

CANADA / JUDGMENT

Kim v. Jung

2021 BCSC 1352

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Supreme Court of British Columbia

DECIDED

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2021 BCSC 1352 Kim v. Jung

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kim v. Jung,

2021 BCSC 1352

Date: 20210709

Docket: S195748

Registry: Vancouver

Between:

Hun Bae Kim and Nextus Developments Ltd.

Plaintiffs

And

Wook Jin Jung, aka Eric Jung, Smart Connection Auto Sales Ltd.,

Motomind Auto Group Ltd., and 1194613 B.C. Ltd.

Defendants

Corrected Judgment: The text of the judgment was corrected on the front page on January 4, 2022.

Before: The Honourable Mr. Justice Mayer

Reasons for Judgment

Counsel for the Plaintiffs:

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R. Josephson

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 18 - 19, 2021

Place and Date of Judgment:

Vancouver, B.C.

July 9, 2021

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Introduction

- [1] On May 17, 2019, the plaintiffs Hun Bae Kim and his company Nextus Developments Ltd. commenced this fraud action against the defendants Wook Jin Jung and his companies Smart Connection Auto Sales Ltd., Motomind Auto Group Ltd. and 1194613 B.C. Ltd. On the same day, the plaintiffs obtained a Mareva injunction seeking to prevent the defendants from disposing of assets in Canada (the "Mareva Order").
- [2] Mr. Jung admits to defrauding the plaintiffs of millions of dollars. The fraud involved obtaining investment funds from the plaintiffs for what the plaintiffs believed was a business to purchase luxury vehicles through an auction house in Ontario for resale in British Columbia. Mr. Jung fabricated the identity of persons, documents, receipts and contracts to create the illusion of this auto purchase and resale business - which was a sham. The

plaintiffs transferred over \$18 million to the defendants and received approximately \$14 million of their own money back, in what the plaintiffs describe as one-person Ponzi scheme.

- [3] On May 18, 2021, I heard two applications brought by the plaintiffs. In the first, the plaintiffs bring a summary trial application seeking damages for fraud in the amount of \$3,909,169, \$400,000 for punitive damages, special costs and an order entitling them to trace misappropriated funds and a declaration of constructive trust over traceable proceeds. In the second application, Mr. Kim seek a declaration that the defendants are in contempt of court for failing to abide by the terms of the Mareva Order, which required the defendants to disclose an accurate list of assets and prohibited them from dissipating those assets.
- [4] The defendants concede that the plaintiffs are entitled to damages for fraud. They contend that the amount taken from their bank account by Mr. Kim and an amount equivalent to the value of their vehicles, which were seized by the plaintiffs and sold just after discovery of the fraud, should be set off against the plaintiffs' claim. They deny the plaintiffs are entitled to punitive damages or special costs. In addition the defendants concede that Mr. Jung breached the terms of the Mareva Order but dispute that this breach constitutes contempt of court in the circumstances.

Background

- [5] Mr. Kim discovered the fraud on or about May 7, 2019 after receiving a tip from an employee at Mr. Jung's used car dealership. When Mr. Kim confronted Mr. Jung on May 8, 2019, Mr. Jung denied the fraud and offered to clear things up. While they were driving to the auto-dealership that Mr. Jung had falsely suggested was involved in the sham auto-resale business, Mr. Jung asked to stop at his home in North Vancouver and then fled into the woods. The plaintiffs later learned that Mr. Jung had gone to Arizona and then returned to Canada the next month.
- [6] In an initial effort to recover his funds, Mr. Kim was able to convince an employee at Mr. Jung's used car dealership to transfer title to 39 used vehicles (the "Inventory Vehicles") over to his company, Nextus Developments Ltd. ("Nextus"). In addition, Mr. Kim was able to transfer \$34,000 from the defendants' bank account over to himself.
- [7] At Mr. Jung's examination for discovery in February 2020, and in response to the plaintiffs' summary trial application, the defendants admit to defrauding the plaintiffs of \$4,652,030, being the amount transferred from the plaintiffs as determined by a forensic accountant. The plaintiffs contend that in addition to this \$4.6 million amount, that they transferred an additional \$57,115 to Mr. Jung. Mr. Jung does not take a position on whether this additional transfer occurred. In total, on the assumption that the \$57,115 transfer was made, and taking into account the \$34,000 the plaintiffs were able to obtain from the defendants' bank account, the net amount of the funds fraudulently obtained by the defendants is \$4,675,145.

- [8] Both parties agree that the value of the Inventory Vehicles should be set off against the gross amount of the plaintiffs' fraud claim but disagree on value. The defendants claim that the Inventory Vehicles should be valued at \$1,101,583[1], the amount determined by an independent automobile appraiser. The plaintiffs contend that the value should be set at \$765,976.62 - being the amount that the plaintiffs obtained when they sold the Inventory Vehicles to an independent third party car dealership - and on this basis contend that they have sustained damages of \$3,909,169.

Issues

- [9] With respect to the plaintiffs summary trial application the issues to be decided include the following:
- a) The set-off value of the Inventory Vehicles;
 - b) Whether, in addition to the amounts admitted by Mr. Jung, an additional \$57,115 was transferred to him;
 - c) Whether the plaintiffs are entitled to a tracing remedy and a constructive trust over traced funds;
 - d) Whether the plaintiffs are entitled to punitive damages and in what amount; and
 - e) Whether the plaintiffs are entitled to special costs and in what amount.
- [10] In addition, the Court is required to determine whether Mr. Jung is in contempt of court for breaching the Mareva Order. The parties agree that if contempt is found a further date will have to be set to deal with an appropriate penalty.

Value of the Inventory Vehicles

- [11] In May 2019, after Mr. Kim had convinced one of Mr. Jung's employees to transfer the Inventory Vehicles to his company Nextus, he sold 37 of the Inventory Vehicles in one block to a car dealership, YVR Used Cars Sales Gallery ("YVR Used Cars") and two vehicles separately for, in total, \$765,976.62. YVR Used Cars was a subtenant of the defendants - the defendants having leased property in Burnaby from Mr. Kim for operation of their used car business.
- [12] Mr. Kim contends that the price he obtained for the Inventory Vehicles reflects the market price for these vehicles if sold on a dealer-to-dealer basis, which he contends was a fair method to determine value. He estimated the value of individual vehicles based on factors including the following: the price Mr. Jung had paid for them, the sale prices for the comparable vehicles sold on the Adesa and Manheim used car auction sites, and other sources from the internet. Mr. Jung says that the Adesa and Manheim auction sites are two of the leading dealer-to-dealer used car auction houses worldwide.

- [13] The defendants obtained an expert report from Carey Scarrow, who provided an opinion on the actual cash value of the Inventory Vehicles (the "Scarrow Report"). In this report Mr. Scarrow estimated the actual cash value of the Inventory Vehicles, and three additional vehicles, to be \$1,101,583.
- [14] The plaintiffs say that the Scarrow Report is unreliable for a number of reasons. First, they say Mr. Scarrow erroneously included three vehicles that were not taken by Nextus. Second, they say that Mr. Scarrow inappropriately valued the Inventory Vehicles as if sold individually to consumers - and not as a block - relying on internet sales data for only 16 of the Inventory Vehicles. The plaintiffs contend that this methodology failed to take into account the cost of selling each individual vehicle including, for example, rent for the used car lot, sales commissions paid to staff and vehicle storage and insurance costs. In addition, the plaintiffs say that in most cases Mr. Jung paid less for the vehicles than the price estimates included in the Scarrow Report. They say that many of the Inventory Vehicles were in poor shape and note that Mr. Scarrow did not inspect any of them and did not account for depreciation.
- [15] In summary, the plaintiffs say that the defendants have not met their burden of proving the value of the Inventory Vehicles. They say that the best evidence of value before the court is the price obtained by the plaintiffs through the arms-length sale to another used car dealer.
- [16] The defendants' principle contention is that the Inventory Vehicles were sold by Nextus to YVR Used Cars very quickly and there is no evidence that Mr. Kim made any efforts to market these vehicles to other dealerships before doing so. They submit that the Court could simply apply a small discount to the valuation set out in the Scarrow Report - to reflect costs related to selling the vehicles. The defendants did not provide evidence or submissions with respect to what discount should be applied.
- [17] As the plaintiffs submit, the onus is on the defendants to prove a value for the Inventory Vehicles on a balance of probabilities. I find that the Scarrow Report does not establish a reliable value, and in this respect rely on the plaintiffs' complaints set out above. I accept the plaintiffs' submission that the best evidence of the value of the Inventory Vehicles before the Court is the sale price they obtained. There is no evidence on which I could conclude that the sale of these vehicles was improvident. As the plaintiffs' submit, Mr. Kim would have been motivated to obtain the highest price possible for the Inventory Vehicles.
- [18] In conclusion, I find that the value of the Inventory Vehicles to be set off against the gross amount of the plaintiffs' fraud claim is \$765,976.62.

Additional \$57,115 Transfer

- [19] Mr. Kim deposes that in addition to the \$4,652,030, which the defendants' forensic accountant calculated is the amount transferred to the defendants by the plaintiffs, that an additional \$57,115 was transferred from Nextus to Mr. Jung's company Motomind Auto Group Ltd. on May 3, 2019. Mr. Jung does not take a position on this additional transfer. There being no evidence to contradict that of Mr. Kim, I find that the plaintiffs transferred the additional \$57,115 to the defendants.

Claim for a Tracing Remedy and Constructive Trust over Traced Funds

- [20] The plaintiffs apply for an order that they have constructive trust over the funds fraudulently obtained by the defendants, a tracing remedy to determine where the funds went and a constructive trust over any traceable proceeds. As set out above, the defendants do not take a position on these applications.
- [21] The Supreme Court of Canada has recognized that a fraud resulting in the wrongful acquisition of property gives rise to a constructive trust: *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 at para. 39.
- [22] The plaintiffs seek a tracing remedy to determine what has happened to their funds. They rely upon the decisions in *Li v. Li*, 2017 BCSC 1312 at paras. 253-254, 263-266, *aff'd* *Li v. Li*, 2021 BCCA 39 and *Li v. Li*, 2019 BCSC 533.
- [23] In this case, Mr. Jung has admitted to defrauding the plaintiffs. I find that there is a basis for imposing a constructive trust over the funds that he or the defendant companies fraudulently obtained. In addition, to the extent that the defendants no longer continue to hold these funds, I conclude that a tracing remedy is necessary to determine what happened to them.

Claim for Punitive Damages

- [24] The plaintiffs seek an award for punitive damages of \$400,000, on the basis that Mr. Jung's actions were malicious, pre-mediated and should offend the Court's sense of decency. They submit that a punitive damages award for this amount is required to denounce Mr. Jung's fraudulent conduct and to deter others from undertaking similar frauds in the future.
- [25] The defendants contend that punitive damages are not appropriate in this case. First, the Defendants submit that Mr. Jung may be charged criminally, which is a factor the court should consider. That is, the court should assume that the goals of denunciation and deterrence are likely to be satisfied in a criminal proceeding. In addition, in a rather interesting submission the Defendants seek to justify Mr. Jung's fraud by suggesting that it resulted from economic pressure imposed on him by Mr. Kim. In this respect, Mr. Jung contends that Mr. Kim pressured him to accept ever-increasing investments in his auto-sales businesses and then threatened to withdraw his investment, putting Mr. Jung's business at

risk. In addition, Mr. Jung contends that Mr. Kim was maneuvering to take over his auto-sales business. He says that in order to appear that he was meeting his financial obligations to Mr. Kim he engaged in fraudulent activity.

- [26] The alleged financial pressure imposed by Mr. Kim on Mr. Jung does not justify Mr. Jung's fraud. In my view, the pressure tactics alleged by Mr. Kim can be described as hard business tactics. As the plaintiffs submit, Mr. Jung was not obligated to take further investments from Mr. Kim. The sham auto resale business was pre-meditated and complex involving the purposeful creation of a number of false documents, receipts and contracts and went on for a significant period. In this sense, it was not a "crime of opportunity" committed after a momentary lapse of judgment resulting from financial pressures.
- [27] The evidence indicates that at some point Mr. Jung began experiencing financial difficulties due to the mediocre performance of his auto-sales business. As the plaintiffs contend, it is possible that Mr. Jung saw Mr. Kim as a source of cash to prop up his business and concocted the elaborate luxury automobile re-sale scam as a way to obtain funds.
- [28] As stated in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 "[p]unitive damages are awarded against a defendant in exceptional cases for 'malicious, oppressive and high-handed' misconduct that 'offends the court's sense of decency'. An assessment of punitive damages must consider proportionality in light of the blameworthiness of the defendant's conduct, the degree of vulnerability of the plaintiff, the need for deterrence, the existence of other penalties - whether civil or criminal, and the advantage gained by the wrongful conduct. Determining the degree of blameworthiness includes considering factors such as: whether the misconduct was planned and deliberate, the intent and motive of the defendant, whether the conduct persisted over a long time, whether the defendant knew that their actions were wrong and attempted to conceal or cover up their misconduct, and whether the defendant profited from their conduct: *Whiten*, at paras. 36, 111-125.
- [29] In this case, I consider that Mr. Jung's planned and deliberate actions in carrying out a complex fraud over an extended period, which he must have known was wrong, attract a high degree of blameworthiness. In addition, I accept that Mr. Kim as someone interested in entering into the auto-sales business, who did not have a dealer license, had a degree of vulnerability. Both of these factors favour an award for punitive damages. With respect to the potential that Mr. Jung may be charged criminally for his fraud, at this point this has not occurred. As a result, I am unable to determine whether this factor militates against a punitive damages award.
- [30] I take judicial notice of the fact that false investment schemes continue to occur in our society. In my view, an award of punitive damages to deter others from carrying out schemes like that carried out by Mr. Jung is appropriate. That is, punitive damages are necessary to create a risk to those participating in an organized fraud: see *Gennett Lumber Co. v. John Doe a.k.a. Milton Harvey et al*, 2019 ONSC 1345 at paras. 33, 48-50, 53. Finally, the advantage gained by Mr. Jung is significant. He has misappropriated over \$4 million of the plaintiffs

money - none of which has been repaid.

- [31] In summary, I find that Mr. Jung's actions were high handed and offend the Court's sense of decency and therefore that an award of punitive damages is appropriate. The question is, what amount of damages under this head should be awarded?
- [32] The plaintiffs point to a number of decisions in which punitive damages were awarded, including the following:
- a) Han v. Cho, 2009 BCSC 458, in which a fraudster was ordered to pay \$100,000 in punitive damages in a fraud case involving damages of approximately \$2.3 million;
 - b) Golden Capital Sec. Ltd. v. Holmes et al, 2003 BCSC 1265, in which the two key conspirators were each ordered to pay punitive damages of \$200,000 in an illegal share trading scheme;
 - c) Elekta Ltd. v. Rodkin, 2012 ONSC 2062, in which a fraudster was ordered to pay \$200,000 in a case involving damages of over \$12,459,784; and
 - d) Century v. New World Eng. Corp., 2013 ONSC 2140, in which the fraudsters were ordered to pay punitive damages of \$300,000 in a case involving damages of over \$7.4 million.
- [33] In the cases referred to by the plaintiffs, the punitive damages awards ranged from approximately 2% to 5% of the amounts awarded as compensatory damages. Although the punitive damages award in each of the cases cited by the plaintiffs turned on their particular facts, they provide some guidance with respect to a possible range for punitive damages. Given the factors set out in Whiten and considering the authorities cited by the plaintiffs, I consider it appropriate to award the plaintiffs punitive damages of \$185,000 - which is approximately 4% of the amount of their fraud claim.

Claim for Special Costs

- [34] The plaintiffs seek special costs of their summary trial application. Special costs are awarded to punish and deter reprehensible conduct in the course of a litigation: Smithies Holdings Inc. v. RCV Holdings Ltd., 2017 BCCA 177 at para. 134.
- [35] The conduct in the course of this litigation, which the plaintiffs say constitute reprehensible conduct justifying an award of special costs, include the following:
- a) Mr. Jung denied committing fraud in his response to civil claim and did not admit his fraud until February 2020;
 - b) The plaintiffs were required to apply for a Mareva injunction to prevent Mr. Jung from disposing of his assets and to bring a further application to compel compliance with that order.

- [36] The plaintiffs contend that this conduct, combined with the conduct at issue in their application for an order that the defendants be found in contempt of court, justifies an order for special costs.
- [37] First, the remedy with respect to contempt of court will be dealt with at a hearing to be set. I decline to consider this in an analysis of the plaintiffs' entitlement to special costs. With respect to whether the other conduct during the course of this litigation pointed to by the plaintiffs constitutes the type of reprehensible conduct justifying an award for special costs, I do not consider this to be the case. The fact that the defendants did not concede the basis for the plaintiffs' fraud claims when the response to notice of civil claim was filed in July 2019 is not surprising. As the defendants point out, Mr. Jung admitted to the fraud relatively quickly - approximately seven months later in February 2020. In addition, the fact that the plaintiffs made a decision to obtain a Mareva injunction does not constitute reprehensible conduct on the part of the defendants. I decline to award special costs.

Contempt of the Mareva Order

- [38] The plaintiffs seek a declaration that the defendants are in contempt of the Mareva Order by spending beyond the prescribed limit, failing to disclose an accurate list of documents and dissipating assets. In the event that this Court makes the declaration sought, the plaintiffs would then return to court for the determination of an appropriate sentence.
- [39] Relevant facts concerning the issuance and terms of the Mareva Order and steps taken after its issuance are set out below.
- [40] On May 17, 2019, I granted the plaintiffs' application for the Mareva Order requiring the defendants to, within seven days of service of the order, produce a list verified by affidavit detailing all of the defendants' assets. In addition, the Mareva injunction prohibited the defendants from disposing of or dealing with any of their assets unless the expenditure fell within a defined exception or if they retained a total of approximately \$5.24 million in assets at all times. Mr. Jung was allowed to spend \$7,000 per month on ordinary living expenses, the defendant companies were allowed to spend \$10,000 on business expenses and the defendants were allowed to spend a total of \$25,000 on legal fees - so long as they disclosed the source of the funds spent on these things to the plaintiff.
- [41] On September 12, 2019, after an application was brought for contempt of the Mareva Order, the defendants consented to an order requiring them to produce all documents in their possession allowing the plaintiffs to trace funds deposited into their accounts, that Mr. Jung would swear an affidavit explaining what happened to the plaintiffs' funds, and that Mr. Jung would be cross-examined before me on his affidavit.
- [42] On October 11, 2019, Mr. Jung swore an affidavit providing a partial explanation for what happened to the \$4.6 million he had taken from the plaintiffs. He swore that over a six week period, between the end of March 2019 and mid May 2019, he withdrew over \$1.6 million of the plaintiffs' funds from various corporate accounts, converted the funds into gold and then

into gambling chips, which he then lost gambling at a public casino and at a private residence. He also swore that he made two payments in May 2019, each for over \$90,000, repaying loans that he obtained in 2016.

- [43] At an examination for discovery in February 2020, Mr. Jung testified that he was using funds from his wife's bank accounts to pay living expenses. In May 2020, Mr. Jung refused the plaintiffs' demand that he provide copies of statements from his wife's bank accounts. In February 2021, the plaintiffs again demanded disclosure of Mr. Jung's wife's bank statements, which the defendants' provided on April 30, 2021.
- [44] On April 30, 2021, Mr. Jung swore a further affidavit, in response to this contempt application, admitting that he had breached the Mareva Order by dissipating assets through spending more than \$7,000 on personal expenses and more than \$25,000 in legal fees and failing to advise the plaintiffs of the source of funds used for these expenditures. His explanation for exceeding the \$7,000 monthly personal expenses limit was that his wife did not realize the impact of the Mareva injunction. He also advised at that time that his brother had been providing him and his wife with funds to pay their living and legal expenses. Finally, he swore that he had not received money from anyone other than his brother for living expenses, which was shown to be correct when on May 17, 2021 he disclosed copies of four paycheques earned working as a car salesman.
- [45] Mr. Jung was cross-examined before this Court on May 18 and 19, 2021. For the purposes of these reasons it is not necessary to review all of Mr. Jung's testimony. In summary, Mr. Jung again admitted that he was aware that the terms of the Mareva Order limited his monthly personal expenditures and that he had exceeded his personal spending limit. He testified that he did not review the Mareva Order in detail and did not appreciate that the personal spending limit had been set at \$7,000 per month. In addition, Mr. Jung testified that his brother in Alberta had been transferring money into his wife's bank account either directly or through a company in British Columbia that owed his brother money. According to banking records, Mr. Jung's brother had transferred approximately \$250,000 to his wife's account.
- [46] During his cross-examination Mr. Jung was taken to documents indicating that his brother's company in Alberta was set up one week after Mr. Kim had discovered the fraud. Mr. Jung denied that he was using his brother's company to hide funds he had taken from the plaintiffs.
- [47] The plaintiffs' contend that Mr. Jung's testimony during his cross-examination, that he was not aware of the amount of the personal spending limit, is not believable and conflicts with his earlier discovery testimony wherein he stated that he knew that he was restricted to spending a certain amount per month. They say that this Court should conclude that Mr. Jung simply chose not to comply with the spending limit set out in the Mareva Order. In addition, the plaintiffs contend that it is clear from recently disclosed bank statements that Mr. Jung has failed to disclose the source of numerous deposits, or to provide any

explanation why a number of deposits totaling approximately \$37,000 appear to come from undisclosed accounts in his name. The Plaintiffs say that Mr. Jung has not disclosed statements for the bank account into which his recent paycheques have been deposited. With respect to Mr. Jung's testimony that he is living off funds provided by his brother, the plaintiffs say that this is not credible given that no explanation is provided for why the funds were sent from the accounts of numbered companies, one of which is not associated with Mr. Jung's brother. Finally, the plaintiffs contend that the defendants have failed to disclose the whereabouts of the plaintiffs' funds as required by the July 2019 consent order.

- [48] The plaintiffs contend that Mr. Jung's story that he converted approximately \$1.6 million dollars into gold, which he then lost gambling is not credible and should be rejected. In particular, with respect to Mr. Jung's contention that he lost most of the \$1.6 million gambling at a private residence they submit that it is not believable that Mr. Jung does not remember where this residence was located or know the last name of the person who took him there on five occasions, who he only identified as Kevin. They submit that it is a convenient story that Mr. Jung only communicated via the "Signal" app, for which no records of communication remain, and that there are no financial records that can be used to establish the veracity of his story concerning the conversion of cash into gold. In addition, the plaintiffs contend that there are no documents or correspondence supporting alleged loans from two individuals, who Mr. Jung claims to have repaid approximately \$200,000 in May 2019, using the plaintiffs' funds. They contend, in essence, that given that these alleged loan repayments were made on May 9 and 10, 2019, within a day or two after Mr. Kim discovered the fraud, that Mr. Kim's story lacks believability.
- [49] In summary, the plaintiffs contend that Mr. Jung's explanations for what happened to the funds he defrauded from the plaintiffs is not capable of belief and are in fact, a series of elaborate lies made for the purpose of obscuring what happened to the plaintiffs' money.
- [50] Mr. Jung acknowledges that he breached the Mareva injunction by unintentionally dissipating assets of the defendants by exceeding the \$7,000 monthly personal spending limit and \$25,000 legal fees limit and failing to advise the plaintiffs of the source of the funds used for these expenditures. He says his monthly expenses, including a large mortgage payment, exceeded the \$7,000 limit. He says that he has tried to comply with the Mareva injunction by reducing his monthly expenses, by for example returning expensive leased vehicles and selling his heavily mortgaged home in North Vancouver. He contends that he has now complied with the requirement to disclose the source of funds he is currently living on and to disclose what happened to the plaintiffs' money.
- [51] Breach of a court order constitutes civil contempt, where it is clear beyond a reasonable doubt that: (i) the breached order stated clearly and unequivocally what should and should not be done; (ii) the alleged contemnor had knowledge of the order; and (iii) the alleged contemnor intentionally did the act the order prohibited or intentionally did not do the act the order required: *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2017 BCCA 19 at para. 103, referring to *Carey v. Laiken*, 2015

SCC 17 at paras. 30-33.

- [52] The contempt power is discretionary and courts generally discourage its routine use to obtain compliance with orders. Where a contemnor acted in good faith in taking reasonable steps to comply with the order in question the judge hearing a contempt application has some discretion to decline to make a finding of contempt: *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, at para. 104.
- [53] Many of the alleged breaches referred to by the plaintiffs, in particular, with respect to Mr. Jung's failure to provide information concerning what happened with the plaintiffs' funds, flow from alleged breaches of the September 12, 2019 consent order. The application before me is for contempt of the Mareva Order obtained in May 2017, which is narrower in scope, and I have limited myself to an evaluation of breaches of that order alone.
- [54] In this case, I find that the defendants had knowledge of the Mareva Order, which clearly set out what should or should not have been done. I find that Mr. Jung either knew of should have known that he was limited to spending only \$7,000 per month on personal expenses and \$25,000 on legal fees and that he intentionally exceeded these spending limits. Further, I find that Mr. Jung intentionally failed to disclose the source of funds used for these expenditures.
- [55] I am not satisfied, beyond a reasonable doubt, that Mr. Jung has failed to disclose a list of his assets as required by the Mareva Order. Although I agree that, for example, the legitimacy of the alleged \$200,000 in loan repayments and the alleged \$1.6 million in gambling losses are suspect, suspicion is not sufficient to ground a finding that Mr. Jung has actually kept these funds and therefore has failed to disclose them as assets. It may be that the tracing remedy I have ordered above will provide further information.

Conclusion

- [56] In summary, I make the following orders:
- a) For judgment in favour of the plaintiffs against the defendants in fraud in the amount of \$3,909,169;
 - b) That the plaintiffs are entitled to pre-judgment interest on this amount pursuant to the Court Order Interest Act, R.S.B.C. 1996,c. 79;
 - c) That the defendants pay the plaintiffs punitive damages in the amount of \$185,000;
 - d) That the plaintiffs have a constructive trust over the fraudulently obtained funds;

- e) Pursuant to Rule 18-1(1) and (3) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, I direct the Registrar to conduct a tracing inquiry and to submit a report of such inquiry to this Court and that after issuance of the Registrar's report the plaintiffs are at liberty to make further submissions to this Court on their entitlement to a constructive trust over any assets which the Registrar determines are the traceable proceeds of the fraudulently obtained funds; and
- f) That the defendant Wook Jin Jung is in contempt of the Mareva Order made May 17, 2019 for exceeding the spending limits for ordinary living expenses and legal expenses set out in the order and for failing to disclose the source of funds used for such expenses.

[57] The plaintiffs' applications for special costs of both of their applications are dismissed.

"Mayer J."

- [1] I note that Mr. Jung has stated in his application response that the Inventory Vehicles were valued at \$1,103,583. I consider this to be a typographical error as the appraisal sets out a value of \$1,101,583.

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