any event, there is nothing precluding a class action, if certified, from being case managed alongside the other actions filed against Virginia, Patrick and Marcus Tan and if, through that process, it becomes apparent that a class action is no longer the preferred course, the CPA allows for decertification.
- [71] Like Justice Gerow in *Samji*, on the evidence before me, I am satisfied "judicial economy will be enhanced under a class action. If the defendants are successful at the common issues trial, the court and class members will be saved from having to manage and participate in individual procedures": at para. 215.

### **Representative Plaintiff**

- [72] To succeed on its application, JPL must show that as a representative plaintiff, it has the capacity to fairly and adequately represent the proposed class, has a workable plan for that purpose, and will vigorously represent the interests of the class as a whole, with no conflicts on the common issues.
- [73] I am satisfied that JPL meets this test.
- [74] JPL is an investor in Virginia Tan's scheme. The circumstances surrounding JPL's involvement, as described in the affidavit material of Lale Doetsch, and supported by financial documentation, are factually consistent with the observations and findings made by Blatchford Consulting in its forensic accounting review. In other words, the manner in which JPL's investment funds were received, processed and used by Virginia Tan appears substantially similar to the manner in which funds from other investors were received, processed and used by Ms. Tan. Like other investors, JPL has suffered a loss by receiving less in return from the scheme, than invested. And, on the evidence, there is no indication that JPL's interest in relation to the common issues would conflict with the other proposed Class members. Like the other members, JPL will need to have the common issues resolved in its favour to establish liability against the defendants and recover its losses, as well as damages.
- [75] JPL filed a proposed litigation plan with its Notice of Application. I have reviewed the plan. Among other things, the plan provides for continued case management by this Court; timelines for the exchange of documents and follow-up demands for production; the creation of a schedule for examinations for discovery and timelines for completion; the exchange and delivery of expert reports; processes governing interlocutory applications; a summary trial of the common issues between 12 to 18 months from any certification

decision; and, a suggested process for managing remaining issues should the common issues be resolved in favour of the Class members, including the possible appointment of an assessor to provide a report on entitlement to damages in individual claims.

- [76] It is not the role of the Court, at this stage of the proceeding, to scrutinize the details of the litigation plan to ensure that it is capable of carrying the case through to trial without further revision. Instead, as noted in *Fakhri v. Alfalfa's Canada Inc. cba Capers*, 2003 BCSC 1717, aff'd 2004 BCCA 549, the "purpose of the [litigation] plan for proceeding at the certification stage is to aid the court by providing a framework within which the case may proceed and to demonstrate that the representative plaintiff and class counsel have a clear grasp of the complexities involved in the case which are apparent at the time of certification and a plan to address them": at para. 77.
- [77] I am satisfied this threshold has been met. Counsel for JPL has advised the Court, and I accept, that its plan is in substantially the same form as various other litigation plans that have been approved in class actions, including the one approved in *Samji*.

## DISPOSITION

- [78] After considering the s. 4(1) CPA requirements, within the context of the entirety of the circumstances before me, I am satisfied that this action must be certified as a class action.
- [79] At this stage of the proceeding, it is not my role to determine the merits of the claims put forward by JPL, or weigh competing evidence. The threshold for certification is low. On the evidence, the statutory requirements are met to a sufficient degree that the requested order must follow: *Finkel* at para. 14.
- [80] Accordingly, I grant the order requested, on the terms set out in Part 1 of JPL's Notice of Application, filed January 7, 2019, paragraphs 1-9.
- [81] This includes the articulation of common issues set out in Schedule "A" to the Notice of Application; the form of notice set out in Schedule "B"; and, the litigation plan attached as Schedule "C". These schedules shall form part of the order.
- [82] However, I direct that JPL make two amendments to these materials:
- a) For greater clarity, and to ensure sufficient notice to potential Class members, the section of the notice in Schedule "B" entitled "What is the class action about?", should be amended to read:

The class action alleges that Virginia Tan operated a fraudulent investment scheme, known as a Ponzi scheme, in which money invested in the scheme was used to make payments to other investors in it or otherwise converted by Virginia Tan for her own use and benefit, or for the benefit of her spouse, Patrick Tan, and/or adult son, Marcus Tan, and that the other Defendants assisted Virginia Tan in carrying out this scheme or received the benefit of funds invested in this scheme.

- b) The litigation plan in Schedule "C" should be amended to reflect the fact that its provisions, as well as the timelines embodied therein, will be subject to directions provided by the case management judge pursuant to the case management framework established in September 2017 in respect of actions filed against Virginia Tan, Patrick Tan, Marcus Tan and their related companies.
- [83] Finally, the CPA requires that a certification order state the manner in which, and the time within which, a class member may opt out of the proceeding: s. 8(1)(f). Accordingly, I order that:
- a) within 30 days of certification of this action as a class proceeding, the Trustee in Bankruptcy for Virginia Tan shall deliver to class counsel a list of all investors in the investment scheme for whom the Trustee has either a mailing address or email address, and setting out that contact information;
  - b) within 60 days of certification of this action as a class proceeding, class counsel shall send the notice in Schedule "B", as amended, to each investor for whom the Trustee in Bankruptcy has provided either a mailing address or email address;
  - c) the said notice will be posted on a website created by class counsel for the purpose of this action at [www.virginiatananclassaction.com](http://www.virginiatananclassaction.com);
  - d) a copy of the notice shall also be provided to the Trustee in Bankruptcy for Virginia Tan for inclusion, subject to the Trustee's consent, with the materials the Trustee is already maintaining on its website with the Trustee's consent pursuant to this Court's case management framework established in September 2017; and,
  - e) class members are entitled to opt out of the class proceeding by notifying Bennett Mounteer LLP, solicitors for the representative plaintiff, in writing by email no later than 60 days after the notice is sent.

[84] JPL has leave, if necessary, to appear back before me to settle the terms of this order.

"DeWitt-Van Oosten J."

- [1] Only counsel for the plaintiff and Virginia and Patrick Tan made submissions on the certification application, with counsel for Ms. and Mr. Tan focusing his submissions on the fact that he has provided his clients with notice of an intention to withdraw, and has no instructions in responding to the application. Other counsel for the named defendants or parties with an interest in the action were present, as well as counsel for the Trustee in Bankruptcy, but they either took no position, did not have standing to make submissions, or indicated that they were present for purposes of a watching brief.

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Prepared on 27 October 2026 · Esheria