

CANADA / JUDGMENT

Kushty Consulting Ltd. v. Wissman

2025 BCSC 2344

COURT

Supreme Court of British Columbia

DECIDED

27 November 2025

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2025 BCSC 2344 Kushty Consulting Ltd. v. Wissman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kushty Consulting Ltd. v. Wissman,

2025 BCSC 2344

Date: 20251127

Docket: S1812181

Registry: Vancouver

Between:

Kushty Consulting Ltd. and Paul Peterson Yeoman

Plaintiffs

And:

Bruno Wissman, Carol Wissman and 682087 B.C. Ltd.

Defendants

- and -

Docket: S208417

Registry: New Westminster

Between:

Bruno Edward Wissman, Carol Patricia Wissman,

and 0682087 B.C. Ltd.

Plaintiffs

And:

Paul Peterson Yeoman, Kushty Consulting Ltd. and
Kushty Nutraceuticals Ltd.

Defendants

Before: The Honourable Justice Hughes

Reasons for Judgment

The Plaintiff Paul Peterson Yeoman, appearing on his own behalf, and on behalf of Kushty Consulting Ltd. in action VA S1812181, and the Defendant Paul Peterson Yeoman, appearing on his own behalf, and on behalf of Kushty Consulting Ltd. and Kushty Nutraceuticals Ltd. in action NW S208417:

P. P. Yeoman

Counsel for the Defendants in action VA S1812181 and the Plaintiffs in action NW S208417:

R.P. Dueckman

Place and Dates of Trial:

Abbotsford, B.C.

April 14-17, 22-24, 2025

Port Coquitlam, B.C.

May 26-28, 30, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2025

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Overview

- [1] These proceedings arise out of two civil actions. In the first action, S1812181, Kushty Consulting Ltd. ("Kushty Consulting") and Paul Yeoman claim as plaintiffs against the defendants 682087 B.C. Ltd. ("682") and Bruno and Carol Wissman (collectively, the "Wissmans"). The plaintiffs' claim is for breach of a bare trust agreement made on August 31, 2017 (the "Bare Trust Agreement") pursuant to which they say the Wissmans hold a 50 percent interest in a property located in Chase, BC, in trust for Kushty Consulting. When I refer to the plaintiffs and defendants herein, I am referring to the parties in this action.
- [2] In the second action, S208417, the Wissmans and 682 claim against Mr. Yeoman, Kushty Consulting, and Kushty Nutraceuticals Ltd. ("Kushty Nutraceuticals") seeking declaratory relief that various agreements, including the Bare Trust Agreement, are null and void or unenforceable, and judgment in the amount of \$145,895.46. The Wissmans and 682 abandoned all the declaratory relief sought at the outset of the trial and advised that they were only seeking recovery of \$22,100 which they say was misappropriated by Mr. Yeoman. However, in closing argument, they abandoned their claim in its entirety.
- [3] Accordingly, the only claim remaining before the Court for determination is Mr. Yeoman and Kushty Consulting's claim for breach of the Bare Trust Agreement. For the reasons that follow, that claim is dismissed.

Facts

- [4] The Wissmans are self-taught businesspeople who have operated various businesses throughout their adult lives, including a trucking company and, more recently, a small-scale cannabis production venture. Neither of the Wissmans have much by way of formal post-secondary education. In this respect, they are significantly less sophisticated than Mr. Yeoman.
- [5] The Wissmans are the registered owners of two properties: a residential property in Mission, BC (the "Mission Property") and a 40-acre rural property in Chase, BC (the "Chase Property"). The Wissmans are also the sole shareholders of 682, which company they have used to operate some of their business ventures over the years.
- [6] Mr. Wissman holds a licence to produce cannabis for the Mission Property under the Marihuana Medical Access Regulations, SOR/2013-119, s. 267 [MMAR]. The Wissmans were looking to expand their cannabis production and in furtherance of this, applied to become licensed producers for cannabis under the Marihuana for Medical Purposes Regulations, SOR/2016-230, s. 281 [MMPR]. The MMPR applications were made by 682 and would have allowed the Wissmans to increase their plant count from what was permitted under Mr. Wissman's existing MMAR licence.
- [7] While the MMPR application was under review, the government introduced the Access to Cannabis for Medical Purposes Regulations, SOR/2016-147, s. 33 [ACMPR]. The Wissmans needed to update the MMPR applications to adhere to the new requirements of the ACMPR.
- [8] Mr. Yeoman is a highly educated consultant. He has a Master of Business Administration degree from the London Business School at the University of London and holds the designation of Chartered Global Management Accountant. With pending legalization of marijuana for recreational use, Mr. Yeoman was interested in getting involved in consulting in the cannabis industry.

Initial discussions between the parties

- [9] In early 2017, Mr. Yeoman was introduced to the Wissmans through a mutual acquaintance in the cannabis industry. Mr. Yeoman understood that the Wissmans had an existing licence to produce cannabis and were looking for someone to help them in converting the MMPR applications to adhere to the new ACMPR scheme. The Wissmans understood that Mr. Yeoman would be able to assist with this.
- [10] Prior to his involvement with the Wissmans, Mr. Yeoman did not have any experience in the cannabis industry. In the spring of 2017, he provided the Wissmans with a curriculum vitae which listed him as "Investor and Director" of Kushty Consulting. No such entity existed at that time.

- [11] Mr. Yeoman did not incorporate Kushty Consulting until June 8, 2017. He testified that he did so for the sole purpose of providing consulting services to the Wissmans. Mr. Yeoman is the sole shareholder of Kushty Consulting. Mr. Yeoman denied that he chose the name "Kushty" because of its association with cannabis; he said it was simply British slang. I find his evidence on this point unconvincing. I find that he chose the name "Kushty" because of its connotation with cannabis and did so to give the impression to the Wissmans that he had experience in the industry, despite not having any.
- [12] Following initial discussions between the parties, in late May or early June 2017, Mr. Yeoman drafted a document titled "Heads of Terms" that set out a framework for a potential agreement between himself and the Wissmans pursuant to which he would assist them in converting their existing cannabis licence applications under the MMPR to comply with the ACMPR.
- [13] Also in May 2017, Mr. Yeoman began discussions with a third party, TheraCANN Canada Benchmark Corporation ("TheraCANN"), to assist with preparation of 682's licensed producer application under the ACMPR for the Chase Property. The Wissmans were familiar with TheraCANN and suggested to Mr. Yeoman that it could assist with the ACMPR application.
- [14] In the course of his discussions with TheraCANN, Mr. Yeoman held himself out as CEO of 682, despite not holding that position at the time. This was also reflected in a May 2017 draft services agreement between TheraCANN and 682.
- [15] The services agreement between 682 and TheraCANN was finalized in June 2017. On June 13, 2017, the Wissmans and Mr. Yeoman each contributed \$12,500 to 682's bank account to be used for TheraCANN's retainer. These were the only funds that Mr. Yeoman contributed to 682. 682 then paid TheraCANN a retainer of \$20,000.

The Consulting Agreement

- [16] In early June 2017, Mr. Yeoman provided the Wissmans with a draft consulting agreement setting out the services Kushty Consulting would provide to 682 ("Consulting Agreement"). The draft agreement was generally reflective of the terms the parties discussed as set out in the Heads of Terms. The draft Consulting Agreement was prepared by Mr. Yeoman's lawyer based on his instructions.
- [17] The Wissmans sought legal advice about the draft Consulting Agreement and were advised not to sign it unless certain changes were made. The Wissmans had their counsel provide a list of "talking points" to help them frame further discussions with Mr. Yeoman. However, neither of the Wissmans had a specific recollection of actually discussing the talking points with Mr. Yeoman, or of giving him a copy of the document their counsel had prepared.

- [18] On June 5, 2017, Mr. Yeoman attended at the Wissmans' home for the purpose of executing the Consulting Agreement. In anticipation of this, the Wissmans had their friend and neighbour, Penny Brown, attend to witness the parties' signatures.
- [19] Each of the Wissmans, Mr. Yeoman, and Ms. Brown testified to different versions of what transpired when the Consulting Agreement was signed. What is consistent is that the meeting occurred in the Wissmans' kitchen and lasted approximately 20 minutes. Mr. Yeoman provided a copy of the agreement to the Wissmans and the parties all signed it.
- [20] I do not accept the Wissmans' evidence that they were pressured into signing the agreement or that Mr. Yeoman stood over Mr. Wissman in a threatening manner. I do, however, find that Mr. Yeoman assured the Wissmans that the Consulting Agreement reflected their earlier discussions as set out in the Heads of Terms and that they should "trust him" and sign it.
- [21] It is not clear what changes, if any, the Wissmans specifically communicated to Mr. Yeoman that they wanted made to the Consulting Agreement before signing it. However, I accept that prior to signing the Consulting Agreement, the parties discussed making changes to the draft and that when the Wissmans signed the agreement, they thought that it reflected the changes they had discussed with Mr. Yeoman. Indeed, on examination for discovery, Mr. Yeoman admitted that there were various versions of the Consulting Agreement and that "[the Wissmans] came back. They wanted to renegotiate a couple things. We put them into the agreement. We changed them, and we - I sent it back to them." Mr. Yeoman attempted to resile this evidence at trial by asserting that the changes he was referring to were from the Heads of Terms to the initial draft of the Consulting Agreement. This explanation was not persuasive, and I reject it.
- [22] The parties signed a single copy of the Consulting Agreement and Mr. Yeoman kept the signed copy. The Wissmans did not obtain a copy of the signed version until some weeks later.
- [23] In so finding, I reject Mr. Yeoman's evidence that the parties signed two copies of the Consulting Agreement on July 5, 2017, one of which was left with the Wissmans. He gave this evidence in an attempt to explain why one version of the Consulting Agreement had Ms. Wissman's handwritten notes on it. Mr. Yeoman insisted that the notes were made by Ms. Wissman in his presence on July 5, 2017, when the parties were discussing the Consulting Agreement immediately prior to signing it. I reject this aspect of his evidence as a deliberate fabrication. First, the nature of the handwritten notes is inconsistent with those that would be made in the course of signing an agreement. Second and significantly, I am satisfied that the reference to "Eric" in the handwritten notes is reference to Eric Mollema, a lawyer that the Wissmans did not retain until some point in 2018.

[24] The parties to the Consulting Agreement were 682, Kushty Consulting, Mr. Yeoman, and Mr. and Ms. Wissman. Under that agreement, 682 agreed to engage Kushty Consulting to assist with the ACMPR applications for cannabis production at the Chase and Mission Properties. The services that Kushty Consulting agreed to provide to 682 are defined in s. 3.1 of the Consulting Agreement:

3.1 Consultant's Services. The Consultant's Services shall be provided by Paul Yeoman or another designate and shall include but not be limited to the following:

- (a) Business consulting, application and government tendering advice concerning the ACMPRs for the Chase Property and the Mission Property;
- (b) Leading the revised application process to adhere to the new ACMPR application requirements for the Chase Property and the Mission Property;
- (c) Leading the fundraising efforts to build the facilities required for cannabis production at the Chase Property and the Mission Property and ensure that the equipment and working capital requirements of the business are met.

[25] Clause 2.1 of the Consulting Agreement expressly stated that the services were to be provided to "the Company", namely 682.

[26] Under s. 4.1 of the Consulting Agreement, Kushty Consulting's compensation for performing the services contemplated therein was an option to purchase half of the legal and beneficial interest in the Chase Property for \$1.00 (the "Chase Option"). The Chase Option was to be exercised by Kushty Consulting delivering a notice in writing to the Wissmans along with the purchase price of \$1.00 in exchange for a fully executed copy of the Bare Trust Agreement. The Chase Option is expressly stated to be compensation for performance of the Services under the Consulting Agreement:

4.1 Compensation. The Consultant shall be compensated for performance of the Services in accordance with the payment provisions and the breakdown of fees, expenses and miscellaneous expenditures listed below:

Upon the signing of this Agreement, the Consultant has the option of purchasing half of the legal and beneficial interest in the Chase Property for \$1.00 from Bruno and Carol, pro rata, or their heirs, executors or assigns (the "Chase Property Option"). The Consultant may exercise this Chase Property Option at any time by delivering a notice in writing to Bruno and Carol indicating that the Chase Property Option is being exercised along with the purchase price of one dollar. Bruno and Carol shall sign and return a fully executed copy of the Bare Trust Agreement in a form similar to that in Schedule A within 15 days from the date of the notice.

- [27] The Wissmans were parties to the Consulting Agreement for the primary purpose of providing the Chase Option as Kushty Consulting's compensation thereunder. This was because, as Mr. Yeoman testified, he was providing the services to the Wissmans's company, 682, but 682 did not have any assets so the Wissmans were providing the consideration for his services.
- [28] The Consulting Agreement also provided an option for Kushty Consulting to purchase a 50 percent interest in 682. That option was never exercised. It also included an option for 682 to purchase the Mission Property from the Wissmans for \$1,100,000 once a licensed producer application for that property had been granted by Health Canada. This was intended to provide comfort to future investors that the company that would become the licenced producer under the ACMPR had ownership of the property upon which the cannabis production would be done.
- [29] The Consulting Agreement also contained an entire agreement clause and required that any modification, amendment, or variation thereof to be in writing and agreed to by all parties.

Incorporation of Kushty Nutraceuticals

- [30] On July 28, 2017, the parties incorporated a new company, Kushty Nutraceuticals. Mr. Yeoman holds 50 percent of Kushty Nutraceuticals' shares and the Wissmans each hold 25 percent. Mr. Yeoman and Mr. Wissman are also directors of Kushty Nutraceuticals. Mr. Yeoman had Kushty Nutraceuticals business cards designed for each of the parties: Mr. Wissman's listed him as Vice President of Operations, and Ms. Wissman's listed her as Vice President of Topicals.
- [31] The parties' understandings as to the purpose for incorporating Kushty Nutraceuticals differed in material respects. Mr. Yeoman testified that once they learned that there was no benefit to be obtained from 682's prior application under the MMPR, the parties had multiple conversations in which they decided to abandon 682 and use Kushty Nutraceuticals to apply for the ACMPR licence. Mr. Yeoman testified that the Wissmans agreed to have the application for the Chase Property ACMPR licence made in Kushty Nutraceuticals' name.
- [32] The Wissmans denied ever discussing or agreeing to making the Chase ACMPR application in Kushty Nutraceuticals' name instead of 682's. The Wissmans understood that 682 would be the licensed producer growing the cannabis under the ACMPR licence, and Kushty Nutraceuticals would be used to market the product. This is consistent with Mr. Yeoman's testimony that they "just changed the brand".
- [33] The Wissmans' understanding is, in my view, more consistent with the preponderance of the evidence and the parties' conduct and I prefer their evidence on this point to Mr. Yeoman's. Mr. Yeoman's evidence on this point was particularly vague, unpersuasive, and uncorroborated by any objective evidence. Mr. Yeoman could not recall any specific conversation with the Wissmans in which this was discussed. If this conversation had in fact occurred, it ought to have been memorable to him. More significantly, Mr. Yeoman's

testimony is belied by the fact that he brought this claim against 682 and asserts throughout his notice of civil claim that the services under the Consulting Agreement were performed for 682. It is difficult to comprehend how this could be the case if the parties had in fact agreed otherwise long prior to the claim being filed.

- [34] It is undisputed that from August 2017 onwards, Mr. Yeoman, through Kushty Consulting, provided the services contemplated in the Consulting Agreement for Kushty Nutraceuticals, not 682.

Exercise of the Chase Option

- [35] On August 31, 2017, Mr. Yeoman attended at the Wissmans' home to exercise the Chase Option. He provided \$1.00 to the Wissmans in exchange for which they signed the Bare Trust Agreement. The Bare Trust Agreement provides in material part:

Whereas:

B. Pursuant to a notice regarding the exercise of the Chase Option dated August 31st, 2017, the Wissmans (the "Bare Trustees") transferred one half (1/2) of the beneficial interest in the Property ("PYs Beneficial Interest") to Kushty Consulting Ltd.

NOW THEREFORE the Bare Trustees hereby declare that:

1. PYs Beneficial Interest is held by the Bare Trustees in trust for Kushty Consulting Ltd.
2. The Bare Trustees have no beneficial interest whatsoever in PYs Beneficial Interest and hold legal title thereto only as bare trustees, and PYs Beneficial Interest does not in any manner belong to the Bare Trustees but is the property of Kushty Consulting Ltd. in its personal capacity.
3. The Bare Trustees acknowledge that they have no power or responsibilities with respect to PYs Beneficial Interest and accordingly will not take or purport to take any action or in any way deal with PYs Beneficial Interest without instructions from Kushty Consulting Ltd, the sole function of the Bare Trustees being to hold the legal title to PYs Beneficial Interest for Kushty Consulting Ltd.

- [36] At no point thereafter did Mr. Yeoman take any further steps in the exercise of his asserted beneficial ownership in the Chase Property. It was not until November 2018, when he learned that the Wissmans had listed the Chase Property for sale, that Mr. Yeoman first asserted his rights under the Bare Trust Agreement and claimed that the Wissmans' attempt to sell the Chase Property was in breach thereof.

ACMPR Application for the Chase Property

- [37] In August 2017, the Wissmans made inquiries of the Thompson-Nicola Regional District to confirm that licensed medical marijuana production was a permitted use of the Chase Property. In furtherance of this, they executed a development application form which listed them as the owners of the Chase Property and designated Mr. Yeoman as their agent for the purpose of seeking a development variance permit for a medical marijuana licence for that property.
- [38] In September 2017, the Thompson-Nicola Regional District confirmed that licensed medical marijuana production is a permitted use for the Chase Property. Over the ensuing weeks, Mr. Yeoman continued working with TheraCANN on the ACMPR application for the Chase Property. Mr. Yeoman also engaged a contractor to design a website for Kushty Nutraceuticals.
- [39] In early October 2017, the parties opened a bank account for Kushty Nutraceuticals. The bulk of the funds deposited into this account in the ensuing months were provided by the Wissmans. From approximately October 2017 to February 2018, they provided over \$53,000 to Kushty Nutraceuticals.
- [40] Later that month, the parties learned that the cost of delivering sufficient power to the Chase Property to operate a growing facility of their intended size would come at a significant cost and with significant complications. Nonetheless, the parties persisted with the ACMPR application. Mr. Yeoman also prepared financial analyses for Kushty Nutraceuticals.
- [41] TheraCANN submitted the licensed producer application under the ACMPR for the Chase Property in November 2017. The ACMPR application for the Chase Property was submitted in Kushty Nutraceuticals' name. Mr. Yeoman signed off on the application as the "Senior Person in Charge" on behalf of Kushty Nutraceuticals. The application listed Mr. Wissman as the proposed "responsible Person in Charge" and Vice President of Operations for Kushty Nutraceuticals, and Ms. Wissman as alternate "responsible Person in Charge" and Secretary of Kushty Nutraceuticals.
- [42] I accept the Wissmans' evidence that they did not know that the Chase Property ACMPR application had been submitted in Kushty Nutraceuticals' name, not 682's. There is no evidence that Mr. Yeoman expressly told either of the Wissmans that the ACMPR application was being submitted in Kushty Nutraceuticals' name instead of 682's, nor is there any evidence that Mr. Yeoman showed the complete copy of the application to the Wissmans prior to TheraCANN submitting it to Health Canada, or at any time thereafter. I accept that the Wissmans did not appreciate that it had been submitted in Kushty Nutraceuticals' name, and that they understood that the ACMPR application had been submitted in 682's name.

- [43] In late November 2017, Health Canada rejected the ACMPR application for the Chase Property because it was incomplete. The rejection arose, at least in part, on account of TheraCANN's failure to submit the application in the proper form. The application was returned to Mr. Yeoman as a box of binders containing portions of the application in disarray. Mr. Yeoman showed the box of binders to the Wissmans. I accept that the Wissmans did not undertake a detailed review of the binders at this point in time, that they accepted what Mr. Yeoman told them about the status of the ACMPR application. The Wissmans are significantly less sophisticated than Mr. Yeoman and I accept that at this point, they still did not appreciate that the ACMPR application had been submitted for Kushty Nutraceuticals as licensed producer instead of 682.
- [44] The ACMPR application for the Chase Property was resubmitted to Health Canada in January 2018, again in Kushty Nutraceuticals' name. On January 18, 2018, it received Health Canada number 10-MM0902.
- [45] On February 8, 2018, Health Canada notified Mr. Yeoman that the application was at the personnel security checks stage of the licence application process. Shortly thereafter, on February 13, 2018, Health Canada notified Mr. Yeoman that the application had progressed to the review and security clearance stage. Mr. Yeoman notified the Wissmans of these developments by forwarding the email notifications he received to the Wissmans at their shared email address.
- [46] On March 27, 2018, Mr. Yeoman completed a Health Canada form to add his name to 682's old MMPR 10-MM0546 application. There is no rational explanation for why Mr. Yeoman would do this. On his own evidence, the parties were aware by this point in time that there was no advantage to be gained by maintaining the 10-MM0546 application and had thus allegedly agreed to use Kushty Nutraceuticals instead of 682 for the ACMPR application.
- [47] On April 27, 2018, Mr. Yeoman was notified that his Security Clearance Application Form was incomplete. There was no evidence confirming that Mr. Yeoman resubmitted his Security Clearance Application Form. However, a September 11, 2018, email shows that he followed up with Health Canada to ask whether he had passed the security clearance or for an explanation as to any delay. On September 12, 2018, Health Canada responded that Mr. Yeoman's security clearance was still in the processing stage, and that no specific timeframe as to its completion could be provided.

Leya Oil

- [48] While awaiting approval of the ACMPR application, the parties pursued manufacturing and selling cannabis oil vape cartridges. They created a brand, Leya Oil, under Kushty Nutraceuticals, to produce cannabis oil for cancer patients using Mr. Wissman's existing MMAR licence. This was the business that the Wissmans understood Kushty Nutraceuticals was incorporated to conduct.

- [49] Mr. Yeoman drafted an investor presentation for Kushty Nutraceuticals and Leya Oil. He also worked with a website designer to create a website design and development for Leya Oil. The costs associated with Leya Oil's website development were paid by Kushty Nutraceuticals.
- [50] The parties continued to work together on the Leya Oil business in the spring and summer of 2018. The Wissmans grew or purchased the cannabis product and then had the byproduct "trim" converted into oil, which they then packaged into vape cartridges for sale to patients. While Mr. Yeoman assisted by transporting trim product to the third-party extractor, I find that the Wissmans contributed the bulk of the labour required to manufacture the vape oil products sold by Leya Oil.
- [51] From early 2018 through September 2018, Leya Oils sold approximately \$72,000 of vape oil product, which funds were deposited into Kushty Nutraceuticals' bank account.

Resignation of quality control professional

- [52] One of the requirements to obtain a licence under the ACMPR was that the proponent have a quality assurance person ("QAP"). The QAP is required to have specific training and knowledge, and be responsible for assuring the quality of a licensed producer's cannabis.
- [53] In September 2017, Kushty Nutraceuticals hired Mussarat Fatima to be the QAP for the Chase Property ACMPR application. Ms. Fatima was required to, among other things, complete the QAP section of Kushty Nutraceuticals' ACMPR application, sign the application as its QAP, and represent Kushty Nutraceuticals as its QAP throughout its dealings with Health Canada. In exchange, Kushty Nutraceuticals agreed to pay Ms. Fatima \$1,200 per month until the ACMPR application was approved, and a salary of \$100,000 annually thereafter.
- [54] Mr. Yeoman testified that he personally paid Ms. Fatima the \$1,200 per month and claimed that a \$10,000 payment he made to himself from Kushty Nutraceuticals' bank account in March 2018 was to reimburse him for Ms. Fatima's wages. I do not accept Mr. Wissman's evidence on this point. He was unable to substantiate how the \$10,000 corresponded with what Ms. Fatima would have earned during the relevant time, and eventually changed his evidence to say that a portion of these funds were reimbursement for gas expenses he incurred driving to Pemberton for Leya Oil business. His evidence on this point was also inconsistent with his evidence on discovery. On discovery, he testified that Ms. Fatima was paid from the vape pen business sales and that the \$10,000 was to cover his "living expenses".

- [55] On March 9, 2018, Ms. Fatima advised Mr. Yeoman that she was no longer interested in continuing to be the QAP for Kushty Nutraceuticals' ACMPR application. She requested that Mr. Yeoman remove her name from the application as soon as possible as she had given her name as a QAP for another application. Mr. Yeoman did not immediately advise the Wissmans of this, nor did he remove Ms. Fatima from Kushty Nutraceuticals' application.
- [56] In May 2018, Mr. Yeoman retained counsel and had Kushty Nutraceuticals file a claim against Ms. Fatima for breach of contract. The Wissmans were copied on some, but not all, of the correspondence between Mr. Yeoman and legal counsel. Negotiations between Mr. Yeoman on behalf of Kushty Nutraceuticals and Ms. Fatima continued, through counsel, into late June 2018. A resolution was not reached, and no further steps were taken in respect of the litigation.
- [57] Despite knowing that the ACMPR required a QAP to be associated with the application and that he was required to notify Health Canada of any personnel changes as soon as practicable, Mr. Yeoman did not advise Health Canada of Ms. Fatima's departure. Mr. Yeoman testified that he attempted to obtain a new QAP but was unable to do so due to increased demand and increased compensation for quality control professionals. In the absence of any corroborative evidence, I do not accept Mr. Yeoman's bare assertion on this point.

Disintegration of the parties' relationship

- [58] By September 2018, Mr. Yeoman had been unable to retain a new QAP to replace Ms. Fatima. Nor had he advised Health Canada that Ms. Fatima was no longer associated with Kushty Nutraceuticals. I find that by this point in time, Mr. Yeoman was aware that Kushty Nutraceuticals needed a QAP to obtain a licence to produce but would not be able to hire someone without additional funding, and would therefore not be able to obtain additional funding without a licence to produce. It follows that Mr. Yeoman knew that the ACMPR application for the Chase Property could not be approved as it then-existed.
- [59] Nonetheless, Mr. Yeoman continued to act towards the Wissmans as if the application remained viable. First, he requested a status update on his security clearance from Health Canada in September 2018. Second, back in June 2018, Health Canada had transitioned to a new online tracking system, the Cannabis Tracking and Licensing System ("CTLS"). Licence holders and applicants were provided with information via email on how to register for access to the new system. Mr. Yeoman registered for CTLS on September 12, 2018. The Wissmans are not technologically savvy and had difficulty completing the CTLS registration. They asked for help from Mr. Yeoman, but he refused.
- [60] In late September 2018, Mr. Yeoman attended at the Wissmans' house and demanded that they sign a blank cheque to be drawn on Kushty Nutraceuticals' bank account. Ms. Wissman initially refused to do so, but eventually signed it after Mr. Yeoman threatened to stop payment on other pending cheques.

- [61] Significantly, and unbeknownst to the Wissmans, in September 2018, Mr. Yeoman commenced employment as Chief Marketing Officer of Bonify Holdings Corporation ("Bonify"), a cannabis company located in Winnipeg, MB. The Wissmans only learned about this some time later after Bonify terminated Mr. Yeoman's employment in late December 2018 and Mr. Yeoman filed a wrongful dismissal claim against Bonify in March 2019.
- [62] On October 11, 2018, Mr. Yeoman attended at the Wissmans' home at the Mission Property and demanded that they give him vape oil and other cannabis product. The Wissmans refused to do so. A physical altercation ensued between Mr. Yeoman and Mr. Wissman.
- [63] Shortly thereafter, the Wissmans engaged legal counsel and sent a letter to Mr. Yeoman dated October 22, 2018, asserting various breaches of the Consulting Agreement and demanding immediate repayment of \$145,895 on account of the financial contributions they allegedly made to Kushty Nutraceuticals. The litigation between the parties was commenced shortly thereafter.

Credibility Assessments

- [64] Mr. Yeoman was not a careful witness; rather, considered as a whole, his evidence gave the impression that he was willing to say whatever appeared most helpful to his position at any given point in time. His recollection of events was unreliable and he frequently resorted to guessing or speculation in giving his evidence. Under cross-examination, Mr. Yeoman was often evasive and argumentative.
- [65] I also have significant concerns about Mr. Yeoman's credibility resulting from multiple inconsistencies in his evidence on material points. In addition to the inconsistencies noted above, the following examples are illustrative:
- a) he initially testified that he provided the Wissmans with his resume in April or May 2017, but when confronted with the fact that listed him as "Investor and Director" of Kushty Consulting--which entity was not even incorporated until June 2017--he changed his evidence to say that the version he gave to the Wissmans must have post-dated June 2017;
 - b) he initially testified that the parties started producing oil under the Leya Oil brand in the first quarter of 2018, but when confronted with documentation showing otherwise, changed his evidence to say this occurred in October 2017; and
 - c) he testified that his relationship with the Wissmans had already broken down in May 2018, but when confronted with documentation showing that the parties were still working together on the Leya Oils business in late summer 2018, conceded that this was not the case and agreed that the breakdown did not occur until October 2018.
- [66] Consequently, I conclude that I am unable to rely on Mr. Yeoman's evidence other than where it is supported by contemporaneous corroborative documentation or other independent evidence that I accept.

- [67] Generally speaking, Mr. Wissman did not have a good recollection of events. He often said he could not remember key events which should have been memorable to him, and his memory frequently had to be refreshed by reference to documentation. This causes me concern about the reliability of his evidence.
- [68] Mr. Wissman also displayed blatant animosity towards Mr. Yeoman throughout his testimony. His frequent attempts to portray Mr. Yeoman in a negative light had the effect of undermining his own evidence and consequently, the weight that I can give to it. For example, Mr. Wissman initially testified that Mr. Yeoman did not make his \$12,500 contribution towards retaining TheraCANN, but when confronted with bank records proving the payment, reluctantly agreed that Mr. Yeoman must have done so after all. He also testified that Mr. Yeoman "cleaned out" Kushty Nutraceuticals' bank account, but was again forced to concede that this was not the case when confronted with the relevant bank statements.
- [69] There were multiple other inconsistencies in Mr. Wissman's evidence that cause me to have concerns about his credibility. Mr. Wissman denied ever adding Mr. Yeoman to his 10-MM0546 cannabis license and only admitted to having done so when confronted with documentary evidence proving this to be the case. He also denied having had any input into proposed designs for a new cannabis production facility at the Mission Property but changed his evidence when confronted with email correspondence showing otherwise.
- [70] I also find Mr. Wissman's testimony that he had no knowledge of, or involvement with, Kushty Nutraceuticals patently unbelievable. The preponderance of the evidence confirms that he was both aware of, and involved with, Kushty Nutraceuticals and its operations. Mr. Wissman attended at legal counsel's office when Kushty Nutraceuticals was incorporated, was a director, and held a 25 percent interest in that company. He had business cards issued to him for Kushty Nutraceuticals and ordered supplies in Kushty Nutraceuticals' name. Regardless of his lack of understanding of Kushty Nutraceuticals' role in relation to the ACMPR application, Mr. Wissman clearly knew about Kushty Nutraceuticals and was involved in its incorporation and business, at least as it related to Leya Oils.
- [71] I therefore conclude that like Mr. Yeoman, I must approach Mr. Wissman's evidence with significant caution, particularly where it is not supported by contemporaneous corroborative documentation or other independent evidence.
- [72] By contrast, while Ms. Wissman also at times had difficulty recalling matters, I found her to be much more forthright and truthful in her testimony than Mr. Yeoman or Mr. Wissman. For the most part, she conceded matters where appropriate and did not attempt to tailor her evidence to portray Mr. Yeoman in a negative light to the same extent as her husband did. Considered as a whole, while I do not accept all of Ms. Wissman's evidence, I did find it to be more reliable and consistent with the preponderance of the probabilities than that of Mr. Yeoman and Mr. Wissman.

Issues

- [73] The plaintiffs' position is that the Consulting Agreement, and consequently also the Bare Trust Agreement, is valid and enforceable. The plaintiffs accept that the services contemplated in the Consulting Agreement were provided to Kushty Nutraceuticals, instead of to 682. They seek to overcome this potential barrier to their claim by asserting--for the first time in closing submissions--that a novation of the Consulting Agreement from 682 to Kushty Nutraceuticals was effected by the parties' conduct.
- [74] Assuming novation is made out, the plaintiffs then say that the defendants breached their obligations under the Consulting Agreement and also breached the Bare Trust Agreement when they listed the Chase Property for sale, in disregard of the plaintiffs' 50 percent beneficial interest therein. The plaintiffs therefore seek declarations that the Consulting and Bare Trust Agreements are valid and enforceable and an order for sale of the Chase Property. The plaintiffs also seek a multitude of alternative relief including the imposition of a constructive trust over the Chase Property, specific performance of the Bare Trust Agreement, and restitution based on quantum meruit for services provided to Kushty Nutraceuticals.
- [75] The defendants say that the plaintiffs are precluded from asserting novation of the Consulting Agreement because novation is not pleaded in the notice of civil claim and Kushty Nutraceuticals is not a named party in this action. Absent novation, the defendants say that Kushty Consulting's failure to perform the services set out in the Consulting Agreement for 682 constitutes a fundamental breach of the Consulting Agreement such that it is unenforceable, rendering the Bare Trust Agreement and the Consulting Agreement void for want of consideration.
- [76] Given the parties' positions, the following issues arise for determination:
- Can the plaintiffs advance a claim in novation in the absence of any pleading to that effect and if so, is novation established on the evidence?
 - Are the Consulting and Bare Trust Agreements enforceable as against the defendants?
 - If not, is Kushty Consulting nonetheless entitled to a remedy by way of an order for specific performance of the Bare Trust Agreement, damages in lieu thereof, imposition of a constructive trust, or compensation on the basis of quantum meruit?

Analysis

- [77] The plaintiffs accept that the services contemplated in the Consulting Agreement were in material part performed for Kushty Nutraceuticals, not for 682. Accordingly, to succeed in this action, they must establish a novation of the Consulting Agreement from 682 to Kushty Nutraceuticals, or absent novation, that they nonetheless fulfilled their obligations to 682 under the Consulting Agreement.

Was the Consulting Agreement novated from 682 to Kushty Nutraceuticals?

[78] Novation is a trilateral agreement by which the original parties to a contract consent to transfer the contractual liabilities to a third party. The original contract is extinguished and replaced with a new contract for fresh consideration: *Community Futures Development Corp. v. Dore River Forest Products Ltd.*, 2016 BCSC 1036 at para. 46. The party asserting novation must establish the following three criteria (*National Trust Co. v. Mead*, [1990] 2 S.C.R. 410, 1990 CanLII 73 at 427) [*National Trust Co.*]:

- a) The new obligor must assume the complete liability;
- b) The obligee must accept the new obligor as principal obligor and not merely as an agent or guarantor of the original obligor; and
- c) The obligee must accept the new contract in full satisfaction and substitution for the old contract.

[79] Where a novation takes place, the person originally liable for performance is relieved from liability and a new person is substituted in its place: *Tonn v. Sears Canada Inc.*, 2016 BCSC 1081 at para. 91.

[80] In a multi-party contract, the consent of all original contracting parties is crucial to the novation: *National Trust Co.* at 431; *Weyerhaeuser Company Limited v. Hayes Forest Services Limited*, 2008 BCCA 69 at para. 23. In the absence of an express agreement, the court should find novation only if the circumstances are compelling: *Elser v. Celani*, 2024 BCSC 2071 at para. 77 [*Elser*], citing *National Trust Co.*, at 426-27.

[81] The plaintiffs' position that the Consulting Agreement was novated from 682 to Kushty Nutraceuticals fails for two reasons. First, novation is not pleaded in the notice of civil claim; it was only raised for the first time in closing submissions. Second, the alleged counterparty to the novation, Kushty Nutraceuticals, is not a party to this action. Even if these defects are overlooked, I would nonetheless find that novation is not made out on the evidence before me.

- (a) Novation must be properly pleaded

[82] Pleadings are foundational. They guide the litigation process and define the issues of fact and law to be determined by the court which in turn ensures the litigation process is fair and promotes justice between the parties: *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 21-23 [*Mercantile*]. In *Mercantile*, the Court of Appeal affirmed the important role that pleadings play in litigation, with Voith J. instructing as follows:

[21] Pleadings are foundational. They guide the litigation process. This is true in relation to the discovery of documents, examinations for discovery, many interlocutory applications and the trial itself.

- [22] Pleadings also give effect to the underlying policy objectives of the Rules, which are to ensure the litigation process is fair and to promote justice between the parties: *Wong v. Wong*, 2006 BCCA 540 at paras. 22-23. They enable the parties and the court "to ascertain with precision the matters on which parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision": *1076586 Alberta Ltd. v. Stoneset Equities Ltd.*, 2015 BCCA 182 at para. 55, citing D.B. Casson & I.H. Dennis, eds, *Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice*, 21st ed (London: Stevens & Sons, 1975) at 75-76.
- [23] For the court, pleadings serve the ultimate function of defining the issues of fact and law that will be determined by the court. In order for the court to fairly decide the issues before them, the pleadings must state the material facts succinctly: *Sahyoun v. Ho*, 2013 BCSC 1143 at paras. 15-22; *Shoolestani v. Ichikawa*, 2018 BCCA 15 at para. 30; *Weaver v. Corcoran*, 2017 BCCA 160 at para. 63. They must be organized in such a way that the court can understand what issues the court will be called upon to decide: Frederick M. Irvine, ed., *McLachlin & Taylor, British Columbia Practice*, 3rd ed, vol 1 (Markham, Ont.: LexisNexis Canada Inc., 2006) (loose-leaf updated 2021) at 3-6; *Simon v. Canada (Attorney General)*, 2015 BCSC 924 at paras. 17-18, *aff'd* 2016 BCCA 52.
- [83] A properly pleaded notice of civil claim enables a defendant to know the claim it must meet and, when taken together with the response to civil claim, confines the ambit of both discovery and the issues to be addressed at trial: *Sayhoun v. Ho*, 2013 BCSC 1143 at para. 18, *aff'd* 2017 BCCA 96, leave to appeal to SCC *ref'd*, 37581 (18 October 2018). In this way, proper pleadings enable the parties to focus their resources and tailor the evidence to be elicited on discovery and adduced at trial on the material issues: *Qi v. Qin*, 2023 BCSC 1678 at para. 52.
- [84] This is particularly the case when dealing with a claim in contract as each of the material terms of a contract or collateral contract must, as a matter of necessity, be pleaded: *Value Village Stores, Inc. v. John Volken Foundation*, 2010 BCSC 2036 at para. 13. The plaintiffs' pleadings are devoid of both the material facts necessary to establish novation and any indication that the plaintiffs were asserting a novation of the Consulting Agreement. In the absence of proper pleadings, the Court is not able to fairly or justly decide the issue of whether the Consulting Agreement was novated to replace 682 with Kushty Nutraceuticals.
- [85] By raising novation for the first time in closing argument, the plaintiffs have deprived the Wissmans and 682 of the opportunity to canvass this issue on discovery and test Mr. Yeoman's evidence by way of discovery and cross-examination at trial. In these circumstances, entertaining the plaintiffs' claim in novation in the absence of proper pleadings would be procedurally unfair and contrary to the interests of justice.
- [86] Mr. Yeoman's assertion of novation also fails because Kushty Nutraceuticals is not a defendant in this action. As noted above, novation requires Kushty Nutraceuticals to become a party to the Consulting Agreement in place of 682 and assume 682's rights and obligations thereunder. As a general rule, all parties to a contract must be before the court: *Mee Hoi*

Bros. Company Ltd. v. Borving Investments (Canada) Ltd., 2017 BCSC 1910 at para. 354. Kushty Nutraceuticals is not a party to this action; it is not even mentioned in the notice of civil claim.

- [87] The plaintiffs did not seek leave to amend the notice of civil claim to add Kushty Nutraceuticals as a defendant and plead novation and the material facts in support thereof. However, recognizing that amendments are liberally granted, even if the plaintiffs had sought leave, I would not have granted it.
- [88] First, the novation that the plaintiffs now assert is predicated on a fundamentally different constellation of facts that is inconsistent with those set out in their existing pleadings. The assertion that Kushty Nutraceuticals replaced 682 as a counterparty to the Consulting Agreement is not simply a different legal gloss on the same facts; it raises a fundamentally different theory of liability against a non-party.
- [89] Second, if novation had been raised at the outset of the litigation, not only would the pleadings have needed to be fundamentally different, but it would also have changed the course of discovery and the trial itself. Kushty Nutraceuticals would have needed to be added as a defendant. The nature and scope of document discovery would have been different, the issues canvassed on examination for discovery would have been different, and the evidence led at trial would have been different.
- [90] Third, the present circumstances are not akin to those where late amendments are permitted to conform to the evidence adduced at trial. As set out below, the evidence adduced does not support novation of the Consulting Agreement.
- [91] I find that it would be highly prejudicial to the defendants and contrary to the interests of justice to entertain the plaintiffs' claim based on novation. Doing so would permit the plaintiffs to effect a sea change in the theory of their case in closing argument and thereby require the defendants to meet a fundamentally different case than that set out in the pleadings.
- [92] The plaintiffs' failure to plead novation of the Consulting Agreement and the fact that Kushty Nutraceuticals is not a party to this action preclude them from asserting a novation of the Consulting Agreement from 682 to Kushty Nutraceuticals for the purpose of establishing that Kushty Consulting fulfilled its obligations under the Consulting Agreement and is therefore entitled to a 50 percent interest in the Chase Property.
- (b) Novation of the Consulting Agreement is not established on the evidence
- [93] In any event, I find that novation is not established on the evidence. Novation is a question of fact that is decided having regard to all the circumstances: Elser at para. 87, citing Prospect Mtge Invt. Corp v. Van-5 Dev. Ltd., 68 B.C.L.R. 12, 1985 CanLII 273 (B.C.C.A.) at para. 39. The evidence simply does not enable me to make the factual findings necessary to establish novation.

- [94] First, there is no evidence that 682 and the Wissmans consented to a novation of the Consulting Agreement. Mr. Yeoman says that sometime between June and August 2017, the parties mutually agreed to "transition away" from 682 and focussed their business efforts on Kushty Nutraceuticals. A "transition" is not equivalent to consenting to a novation, and in any event, this is denied by the Wissmans.
- [95] Regardless, Mr. Yeoman seemingly accepts that there was no express agreement to that effect as he says novation arises from the parties' conduct. More specifically, he says the following conduct "clearly and jointly" signifies a common intention to proceed with Kushty Nutraceuticals and discharge 682's obligations under the Consulting Agreement:
- a) the parties' joint incorporation of Kushty Nutraceuticals;
 - b) the fact that Kushty Nutraceuticals' bank account required dual signatures, the ACMPR application was submitted in Kushty Nutraceuticals' name;
 - c) Kushty Nutraceuticals business cards being issued for Mr. Yeoman and the Wissmans with official titles for all of them; and
 - d) the parties focussing their efforts on Leya Oil and Kushty Nutraceuticals from summer 2017 onwards.
- [96] I disagree. In the absence of an express agreement, the court should only find novation in compelling circumstances: Elser at para. 77. The present circumstances are not sufficiently compelling. Significantly, there is no evidence from Kushty Nutraceuticals. This is a fatal to novation as the plaintiffs must establish that the new obligor assumed complete liability under the Consulting Agreement.
- [97] Regardless, I am not persuaded that the conduct relied on by Mr. Yeoman provides compelling evidence of novation of the Consulting Agreement. Rather, the parties' conduct outlined above is equally, if not more, consistent with the Wissmans' understanding that Kushty Nutraceuticals was the entity through which the Leya Oils business was being conducted while they waited for the ACMPR licence to be granted to 682, as it is with a novation of the Consulting Agreement from 682 to Kushty Nutraceuticals.
- [98] The present circumstances are not akin to *Cos Shore Inc. v. Unimac-United Mgmt. Corp.*, 2017 ONSC 4813 at para. 49, where novation could be inferred from pleaded facts. There are no facts pleaded in the notice of civil claim from which novation could be inferred. Rather, the facts that would need to be pleaded to support novation would be inconsistent with the pleaded facts. The notice of civil claim pleads that the plaintiffs provided the services under the Consulting Agreement to 682, but in order to support a novation, the plaintiffs would need to plead that those same services were provided to Kushty Nutraceuticals.

- [99] There is no evidence that Kushty Nutraceuticals agreed to assume complete liability under the Consulting Agreement. And the evidence before me does not support a finding that each of 682, Mr. Wissman, and Ms. Wissman agreed that Kushty Consulting could fulfill its obligations under the Consulting Agreement by providing the services contemplated therein to Kushty Nutraceuticals instead of 682.
- [100] Nor is there any evidence on the issue of whether 682 and the Wissmans were released from their obligations under the Consulting Agreement consequent on novation. Importantly, the Wissmans' primary obligation under the Consulting Agreement was to grant the Chase Option as consideration for Mr. Yeoman providing consulting services through his company, Kushty Consulting, to their company, 682.
- [101] The lack of any evidence of the Wissmans agreeing that Kushty Consulting could satisfy its obligations under the Consulting Agreement--and thus be entitled to a 50 percent interest in the Chase Property pursuant to the Chase Option--by providing consulting services to Kushty Nutraceuticals instead of to 682 is fatal. Such a finding would, in my view, also be inconsistent with the preponderance of probabilities because Mr. Yeoman already had a 50 percent interest in Kushty Nutraceuticals and contributed no operating capital, while the Wissmans provided operating capital in excess of \$70,000.
- [102] In the result, I find that even if novation had been properly pleaded, the plaintiffs have not established novation of the Consulting Agreement from 682 to Kushty Nutraceuticals.

The Consulting Agreement is unenforceable because of the plaintiffs' fundamental breach and thus void for want of consideration

- [103] It is undisputed that from August 2017 onwards, the plaintiffs provided the services contemplated in the Consulting Agreement to Kushty Nutraceuticals, not 682. Consequently, the defendants say that the plaintiffs committed a fundamental breach of the Consulting Agreement, rendering it unenforceable, and that accordingly, the Bare Trust Agreement is void for want of consideration.
- [104] A fundamental breach occurs where one party to a contract deprives the other party of substantially the entire mutually intended benefit of the agreement, thus amounting to a refusal to perform their obligations under the contract: *Kuo v. Kuo*, 2017 BCCA 245 at para. 39. Fundamental breach goes to the very root of the contract, such that the unperformed obligation constitutes the very purpose for which the contract was designed: *Parker Cove Properties Limited Partnership v. Gerow*, 2024 BCCA 316.
- [105] Under the Consulting Agreement, the Wissmans provided the Chase Option which resulted in the Bare Trust Agreement as consideration for the services that Kushty Consulting was to provide to 682. Kushty Consulting did not provide those services to 682. The fact that Kushty Consulting performed the consulting services to Kushty Nutraceuticals instead of to 682 means that Kushty Consulting did not fulfill its obligations under the Consulting Agreement.

- [106] The plaintiffs' failure to provide the services contemplated in the Consulting Agreement to 682 deprived 682 of essentially the whole of the bargain and thus constitutes a fundamental breach of the Consulting Agreement, rendering it unenforceable. The Bare Trust Agreement was provided as consideration under the Consulting Agreement and is also thus unenforceable.
- [107] Kushty Consulting's failure to provide consulting services to 682 also means that there was no consideration flowing to 682 and the Wissmans under the Consulting Agreement. The Wissmans did not agree to provide the Chase Option and the Bare Trust Agreement in exchange for Kushty Consulting providing services to Kushty Nutraceuticals; the Chase Option was consideration for those services being provided to 682. Consequently, there was no consideration for the Bare Trust Agreement, rendering it unenforceable: see e.g. *Terrafund Financial Inc. v. 569244 B.C. Ltd.*, 2000 BCSC 1719 at paras. 25-26. In the result, the plaintiffs are not entitled to specific performance of the Bare Trust Agreement, nor are they entitled to damages for any alleged breach thereof by the defendants.

Quantum meruit

- [108] The plaintiffs' notice of civil claim does not plead a claim in quantum meruit for services provided pursuant to the Consulting Agreement. Nonetheless, the defendants accept that they have had sufficient notice of this claim and do not object to the Court considering it.
- [109] There are two types of quantum meruit claims. Contractual quantum meruit is where parties to a valid contract have agreed for the provision of goods or services, clearly intended to be paid for, but have failed to provide for the terms of the remuneration. In such cases, a contractual term to pay a reasonable price may be implied, so the quantum meruit depends on what price may be considered reasonable in the circumstances: *RMS Industrial Maintenance Ltd. v. Agrisol Manufacturing Inc.*, 2021 BCSC 2415 [RMS] at para. 85.
- [110] Restitutionary quantum meruit is an unjust enrichment remedy where no contract exists between the parties, or where there is a contract which cannot be recognized or enforced: RMS at para. 75. In such cases, three elements must be proven: an enrichment of the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment: *Maradadi Pacific Holdings Ltd. v. Call*, 2019 BCSC 607 at paras. 77-78.
- [111] The plaintiffs did not articulate the ground upon which they seek compensation in quantum meruit. Regardless, I find that they have not met their onus of establishing a quantum meruit claim of either type against the defendants.

- [112] The plaintiffs accept that from the summer of 2017 onwards, the services contemplated in the Consulting Agreement were provided to Kushty Nutraceuticals, not 682, or the Wissmans in their personal capacities. Accordingly, the plaintiffs' claim in quantum meruit ought to be brought against Kushty Nutraceuticals, not the present defendants. The plaintiffs are not entitled for compensation from the defendants for services provided to Kushty Nutraceuticals.
- [113] Finally, to the extent Kushty Consulting may have provided services to 682 prior to Kushty Nutraceuticals' incorporation, there is no evidentiary basis in the record upon which to determine the extent of any such services provided or their value. The record does not permit me to make a finding as to how much time Mr. Yeoman spent on work for 682 prior to Kushty Nutraceuticals' incorporation, or what the appropriate hourly rates would be for someone with Mr. Yeoman's qualifications and experience providing services of the nature he provided to 682 via Kushty Consulting.
- [114] In the result, the plaintiffs' claim for compensation for services provided to the defendants on a quantum meruit basis is dismissed.

Conclusion

- [115] Kushty Consulting's failure to provide the services contemplated in the Consulting Agreement to 682 constitutes a fundamental breach of that agreement, rendering it, and the Bare Trust Agreement, unenforceable. Kushty Consulting is thus not entitled to specific performance of the Bare Trust Agreement, or any other form of relief. Nor is there any basis for an award in quantum meruit. The plaintiffs' claim is therefore dismissed.
- [116] The defendants are entitled to their costs of the S1812181 action. If the parties are unable to agree as to costs of the S208417 action, they may seek a further hearing before me to address costs.

"Hughes J."

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