
CANADA / JUDGMENT

Payne v. The Kimberley Academy Ltd.

2020 BCSC 506

COURT

Supreme Court of British Columbia

DECIDED

2 April 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 506 Payne v. The Kimberley Academy Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Payne v. The Kimberley Academy Ltd.,

2020 BCSC 506

Date: 20200402

Docket: S29054

Registry: Cranbrook

Between:

Shelley Payne

Plaintiff

And

The Kimberley Academy Ltd.

Defendant

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

Jamie M. Lalonde

Counsel for the Defendant:

No appearance

Place and Date of Hearing:

Cranbrook, B.C.

February 21, 2020

Place and Date of Judgment:

Cranbrook, B.C.

April 2, 2020

Table of Contents

Introduction. 3

Facts. 5

The plaintiff's employment with the Academy. 5

The plaintiff's termination. 6

The March 2018 Goalie Camp. 7

Issues. 8

- a. Was there an employment contract for a fixed-term?. 8
- b. Was the employment contract terminated without cause?. 9

Legal principles. 9

Analysis. 11

- c. Was there a further verbal agreement for the Elite Concept Goalie Camps?. 11
- d. Is the plaintiff entitled to contractual damages?. 11

Salary for the time remaining under the fixed-term contract 12

Housing and meals for the time remaining under the fixed-term contract 14

Moving expenses. 18

March 18 Camp. 19

- e. Should there be an award of punitive damages?. 19

Legal principles. 19

Analysis. 21

- f. Should there be an award of special costs?. 25

Legal principles. 26

Analysis. 28

g. Is the plaintiff entitled to her costs?. 28

Conclusion. 31

Introduction

- [1] The plaintiff, Shelley Payne, was employed at the Kimberley Academy (the "Academy"), a hockey school in Kimberley, British Columbia, as an assistant coach and head goalie coach. Her written employment contract was for the fixed period of September 15, 2017 to July 15, 2018 (the "Employment Contract"). The Academy terminated her employment on or about March 15, 2018.
- [2] The plaintiff brings an action for breach of contract, seeking compensation for the unexpired portion of the Employment Contract, pre- and post-judgment interest, and aggravated and punitive damages. She further seeks special costs. The plaintiff proceeded by way of a summary trial. At the summary trial, the plaintiff abandoned her claim for aggravated damages.
- [3] The Academy did not attend the summary trial hearing.
- [4] I decided to proceed with the summary trial in the absence of the Academy on the basis I was convinced it was properly served. The particulars of the service are as follows:
- a. The notice of civil claim was filed on March 19, 2019, and was served on the registered and records office of the Academy, being the Maggie Melnychuk Professional Law Corporation, a law firm located at 230 Spokane St., in Kimberley;
 - b. On or about April 24, 2019, the defendant provided an unfiled copy of a response to civil claim to plaintiff's counsel. It was signed by Brad Park, one of the directors of the defendant. It did not provide an address for service;
 - c. On April 26, 2019, the defendant filed the response to civil claim which included a handwritten notation providing an address for service as "c/o Maggie Melnychuk, 230 Spokane St, Kimberley, BC V1A 2E4". The filed response to civil claim was not served on the plaintiff;
 - d. On January 15, 2020, the plaintiff filed a notice of application along with an affidavit (the "summary trial materials"), seeking a summary trial;
 - e. The summary trial materials were served by email on the defendant's registered and records office to the attention of Mr. Prestwich at Maggie Melnychuk Professional Law Corporation;

- f. On January 17, 2020, Ms. Melnychuk replied advising: "We acknowledge service of the notice of application and other materials sent to our office yesterday, but we only do so as the registered and records office for the Kimberley Academy Ltd. Neither Mr. Prestwich nor I are litigation counsel for the Academy. We have forwarded the materials to Mr. Park today";
- g. On January 27, 2020, counsel for the plaintiff followed up with Ms. Melnychuk asking if her client had confirmed receipt of the summary trial materials. If not, he advised he would attend to personal service. Ms. Melnychuk replied she had not;
- h. On January 27, 2020, plaintiff's counsel emailed the two directors of the defendant, Brad Park and Shane Murray, confirming that the summary trial materials had been served on the company's registered and records office. He advised that he was intending to proceed with the application on February 18, 2020, at 10 a.m. and requested that responding materials be provided;
- i. On January 28, 2020, Mr. Park email plaintiff's counsel advising as follows: "The Kimberley Academy is no more. Shane Murray resigned as the only other director of the company and left me holding the ball. The company is insolvent and cannot afford legal counsel and I am working through how to close it. There is a substantial GST account that needs to be addressed. I do not have anything to provide further than what was provided previously";
- j. On February 12, 2020, the plaintiff's counsel emailed Mr. Park the application record index. There was no response;
- k. On February 18, 2020, plaintiff's counsel appeared in court and Mr. Park was not present. The matter was adjourned to February 21, 2020;
- l. Plaintiff's counsel did a CSO search to determine if the defendant was named in any other litigation. It was not;
- m. On February 21, 2020, plaintiff's counsel did a company search of the defendant and it indicated that the company was not in liquidation and no receiver had been appointed. The last annual report was filed on September 21, 2019.

Facts

The plaintiff's employment with the Academy

- [5] In her affidavit, the plaintiff deposed that she first met the two directors of the defendant Academy, Messrs. Park and Murray, at some point in 2016. She says that the directors of the defendant then invited her to come to Kimberly in November 2016 for a brief coaching trial. At some later time a further meeting took place, where they discussed the plaintiff joining the Academy as an assistant coach/goalie coach for the 2017/2018 season. The plaintiff says the parties verbally agreed that she would join the Academy in exchange for compensation of \$3,000 CAN per month plus housing and food.

- [6] In early 2017, the plaintiff attended in Kimberly and again discussed the terms of her employment with the Academy directors. No written contract was prepared at this point.
- [7] The plaintiff arrived in Kimberley in late August 2017 to run a goalie camp. She was provided with a room at the Trickle Creek Lodge and started her coaching and recruiting duties.
- [8] Since the plaintiff is a U.S. citizen she advised the directors that she needed a written employment contract for immigration purposes. The plaintiff says she drafted the contract for the directors to review, and an agreement was reached on the final version. The employment contract was signed September 11, 2017, by Mr. Park and by the plaintiff on September 12, 2017. Both the plaintiff and Mr. Park attended the border office in Roosville, Montana, with necessary immigration documents including the signed employment contract.
- [9] The plaintiff obtained a work visa. She then opened an RBC checking account in her name for the defendant to deposit her pay. The Academy paid her the \$3,000 each month until the end of January 2018. In addition, they paid for her housing at the Trickle Creek Lodge and her food as provided for in the employment contract.
- [10] The plaintiff submits that she fulfilled her job responsibilities as set out in the employment contract. The plaintiff had arranged for an approved extended leave of absence from her job duties to play in a league in Sweden from approximately February 13 to March 6, 2018. She deposed that the parties agreed she would not be paid during this leave. She says the parties had agreed upon this leave in the fall of 2017.

The plaintiff's termination

- [11] On or about March 15, 2018, after her return from Sweden, Ms. Payne says the two directors called her into a locker room after the final practice before spring break. They advised her that she was, effective immediately, terminated. The reason provided at that time was that she was a "bad fit".
- [12] The plaintiff believes that the directors were unhappy with her critiques of how they operated the Academy and in particular with their approach to starting a boys program, with Mr. Park's habit of booking travel at the last minute, and with the team dropping out of the local league.
- [13] The plaintiff claims that she had never been disciplined by her employer, either verbally or in writing. She further says that her work performance was never criticized.
- [14] The plaintiff did not hear from the directors after the March 15, 2018, meeting so she prepared a document titled "separation agreement", outlining proposed terms of her termination. On April 2, 2018, she emailed a copy of the document to Mr. Park.
- [15] The Academy in its filed response to civil claim states as follows:

There were numerous and substantive issues with Ms. Payne's quality of work, which led to her termination.

Ms. Payne did not fulfill nor deliver on her employment duties. Ms. Payne was in breach of her responsibilities of the agreement.

[16] The only other evidence from the defendant on this issue is an email from Mr. Park to the plaintiff dated April 3, 2018, responding to her email attaching the "separation agreement". Mr. Park states that "[y]our dismissal from The Kimberley Academy is not a separation agreement. We have prepared a document detailing the terms of your dismissal. Your position with the Kimberley Academy ended effective March 15." In the same email, Mr. Park advised that he was submitting her demands to the Academy's attorney, and that once he and Mr. Murray had received advice from their attorney she would be provided with documents. The Academy did not provide the plaintiff with any further documents.

The March 2018 Goalie Camp

[17] The plaintiff was scheduled to run a goalie camp from March 30 to April 1, 2018 (the "March 2018 Camp"). The directors initially told her that another goalie coach would run the camp, but the parties ultimately agreed that the plaintiff would run it. The plaintiff claims that the Academy agreed that she would be paid the profits, less a 15% commission, earned through camp she ran after her termination. The plaintiff claims she was also entitled to be reimbursed for expenses.

[18] In their response to civil claim, the defendant admits that the plaintiff organized and operated the March 2018 Camp, but denies receiving any funds from the camp. The defendant denies owing the plaintiff any funds in relation to the camp.

Issues

[19] The pleadings and submissions raise the following issues:

- a. Was there an employment contract for a fixed-term?
- b. Was the employment contract terminated without cause?
- c. Was there a further verbal agreement for the Elite Concept Goalie Camps?
- d. Is the plaintiff entitled to contractual damages?
- e. Should there be an award of punitive damages?
- f. Should there be an award of special costs?
- g. Is the plaintiff entitled to her costs?
- a. Was there an employment contract for a fixed-term?

- [20] The plaintiff says there was a written employment contract for a fixed-term. A copy of the employment contract, signed by Ms. Payne and Mr. Park, was produced.
- [21] Since the Academy did not appear at the summary trial the only evidence of its position is set out in the filed response. The Academy denies Ms. Payne's assertion that there was written employment agreement, and contends that "[n]o employment contract was signed."
- [22] The only evidence before me is that of the plaintiff. There is a signed employment contract which provides the period of employment as: "Sept. 15, 2017 to July 15, 2017", with the second 2017 crossed off and 2018 inserted. The initials "SP" appear beside the handwritten 2018.
- [23] Since the defendant did not tender any evidence in support of their denial of an employment contract, I find that the plaintiff has proven the existence of an employment contract for a fixed-term.
- b. Was the employment contract terminated without cause?

Legal principles

- [24] The burden is on the defendant to show that it had just cause to terminate the plaintiff's employment: *Staley v. Squirrel Systems of Canada Ltd.*, 2013 BCCA 201 at para. 19, citing *Leung v. Doppler Industries Inc.*, [1995] B.C.J. No. 690 (S.C.), aff'd [1997] B.C.J. No. 382 (C.A.). The Court in *Staley* described the onus as a "heavy one".
- [25] Just cause is behaviour that is seriously incompatible with the employee's duties and which fundamentally undermines the employment relationship. The test is objective, viewed through the lens of a reasonable employer taking account of all relevant circumstances: *Panton v. Everywoman's Health Centre Society* (1988), 2000 BCCA 621 at para. 28; *Roe v. British Columbia Ferry Services Ltd.*, 2015 BCCA 1 at para. 35.
- [26] In *McKinley v. BC Tel*, 2001 SCC 38, the Supreme Court of Canada established that a contextual approach must be used when assessing whether the conduct relied upon by the employer justifies dismissal. Underlying this approach is the principle of proportionality: a balance must be struck between the severity of an employee's misconduct and the sanction imposed. The Court will examine the nature of the employee's misconduct and its possible consequences, all of the circumstances surrounding the misconduct, and the nature of the employment in question, and the status of the employee (at paras. 33-34, 51).
- [27] Mr. Justice Branch elaborated on the content of the contextual analysis in *Scorpio Security Inc. v. Jain*, 2018 BCSC 978:
- [52] In *McKinley* the court emphasized the importance of proportionality between the severity of the alleged misconduct and the sanction imposed:

[53] Underlying the approach I propose is the principle of proportionality. An effective balance must be struck between the severity of an employee's misconduct and the sanction imposed. The importance of this balance is better understood by considering the sense of identity and self-worth individuals frequently derive from their employment, a concept that was explored in *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, where Dickson C.J. (writing in dissent) stated at p. 368:

Work is one of the most fundamental aspects in a person's life, providing the individual with a means of financial support and, as importantly, a contributory role in society. A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being.

[53] It is incumbent upon the employer, as part of the contextual analysis, to consider the suitability of alternative disciplinary measures to dismissal: *George v. Cowichan Tribes*, 2015 BCSC 513 (B.C. S.C.) at para. 115; *TeBaerts v. Penta Builders Group Inc.*, 2015 BCSC 2008 (B.C. S.C.) at para. 73. The courts have also emphasized the importance of a proper investigation: *Porta v. Weyerhaeuser Canada Ltd.*, 2001 BCSC 1480 (B.C. S.C.) at para. 14. The employer must consider the fact that dismissal for cause is the most severe reprimand available. As stated in *Henry v. Foxco Ltd.*, 2004 NBCA 22 (N.B. C.A.):

[109] The principle of proportionality calls for an effective balance to be struck between the severity of an employee's misconduct and the sanction imposed. This principle is a reminder of the well-worn cliché: summary dismissal constitutes capital punishment in employment law.

[28] As the "capital punishment" in employment law, the punishment (termination for cause) must be proportional to the offense. The employee's conduct must be so serious that lesser disciplinary measures are inappropriate in the circumstances. As Justice Russell put it in *Liebreich v. Farmers of North America*, 2019 BCSC 1074: "[t]he governing question is whether the worker has engaged in behaviour that is seriously incompatible with the duties forming the root of their contract with the employer -- that is, conduct fatal to the employment relationship -- from the objective view of a reasonable employer informed of all the circumstances" (at para. 79).

Analysis

[29] On the evidence before me, the Academy has not established that it had just cause to terminate the plaintiff's employment. The burden is on the Academy to show that Ms. Payne engaged in behaviour that was, in all the circumstances, incompatible with the duties underlying the employment contract. They have failed to do so. The response to civil claims asserts that the plaintiff did not fulfill her employment duties but no particulars are given.

- [30] The Academy could have provided to the plaintiff the particulars to support her dismissal for cause on March 15 and they did not. A further opportunity arose in early April when Mr. Park advised he would provide documents after obtaining further advice from the Academy's attorney. No further documents were provided.
- [31] On the evidence before me, I conclude that the plaintiff was terminated without cause.
- c. Was there a further verbal agreement for the Elite Concept Goalie Camps?
- [32] The plaintiff claims that registration fees for the March 2018 Camp were paid to the Academy. In addition to her affidavit, the plaintiff tenders an email chain between herself and Valerie Park, Mr. Park's wife, where the plaintiff references the registration of participants for the goalie camp and payment by some of the attendees by cheque. The emails suggest that Ms. Park had knowledge of payments being made, and that at least some of the payments were made to the Academy.
- [33] All parties agree that the plaintiff ran the March 2018 Camp. Based on the evidence before, I find that the plaintiff and the entered into a verbal agreement whereby the Academy would receive registration fees, pay expenses, receive a 15% commission, and the plaintiff would receive the net profit.
- d. Is the plaintiff entitled to contractual damages?
- [34] The plaintiff seeks the following damages:
- The salary for the fixed-term employment contract: pro rata amounts for February and March 2018 of \$982.00 and \$2,045.00 respectively, and \$3,000.00 monthly for the months of April to July 2018, for a total of \$15,027.00;
 - Housing and meals for the period remaining in the fixed-term contract of \$5,000.00;
 - Moving expenses of \$521.77; and
 - Net profits from the March 2018 Camp of \$551.55

Salary for the time remaining under the fixed-term contract

- [35] The Ontario Court of Appeal in *Howard v. Benson Group Inc.*, 2016 ONCA 256, held that when an employer terminates, without cause, a fixed-term employment contract that does not contain an enforceable provision allowing for early termination, an employee is entitled to the wages she would have received to the end of the term (at para. 22).
- [36] In *Quach v. Mitrox Services Ltd.*, 2020 BCCA 25, our Court of Appeal held at para. 36 that the leading case in British Columbia when dealing with a Howard type of situation is *Neilson v. Vancouver Hockey Club Ltd.*, (1988), 51 D.L.R. (4th) 40 (B.C.C.A.). Neilson distinguishes between fixed-term contracts that do not contain a termination clause and employment contracts with a termination clause providing for the payment of a fixed amount. Where the employee under a fixed-term contract is refused continued employment, the employee's

action is for contractual damages, not remuneration. Justice Seaton did not resolve whether there is a duty to mitigate, but concluded that the employer is, unless the contract provides otherwise, entitled to derive the benefit of mitigation, even in a fixed-term contract.

- [37] Per Quach, the fixed-term nature of a contract does not entitle an employee to damages in the full amount of unpaid wages for the balance of the term where the employee earned money elsewhere during the term, absent a contractual provision otherwise (at para. 39).
- [38] In this case, the plaintiff returned to her home in New Mexico on approximately April 3, 2018. It is not clear what she did on her return but she states that over the summer of 2018 she trained for the upcoming season and officially launched Elite Concepts Goalie Training as a stand-alone entity. On or about July 10, 2018, she accepted a position for the 2018-2019 season with a women's hockey team in Sweden. The contract commenced on July 12, 2018.
- [39] Based on this evidence, there is no suggestion that the plaintiff earned any money during the remainder of the fixed-term.
- [40] While there may be some uncertainty on the issue of whether there is a duty to mitigate in the case of a fixed-term contract that is terminated early, it is clear that the burden of proving that an employee failed to mitigate her losses rests with the defendants: *Steinebach v. Clean Energy Compression Corp.*, 2016 BCCA 112 at para. 24. There is a heavy onus to demonstrate a failure to mitigate. As was stated by Justice Edwards in *Petersen v. Labatt Breweries of British Columbia*, [1996] B.C.J. No. 2470:

The onus on a defendant alleging a plaintiff has failed to mitigate in an action of this kind is "by no means a light one". See: *Michaels v. Red Deer College* (1976), 57 D.L.R. (3d) 386. The defendant must show not only that the plaintiff failed to take steps to mitigate but also that had the plaintiff taken those steps he could likely have found equivalent employment. See: *Jorgenson v. Jack Cewe Ltd.*, (1978), 93 D.L.R. (3d) 464, [1979] 1 A.C.W.S. 138 and *Munana v. MacMillan Bloedel Ltd.*, [1977] 2 A.C.W.S. 364. (at para. 10).

- [41] I find that the plaintiff is entitled to the full amount of the earnings that would have been paid for the fixed-term of the employment contract of \$15,027. There is no evidence that she earned income elsewhere during the term of the contract. If there is in fact a positive duty to mitigate in a case like this--an issue that I do not purport to resolve here--then the defendant has not met the burden of proving such a failure.

Housing and meals for the time remaining under the fixed-term contract

- [42] The plaintiff further claims that she is entitled to recover for the lost benefit of paid housing and food during the fixed-term of the employment contract. The employment contract included the term that the compensation package included housing provided for the duration of the contractual period at the Trickle Creek Lodge in Kimberley, B.C. and three meals per day.

- [43] Ms. Payne seeks the sum of \$5,000 for the loss of the benefit of paid housing and food for the remainder of the fixed-term. No evidence was adduced in support of this number. The plaintiff's counsel suggested that judicial notice could be taken that a hotel accommodation and food would have cost the Academy money and was a benefit that the plaintiff lost.
- [44] Where an employee is deprived of the opportunity to render services and earn a rewards, she is entitled to receive as damages the entire amount of the reward she would have earned under the employment contract. This principle was endorsed by the Ontario Court of Appeal in *Lawson v. Dominion Securities Corp.*, [1977] O.J. No. 1609:

The recovery of lost income is not limited to salary. In this case the appellant conceded that the pension plan benefits should also be included. *Carey v. F. Drexel Co. Ltd.*, 1974 CarswellBC 134, [1974] 4 W.W.R. 492 exemplifies the rule that other income items should be admitted including contractual profit-sharing, a share-purchase option, and many fringe benefits such as a company car, club membership, pension, disability and medical plans. Other cases have allowed compensation for lost commission, money paid on piece-work, tips, rent-free residence, board and lodging, luncheon vouchers, and the like: *McGregor on Damages* (13th edition) para. 885 at 595. However, discretionary items such as bonus or profit distribution are not normally allowed: *Bardal v. Globe & Mail (The)*, 1960 CarswellOnt 144, [1960] O.W.N. 253.

- [45] The plaintiff relies on *Noble v. Principal Consultants Ltd. (Bankrupt)*, 2000 ABCA 133, as authority for the proposition that an employee is entitled to all of the benefits they would have received under the employment contract had they not been wrongfully terminated. In *Noble*, the Court held that the plaintiff employee, who had been wrongfully terminated, was entitled to receive the bonus he would have earned had he been working, in addition to his salary (at para. 41). British Columbia courts have reached similar results, granting employees damages for, inter alia, bonuses, vacation pay, stock options, RRSP matching, and vehicle allowances, that they would have been entitled to during the notice period: see e.g.: *Piron v. Dominion Masonry Ltd.*, 2013 BCCA 184 (bonus); *Gillies v. Goldman Sachs Canada Inc.*, 2001 BCCA 683 at para. 25 (stock options); *Pakozdi v. B & B Heavy Civil Construction Ltd.*, 2018 BCCA 23 at para. 59 (RRSP matching); *Price v. 481530 B.C. Ltd.*, 2017 BCSC 309 (vacation pay, use of company vehicle).
- [46] Where an employee is given housing as a benefit of employment, the loss of housing is a head of damage. In *Graham v. Bella Bella School Board*, [1985] B.C.J. No. 1201, Justice Hinds confirmed that a wrongfully terminated employee can recover for the rent-free housing she is owed under the employment contract. While the plaintiff in *Graham* was unsuccessful in arguing that she had been constructively dismissed, the Court went on to consider the issue of damages in the event that the determination on the first issue was incorrect. The plaintiff in *Graham* was employed pursuant to a fixed-term contract whereby she was provided with housing during her employment. Had she been constructively dismissed, the court would have awarded her the value of rental accommodation, in addition to payment by the defendant of life insurance and medical insurance premiums and holiday pay.

[47] Similarly, our Court of Appeal affirmed in *Bower v. J.M. Schneider Inc.* (1986), 9 B.C.L.R. (2d) 145 (C.A.), that an employer's agreement to contribute to an employee's mortgage payments is part of the employment contract. Where an employee is terminated without cause, the employer must continue to make the payments during the period of reasonable notice (at 145).

[48] More recently, the Alberta Court of Queen's Bench held that an employee who was constructively dismissed was entitled to the losses she suffered as a result of losing the housing provided by her employer: *JR v. University of Calgary*, 2012 ABQB 342. At para. 302, Justice Read states:

Leavitt, *The Law of Dismissal in Canada* (Canada Law Book, 2011) at para 9:10.170, sets out the law respecting provision of board and lodging in an employment context, saying this:

Board and lodging are compensable if the employer was required to provide them to the employee as part of the contract of employment...

The employer has been held to be entitled to require an employee to leave the employer-provided residence immediately following termination. The employee can only sue for the damages actually suffered from losing the use of that residence during the period of notice. Therefore, if the employee had maintained another residence while employed, he or she will suffer no damages from the loss of the company's supplied residence.

[49] A party claiming damages bears the onus of proving the loss and its quantum. Where the plaintiff has or should have evidence available to prove a loss, "it is incumbent on the plaintiff to lead it". If this does not occur, the court can decline to make an award of damages: *Vancouver Canucks Limited Partnership v. Canon Canada Inc.*, 2015 BCCA 144 at para 146. At para. 147, Justice Neilson went on to endorse the following passage from McGregor on Damages, 18th ed. (London, U.K: Sweet & Maxwell, 2009) at para. 08-001:

A claimant claiming damages must prove his case. To justify an award of substantial damages he must satisfy the court both as to the fact of damage and as to its amount. ... If the fact of damage is shown but no evidence is given as to its amount so that it is virtually impossible to assess damages, this will generally permit only an award of nominal damages[.]

[50] This is not so say that difficulty in fixing the precise amount of damages is a bar to recovery. Just because the loss is difficult to quantify does not mean that damages will not be awarded. However, this principle applies to situations where there are difficulties in quantifying the loss, not in situations where the plaintiff has chosen not to lead specific evidence on the issue: *Century 21 Canada Ltd. Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196 at para. 394.

[51] Where a plaintiff has provided minimal proof of damage, the court can award nominal damages. In *Century 21 Canada Ltd.*, Justice Punnett awarded \$1,000 to the plaintiff who had failed to adduce evidence of loss and expenses incurred in relation to the wrongful actions of the defendant. The same amount was awarded in *San-Co Holdings Ltd. v. Kerr*, 2009 BCSC 1747, where the plaintiff could not prove damages resulting from the defendant's misrepresentation.

[52] In *Hooge v. Gillwood Remanufacturing Inc.*, 2014 BCSC 11, Justice Joyce set out the law on quantifying damages for loss of benefits beyond wages in the employment law context:

101 With respect to other fringe benefits, in *Sheehan v. British Columbia Hydro & Power Authority* (1999), 72 B.C.L.R. (3d) 154 (B.C. S.C.), at 199, the late Mr. Justice Brenner stated the law as follows at para. 231:

[231] Damages for lost fringe benefits are to be measured not by the total value of the benefits provided by the employer to the employee prior to dismissal, but by the amount that the employee has actually expended to replace those fringe benefits following termination.

102 As with the other heads of damages, it is for the plaintiff to prove those amounts by evidence. In this case, the plaintiff has not put forward evidence of losses he suffered or out-of-pocket expenses he paid for replacement coverage items that would otherwise be covered by his benefits.

[53] In British Columbia, it appears that an employee cannot seek to recover a benefit she never reported as such when she was employed. In *Preston v. British Columbia* (1993), 81 B.C.L.R. (2d) 218, the plaintiff employee was not entitled to recover losses for his personal use of a company vehicle because it was not treated as a taxable benefit. Justice Allan referred to *Haché v. New Brunswick* (1989), 97 N.B.R. (2d) 78 (Q.B.), where the Court said:

Surely no one should recover more in damages for the loss of such a benefit than he is prepared to pay income tax on.

[54] Following *Preston*, Justice Hunter disallowed an award for a housing benefit in *Craige v. Gibraltar Mines Ltd.*, [1994] B.C.J. No. 2758. The plaintiff employee in *Craige* claimed that he was provided with a company house during his employment for which he paid \$250.00 per month. He claimed that an equivalent house would cost \$650.00 per month. In declining to compensate the plaintiff for this loss, Justice Hunter found that the low-rent housing was not described by the employer as a benefit under the employment contract, and the plaintiff did not treat it as such by declaring it on his tax return: see also: *Beatty v. Canadian Mill Services Association*, 2003 BCSC 1053 at para. 64.

- [55] The written employment contract provided that Ms. Payne would be provided with lodging and meals for the duration of her employment with the Academy. Given my conclusion that she was terminated without cause, she is entitled to receive all of the benefits that she would have received had she been working for the remainder of the fixed-term contract. However, I find that Ms. Payne has provided me with insufficient evidence to be able to quantify her loss.
- [56] As noted above, counsel for the plaintiff asks the Court to take judicial notice of the fact that housing and food costs money. The leading case on judicial notice is *R. v. Spence*, 2005 SCC 71, where the Supreme Court said at para. 61 that the permissible scope of judicial notice varies according to the nature of the issue under consideration. The closer a fact approaches a dispositive issue, the more the court ought to insist on compliance with the strict criteria for judicial recognition.
- [57] I am unaware of any authority which would allow me to take judicial notice of damages that have not been proved, especially when such evidence would have been readily available to the plaintiff. This is not a case where fixing the precise amount of damages is an inherently difficult exercise. Following *Hooge*, the onus is on the plaintiff to show that she expended funds in order to replace the lost benefit.
- [58] In the circumstances, I conclude that an award of \$1,000 is appropriate for the lost of this benefit.

Moving expenses

- [59] The plaintiff claims moving expenses of \$521.77. This was her actual cost. The plaintiff claims that she understood that she would be reimbursed for her moving expenses which did not happen. The employment contract is silent on this issue.
- [60] In light of the failure of the Academy to respond to the summary trial I am prepared to award the plaintiff the \$521.77 reimbursement for her moving expenses.

March 18 Camp

- [61] The plaintiff claims the sum of \$551.55 as the profit she should be paid for the March 2018 Camp. The plaintiff has provided the following calculations explaining how she arrived at this amount:

- Revenue: Five camp attendees paying \$356.75 each = \$1,783.75
- Expenses: 12 hours of ice time costing \$1,174.20 (paid by the Academy); three shooters paid \$75 each (paid by Ms. Payne). Total expenses = 1,399.20.
- Total profit: \$1,783.75 - 1,399.20 = \$384.55
- The Academy's 15%: \$57.68

· Total owed to Ms. Payne: (\$384.55 - 15%) + \$225 (for the shooters) = \$551.87

[62] I find that the plaintiff is entitled to the sum of \$551.87 for the services she provided for the running of the March 2018 Camp.

e. Should there be an award of punitive damages?

Legal principles

[63] Punitive damages are very much the exception rather than the rule, and should only be awarded if other damages are insufficient in the circumstances. In order for the court to award punitive damages, the defendant must have committed an independently actionable wrong causing damage to the plaintiff, and the defendant's conduct must be sufficiently harsh, vindictive, reprehensible, oppressive, or highhanded that it offends the court's sense of decency. What is required is a "marked departure from decent behaviour", and damages are awarded with an aim to punish the defendant rather than to compensate the plaintiff: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 36.

[64] The Supreme Court of Canada described the test for punitive damages as follows in *Honda Canada Inc. v. Keys*, 2008 SCC 39 at para. 68:

[] this Court has stated that punitive damages should "receive the most careful consideration and the discretion to award them should be most cautiously exercised" (*Vorvis*, at pp. 1104-5). Courts should only resort to punitive damages in exceptional cases (*Whiten*, at para. 69). The independent actionable wrong requirement is but one of many factors that merit careful consideration by the courts in allocating punitive damages. Another important thing to be considered is that conduct meriting punitive damages awards must be "harsh, vindictive, reprehensible and malicious", as well as "extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment" (*Vorvis*, at p. 1108).

[65] In *Whiten*, Justice Binnie states that the level of blameworthiness required to impose a punitive damage award may be influenced by many factors, which could include (at para. 113):

- (1) whether the misconduct was planned and deliberate;
- (2) the intent and motive of the defendant;
- (3) whether the defendant persisted in the outrageous conduct over a lengthy period of time;
- (4) whether the defendant concealed or attempted to cover up its misconduct;
- (5) the defendant's awareness that what he or she was doing was wrong;
- (6) whether the defendant profited from its misconduct; and
- (7) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff, e.g., professional reputation.

- [66] The court must not conflate the analysis of punitive damages and special costs. Reprehensible conduct leading to and during the course of litigation should be addressed through special costs, while punitive damages flow from egregious conduct at the time of dismissal. However, where an employer's conduct at the time of termination was egregious, "continued in an unbroken course throughout the legal proceedings", and is not addressed through an award of special costs, then such conduct can be taken into account in crafting a punitive damage award: *Kelly v. Norsemont Mining Inc.*, 2013 BCSC 147 at paras. 127-128.
- [67] An employer's failure to uphold its implied obligation of good faith and fair dealing in the manner of dismissal can justify a punitive damages award. Justice Loo described the behavioural requirements imposed by this obligation in *Nishina v. Azuma Foods (Canada) Ltd.*, 2010 BCSC 502:
- [262] The obligation of good faith in the manner of dismissal imposes a behavioural requirement on employers to investigate allegations of misconduct, give employees the opportunity to respond, and requires employers not to fabricate grounds for cause, maintain unfounded allegations of cause, or treat an employee in a humiliating manner: as summarized by Judy Fudge in "The Limits of Good Faith in the Contract of Employment: From Addis to Vorvis to Wallace and Back Again?" (2007), 32 *Queen's L.J.* 529.
- [263] Mr. Justice Iacobucci described the content of the obligation as follows in *Wallace*, at para. 98:
- [98] The obligation of good faith and fair dealing is incapable of precise definition. However, at a minimum, I believe that in the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive.
- [68] Finally, an award of punitive damages must be proportional to the defendant's conduct. In *Whiten*, Justice Binnie said at para. 74:
- [] The overall award, i.e. compensatory damages plus punitive damages plus any other punishment related to the same misconduct, should be rationally related to the objectives for which the punitive damages are awarded (retribution, deterrence and denunciation).

Analysis

- [69] The plaintiff cites *Kelly*, *Nishina*, and *Liebreich v. Farmers of North America*, 2019 BCSC 1074, as justifying an award for punitive damages.
- [70] The Court in *Kelly* awarded the plaintiff \$100,000 in punitive damages. The employer in that case maintained meritless for dismissal, including incompetence and civil fraud, for over seven years and through the trial; a malicious attitude that the Court found warranted punishment. Justice Fenlon (as she was then) further found that:

- The employer refused to pay the plaintiff his final month's salary, telling him he would only be paid if he signed a release of all his claims. The defendants withheld this sum for more than seven years, despite acknowledging at trial that it was owed to the plaintiff;
- The employer refused to return the plaintiff's personal belongings, including his personal laptop, after his termination, but demanded that he return a Starbucks coffee card the company had issued to him;
- The employer threatened to bankrupt the plaintiff and told him he would ensure that he did not have the funds to take his case to court; and
- After being dismissed, the plaintiff struggled financially and had secured a spot on a radio program. The employer said he knew the host and would make sure the plaintiff was not asked back.

(at paras. 119-126).

- [71] The plaintiff in *Nishina* was awarded \$20,000 in punitive damages based on her employer's failure to uphold its implied obligation of good faith and fair dealing in the manner of dismissal. The Court found that the defendant employer failed to investigate each of the incidents it relied upon to establish cause. The plaintiff's views on the allegations of misconduct were discounted despite providing what seemed to be reasonable explanations, with the employer "preferring instead to view her as disrespectful, untrustworthy, or guilty". The employer constructively dismissed her by demoting her to a factory worker position, and pressured her to accept the demotion by implying that she would receive a bad reference and would not be able to find a new job. The employer was aware that the plaintiff was vulnerable due to her immigration status, and used that fact to pressure her into accepting the demotion. They knew that her presence in the country depended on her continued employment with the defendant, and that she would not be eligible for employment or medical insurance if she was terminated. Justice Loo concluded that the employer's actions revealed a "shocking disregard for [the plaintiff]'s vulnerability as an employee, and shows a significant lack of good faith" (at paras. 260, 264-267).
- [72] The employer in *Liebreich* likewise attempted to pressure the plaintiff employee into accepting a demotion. Madam Justice Russell found that the employer's conduct justified an award of \$15,000 in punitive damages. Prior to the plaintiff's termination, her employer attempted to make changes to her compensation, reduced her hours to half time, and arbitrarily withheld payments for work which had been performed. She acceded to the changes as she needed a job. The plaintiff was then accused of taking vacation time when it was not approved, though the record demonstrates that it was. Her employer took the position that this amounted to the plaintiff abandoning her job, and suspended her network access. He then instructed his administrative staff to prepare paperwork for the plaintiff's termination, indicating that she was dismissed for having abandoned her employment. Only when his administrative staff informed him that this was not sufficient cause for termination did the plaintiff's employer assert that she was terminated for poor performance, time theft,

insubordination, misusing confidential information, and engaging in conflicts of interest. She was never given an opportunity to respond to these allegations of misconduct. Justice Russell concluded that the employer's behaviour was "egregiously objectionable, properly the subject of deterrence and denunciation, and sufficiently blameworthy to merit the imposition of punitive damages" (at paras. 129-131).

[73] The plaintiff in this case submits that the sum of \$20,000 would be an appropriate punitive damages award. She seeks this on the following basis:

- a. that the Academy owed her a fiduciary duty and an implied duty of good faith as her employer and these duties were breached;
- b. the Academy denied in its response that there was an employment contract signed;
- c. the Academy failed to give particulars of what breaches occurred;
- d. the Academy denied in its response that any monies were owed for the March 2018 Camp and failed to pay her for two months of work;
- e. the Academy failed to respond to the summary trial; and
- f. the Academy took advantage of the plaintiff because she was a foreign worker and assumed filing an action in a foreign jurisdiction would make it more difficult for her.

[74] I see no basis to award any punitive damages in this case. I find that it is not the sort of exceptional case contemplated by the Court in *Keays*. There is no evidence of the requisite "harsh, vindictive, reprehensible and malicious" conduct.

[75] As a preliminary matter, I note I cannot find that a fiduciary relationship existed between Ms. Payne and the Academy. While Ms. Payne's immigration status in Canada appears to have been tied to her employment with the Academy, I find that the Academy had not "taken over her affairs" in the way the employer in *Mustaji v. Tjin* (1996), 25 B.C.L.R. (3d) 220 (C.A.), who was found to be a fiduciary, had done. Justice Cromwell described that case in *Galambos v. Perez*, 2009 SCC 48, as follows:

[56] *Mustaji* involved a claim by a nanny brought to Canada under the Foreign Domestic Movement Program. There were findings of fact that the defendants had taken over her affairs concerning her immigration and employment in Canada, that they had the opportunity to exercise power or discretion over her, were capable of using that power or discretion without her knowledge or consent so as to affect her legal and practical interests and that she was especially vulnerable to that exercise of discretion and control

[Citations omitted.]

[76] I further decline to award punitive damages against the Academy based on its alleged failure to uphold the duty of good faith and fair dealing in the manner of dismissal.

- [77] The employer's conduct in Kelly was especially egregious. The employer made allegations of fraud against the employee, engaged in outrageous post-termination conduct, and withheld substantial funds from the plaintiff. On that basis, I find that Kelly is distinguishable.
- [78] Liebreich and Nishina are likewise distinguishable in that they both involved attempts at pressuring an employee into acceding to a demotion. Further, the employer in both cases fabricated cause for the plaintiff's termination in bad faith. While I find that the Academy did not have just cause to terminate the plaintiff, simply maintaining that there was cause for termination does not justify an award of punitive damages: *Kerr v. Arpac Storage Systems Corporation*, 2018 BCSC 704 at para. 123. The remedy is reserved for exceptional cases.
- [79] The evidence is that the directors of the Academy spoke to the plaintiff in a private setting and terminated her. There was no public humiliation that the plaintiff experienced. On her own evidence, the parents of the players were not aware that she had been terminated. This is not a case in which the directors were badmouthing her in the hockey community. There is no evidence to support such assertion.
- [80] The suggestion that an award of punitive damages should be made because a defendant denies matters in a response to civil claim has no merit. If this were the case, such an award could be made in most cases.
- [81] Finally, the suggestion that the failure of the defendant to respond to the summary trial application should support a punitive damages award ignores the reasons given by the defendant on why no response was made. Mr. Park advised plaintiff's counsel that the Academy "is no more". He further advised that the company was insolvent. To suggest that in light of this information the defendant ought to have defended this summary trial application is without merit.
- [82] In conclusion, there is no basis to have claimed punitive damages and no award is made.
- f. Should there be an award of special costs?
- [83] In the alternative to an award of punitive damages, the plaintiff seeks an award of special costs.

Legal principles

- [84] The leading authority on special costs in British Columbia is *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.), where Justice Lambert, writing for the Court, determined that the threshold for awarding special costs is "reprehensible" conduct during the litigation, which includes "scandalous or outrageous conduct as well as milder forms of misconduct deserving of reproof or rebuke" (at para. 17). He further explained this standard at para. 23:

the fact that an action or an appeal "has little merit" is not in itself a reason for awarding special costs. Something more is required, such as improper allegations of fraud, or an improper motive for bringing the proceedings, or improper conduct of the proceedings themselves, before the conduct becomes sufficiently reprehensible to require an award of special costs.

[85] The purpose of special costs is to deter and punish reprehensible conduct in the course of litigation. Pre-litigation conduct should not be considered, and courts must be careful not consider the same misconduct as going towards both punitive damages and special costs: *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 134.

[86] Special costs can be awarded in a wide range of circumstances. Madam Justice Gropper helpfully organized these circumstances into various "thematic groups" in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352, which include:

- Meritless claims and improper motive: Meritless claims alone will not attract special costs, but where a meritless claim is pursued for some improper motive special costs may be awarded;
- Abuse of the court's process: For example, in *Chudy v. Merchant Law Group*, 2009 BCCA 93--a case relied on by the plaintiff--special costs were awarded against a party who brought pre-trial motions without merit; brought an application based in part on false evidence; challenged the jurisdiction of the court to try the matter; avoided a peremptory trial date by adding a third party that it did not intend to proceed against to the litigation; brought a motion for removal of the other party's counsel on ridiculous grounds; and offered evidence at the trial that the trial judge determined was false and misleading;
- Sharp practice derogating from the rules of professional conduct and the rules of court: Sharp practice alone will not result in an award of special costs. However, special costs have been awarded where sharp practice is aimed at prejudicing the other party: *Johal v. Insurance Corp. of British Columbia* (1998), 48 B.C.L.R. (3d) 236 (C.A.); or where a party makes serious allegations of professional misconduct against the other and wastes court time: *Commonwealth Trust Co., Re*, 2012 BCCA 138.
- Misleading the court: Fraudulent claims and untruthful testimony are a particularly reprehensible form of conduct deserving of rebuke through special costs.

[87] Mr. Justice Walker also set out a list of circumstances where special costs may be ordered in *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914:

[11] Special costs may be ordered in the following circumstances:

- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
- (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
- (c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;

- (d) where a party made the resolution of an issue far more difficult than it should have been;
- (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
- (f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;
- (g) where a party brings a proceeding for an improper motive;
- (h) where a party maintains unfounded allegations of fraud or dishonesty; and
- (i) where a party pursues claims frivolously or without foundation.

[Citations omitted.]

Analysis

[88] The plaintiff did not make submissions on costs beyond asserting that special costs are warranted. I disagree, and find that there is no basis for an award of special costs in this case.

[89] As noted above, special costs are intended to deter and punish reprehensible litigation conduct. This case did not involve any pre-trial motions or applications, and the defendants did not attend the summary trial, likely due to impecuniosity. There is therefore very little conduct to scrutinize. While the Academy's position that they had cause to terminate the plaintiff and therefore did not have an obligation to pay her the remaining wages owed under the fixed-term contract could be construed as meritless, maintaining a meritless position does not, without more, justify an award of special costs. Some evidence of an improper motive is needed, and no such evidence has been adduced. Likewise, simply failing to reply to communications and failing to attend court is not a basis for awarding special costs where there is no evidence that it was done with the intention of prejudicing the plaintiff or misleading the court. In this cases, the Academy indicated that it was experiencing financial hardship and was therefore unable to retain counsel or attend proceedings.

[90] I therefore decline to award special costs.

g. Is the plaintiff entitled to her costs?

[91] The amount awarded to the plaintiff is within the Small Claims court jurisdiction of \$35,000. Rule 14-1(10) of the Supreme Court Civil Rules [Rules] provides:

A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the Small Claims Act is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.

- [92] Madam Justice Kirkpatrick indicated in *Gehlen v. Rana*, 2011 BCCA 219, that a judge must apply this subrule unless she finds that the plaintiff had sufficient reason, at the time the action was commenced, to bring the action in Supreme Court (at para. 24). The test of sufficient reason is objective, requiring the plaintiff to provide persuasive and compelling reasons for bringing the action in Supreme Court (at para. 32). The quantum of the claim is likely the most important factor, but it is not the only factor that may be taken into account (at para. 37).
- [93] Our Court of Appeal examined the meaning of "sufficient reason" in *Gradek v. DaimlerChrysler Financial Services Canada Inc. and Fletcher*, 2011 BCCA 136, stating that "any reason" is insufficient, though sufficient reason need not be connected solely to the quantum of the claim (at para. 16). Madam Justice Prowse went on to note that the procedures provided by the Provincial Court will, in most cases, enable parties to proceed in a cost efficient manner to a just result, though she cautioned that this may not always be the cases. Ultimately, the Court concluded that there may be circumstances that justify bringing an action in Supreme Court despite the fact that the claim was, from the outset, within the monetary jurisdiction of the Small Claims Court (at para. 18).
- [94] In *Icecorp International Cargo Express Corp. v. Nicolaus*, 2007 BCCA 97, the Court affirmed the non-exhaustive list of factors articulated by Master Groves, as he then was, in *Kuehne v. Probstl*, 2004 BCSC 865 (at paras. 15, 27). Per Master Groves, a plaintiff may have sufficient reason to bring a claim in Supreme Court where:
- a proceeding is legally complex;
 - documentary discovery may be needed;
 - the use of the Supreme Court summary trial procedure could lead to an effective resolution of the proceedings;
 - a plaintiff has a bona fide preference for a jury trial;
 - more time would be available in the Supreme Court to deal with a complex matter; or
 - a plaintiff needs a judgment that could be enforced more effectively outside British Columbia than a Provincial Court judgment could be.
- [95] Counsel for the plaintiff did not make submissions on the application of R. 14-1(10) since he submitted that the damages exceeded the Small Claims monetary limit. I note that this proceeding was not particularly complex, there is no need to enforce this judgment outside of British Columbia, and documentary discovery was not made. It was clear from the outset that damages for breach of the employment contract were substantially under \$35,000. I note that the demand letter sent May 23, 2018, sought damages of under \$15,000. The only means of exceeding the Small Claims limit would be through an award of punitive damages. I found there was no evidence to support such an award.

- [96] The plaintiff in this case did, however, proceed summarily. I will therefore consider whether bringing this action in Supreme Court was justified on the basis that the summary trial procedure could lead to an effective resolution.
- [97] In *True v. Vedder Transport*, 2018 BCCA 463, Kirkpatrick J.A. highlighted that the question of whether a plaintiff had sufficient reason to bring an action in Supreme Court is a fact-specific inquiry. The availability of summary trial procedures is but one factor to consider.
- [98] The plaintiff employee in *True* successfully sued for wrongful dismissal and was awarded just over \$14,000. While the plaintiff sought an award just over the Small Claims limit, the trial judge found his calculation "optimistic". In declining to award costs, the trial judge held that the case was not complex, did not engage contested legal principles, and did not require the plaintiff to furnish evidence going beyond his personal knowledge (at para. 12). She did not accede to the plaintiff's claim that he was justified in bringing the claim in Supreme Court because a summary trial was not available in Provincial Court and a trial in that court would likely have consumed an extra day. Instead, she concluded that the lack of the summary trial option in Provincial Court was balanced by the measures available in that Court, such as mediation services and settlement conferences (at paras. 22-23).
- [99] The Court of Appeal denied the plaintiff leave to appeal, rejecting his position that a summary trial necessarily establishes sufficient reason. The determination of sufficient reason is an "intensely fact-specific exercise". In this case, the plaintiff had failed to establish sufficient reason (at para. 27).
- [100] I see no reason to distinguish this case from *True*. Ms. Payne was awarded substantially less than the Small Claims limit. I find that any calculation of damages above the Small Claims limit at the outset of this action would have been overly optimistic. Any court time saved by bringing this action in Supreme Court is balanced, if not outweighed, by the dispute resolution measures available in Provincial Court. As such, my view is that the plaintiff should have brought this action in Small Claims court and should therefore only be entitled to her disbursements.

Conclusion

- [101] The plaintiff is entitled to the following award:
- a. \$15,027 for the loss the fix-term employment contract;
 - b. \$1,000 for the loss of housing and food benefits;
 - c. \$521.77 for reimbursement for the moving expenses;
 - d. \$551.87 for the services she provided in running the March 2018 Camp; and
 - e. Disbursements only in accordance with Rule 14-1(10) of the Rules.
- [102] The plaintiff is also entitled to pre-judgment interest on the amounts awarded.

[103] I request that counsel for the plaintiff serve, via email, a copy of these reasons on Mr. Park as the remaining director of the defendant.

"Forth J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/05/2020BCSC0506.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/payne-v-the-kimberley-academy-ltd-2020>

Prepared on 26 October 2026 · Esheria