

CANADA / JUDGMENT

Sandhu v. Virk

2025 BCSC 1519

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1519 Sandhu v. Virk

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sandhu v. Virk,

2025 BCSC 1519

Date: 20250509

Docket: S195465

Registry: Vancouver

Between:

Manjeet Kaur Sandhu

Plaintiff

And:

Meera Virk, Kuldeep Virk, Georgeta Donici, Rohita Pannu,

Rohita Pannu Law Corporation, and Ranbir Singh Chahal

Defendants

Before: The Honourable Justice Fowler

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

D. Lunny

T.W. Clifford

No other appearances

Place and Dates of Trial:

Vancouver, B.C.

April 7-8, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 9, 2025

- [1] THE COURT: These are my reasons for judgment. They are a little lengthy, but given that this was an undefended trial and that the defendants have the right to apply to set aside any judgment under Rule 12-5(77) of the Supreme Court Civil Rules, I think it is imperative that I give full reasons for the conclusions I have arrived at. These are also oral reasons. If a transcript is ordered, I reserve the right to edit for grammar and to insert citations and quotes from the case law.

Introduction

- [2] This is a judgment for damages further to an undefended trial in which the plaintiff, Ms. Sandhu, has sued two defendants, Meera Virk and Kuldeep Virk, who I will refer to either as "the Virks" or "M. Virk" and "K. Virk," alleging that they both conspired to and did, in fact, defraud Ms. Sandhu of \$600,000. Actions against the other four defendants, Georgeta Donici [Donici], Rohita Pannu [Pannu], Rohita Pannu Law Corporation, and Ranbir Singh Chahal I understand have been discontinued after settlement, and the total amount of \$330,000 was obtained.
- [3] In summary, it is alleged that M. Virk and K. Virk, working together with the assistance of the other defendants, fraudulently misrepresented to Ms. Sandhu that they were assisting in obtaining funds for the completion of a development project in Dubai and that she would receive 10 percent interest per annum on any loan she made to the project.
- [4] Throughout Ms. Sandhu's dealings with the Virks, M. Virk represented that she was a well-established businesswoman who was devoutly religious and spiritual. Furthermore, Ms. Sandhu was advised that some of the money she advanced would be secured by a mortgage against a property owned by Georgeta Donici. The rest would be secured by promissory notes.

- [5] Ultimately, Ms. Sandhu discovered that no mortgage was ever registered against a property; that there was no Dubai project; that the Virks were judgment debtors, having been ordered to pay \$1.6 million in a judgment in December 2015, a few months before the Virks started to defraud Ms. Sandhu; and that she had, in fact, herself been defrauded of much of her life savings by the Virks.
- [6] The primary issue in this undefended trial is the quantification of damages one or both of the Virks should be ordered to pay to Ms. Sandhu. Other remedies include whether an award of aggravated and/or punitive damages is appropriate, a declaration pursuant to s. 178 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA], that any award survives any discharge from bankruptcy, and the plaintiff is seeking an award of special costs.

Procedural History

Application to Proceed with the Trial in the Absence of the Defendants

- [7] Ms. Sandhu commenced her action against the Virks and four other defendants on May 9, 2019. The Virks' response to civil claim filed on July 5, 2019, is a simple denial with no version of the denied facts being pleaded. An amended notice of civil claim was filed April 11, 2023. No amended response to civil claim was filed by the Virks.
- [8] The Virks were represented by counsel from at least the time of filing the response to civil claim until a notice of intention to withdraw was filed on October 27, 2022. Ultimately, a notice of withdrawal of lawyer was filed April 25, 2023, and served on the plaintiff May 8, 2023.
- [9] The notice of intention to withdraw had an address for service on 141 Street, Surrey, BC. The notice of withdrawal had a different address for service, a house on 64th Avenue in Surrey. The amended notice of civil claim was personally served on the Virks at the 141 Street address on April 11, 2023.
- [10] Attempts to serve the Virks with the notice of trial by regular mail proved unsuccessful, and so the plaintiff's counsel began communication with the Virks by email in order to attempt to schedule and then reschedule trial dates. Apparently, the email address was confirmed to be correct by counsel for one of the defendants. After receiving no response to emails, plaintiff counsel's legal assistant sent direct messages to M. Virk's Instagram and Facebook accounts.
- [11] On November 21, 2023, M. Virk was advised that the trial of this matter would take place on April 7, 2025. Screenshots of M. Virk's Facebook Messenger page appears to confirm that Ms. Virk received and read the message about the trial date. Ultimately, given the difficulties communicating with the Virks, a process server delivered several documents, including the trial record, to M. Virk and K. Virk personally at [address redacted] 181A Street in Surrey, an address I note is different from both last known addresses for the Virks provided by their former counsel.

- [12] Any concerns about the accuracy of M. Virk's email address or whether the Virks had notice of the trial date was resolved when Ms. Sandhu's counsel, David Lunny and Thomas Clifford, received an email from M. Virk and K. Virk from the email address noted earlier confirming that they were aware of the trial date, would not be attending the trial, and admitting to having borrowed \$600,000 from Ms. Sandhu.
- [13] I note parenthetically that the email indicates they were served with documents on April 25, 2025. Self-evidently this is a typographical error because the Virks' email was sent April 6, 2025. Having reviewed the compendious affidavit from counsel's legal assistant, attesting to much of the procedural history set out above, which corroborated the authenticity of the email from the Virks, I am satisfied that the Virks were personally served on March 26, 2025. I am satisfied that the Virks were aware of the trial date and have decided not to attend. To use the language in some of the case law, the Virks have "simply checked out of this proceeding."
- [14] I also observe that the Virks' decision not to attend is consistent with much of their litigation conduct to date. They have failed to provide any list of documents despite an agreement to do so by April 12, 2021, and have filed a response to civil claim that does not comply with the requirements of Rule 3-3(2), being a bare denial without setting out the defendants' version of the facts. Even had the Virks attended, they would have been barred from giving any evidence at trial not set out in their response to civil claim. See: *Royal Bank of Canada v. Pisani*, 2014 BCSC 761, at paras. 11-12.
- [15] On the basis of all of the above, as well as the circumstances as pleaded in the amended notice of civil claim, being that Ms. Sandhu was defrauded of over \$600,000 by the defendants, something which they no longer deny, I ruled that I should exercise my discretion under Rule 12-5(76), having considered the relevant factors as discussed in *Laponder v. Birkich*, 2017 BCSC 1888, to proceed with the trial in the absence of the Virk defendants.
- [16] Their litigation conduct and their pleadings taken together clearly indicate that they had no intention of raising an admissible defence to Ms. Sandhu's claims. Therefore, it would be consistent with the just and speedy determination of this proceeding on its merits to proceed with the trial in the absence of the Virk defendants.

Plaintiff's Evidence

Introduction

- [17] I will say at the outset that I agree unreservedly with counsel for the plaintiff that Ms. Sandhu was an honest witness, and I accept her evidence in its entirety. Most importantly, much of her evidence was corroborated by documents.

- [18] Ms. Sandhu has clearly been significantly traumatized by the extent of the Virks' deception of her. A nurse by training, I am certain that Ms. Sandhu feels humiliated that she allowed the Virks to deceive her and effectively steal \$600,000 of her money. The Virks, particularly M. Virk, relying on claims of being a religiously and spiritually upstanding person, abused Ms. Sandhu's trust.
- [19] I note that Ms. Sandhu's demeanour while testifying, albeit the demeanour of a witness should never overwhelm the analysis of credibility or reliability, was entirely consistent with what one would expect from someone who had been preyed upon, deceived, and defrauded of \$600,000. While testifying, Ms. Sandhu showed signs of distress, hurt, and anger when describing her meetings with M. Virk and was particularly distressed when recounting that the loss of so much money meant she could not financially help her daughter, when she studied law at McGill University, as much as she wanted.

Testimony of Ms. Sandhu

- [20] Ms. Sandhu was born in India in 1955. After obtaining a degree in nursing, she worked as a nurse in India from 1989 to 1995. She married in 1994 and came to Canada in 1995. Her daughter was born in 1996. Her husband died very soon after they arrived in Canada. Ms. Sandhu never remarried. She raised her daughter as a single mother. As stated earlier, her daughter recently graduated from law school and is currently clerking at the Federal Court of Canada.
- [21] Ms. Sandhu returned to nursing in 2023, and to this day she continues to work at Lions Gate Hospital. The theft of money by the Virks has meant that Ms. Sandhu has had to work long after she had hoped to retire.
- [22] Ms. Sandhu met the Virks through her brother-in-law. Apparently, M. Virk was a friend of his. She had a business, Hope Capital Investments. Ms. Sandhu's brother-in-law described M. Virk as being very trustworthy and dedicated to her investment company.
- [23] Ultimately, Ms. Sandhu spoke to M. Virk by telephone and was convinced by her claims of devotion to her Sikh faith, to invest \$200,000 in a soon-to-be-completed construction project in Dubai. Ms. Sandhu was told her money would be returned as soon as possible, and she would receive in return ten percent interest per annum. Ms. Sandhu's investment was to be secured by a second mortgage against a property on 84A Avenue in Delta owned by Donici. According to Ms. Virk, all the necessary documents would be produced by a lawyer named Pannu.

- [24] M. Virk provided Ms. Sandhu with Donici's TD account and branch numbers and told her to transfer \$200,000. Exhibits filed, including Ms. Sandhu's handwritten notes of the account details and the TD Canada Trust transaction slip, document that the transaction was completed at 3:35 p.m. February 16, 2016, at the Toronto Dominion branch at 1400 Lonsdale Avenue in North Vancouver, which I accept is close to the Lions Gate Hospital where Ms. Sandhu continues to work.
- [25] Approximately one week later, M. Virk contacted Ms. Sandhu again asking for another \$200,000, stressing that the project was very close to being finished but needed more money. Once again, M. Virk was reassuring. In reliance on M. Virk attesting to her Sikh faith, Ms. Sandhu again trusted her. She was told that the second \$200,000 was to be secured by a mortgage on a property owned by Donici.
- [26] On February 24, 2016, Ms. Sandhu purchased a \$200,000 bank draft payable to Donici from the Toronto Dominion Bank on Lonsdale Avenue in North Vancouver. The customer's record of draft purchase was filed as an exhibit. M. Virk came to Ms. Sandhu's house to pick up the draft. According to Ms. Sandhu, M. Virk presented very well. She drove a good car and was well-dressed, which Ms. Sandhu found reassuring. Even more reassuring were M. Virk's promises made before the Sikh religious book, Guru Granth Sahib, that all of Ms. Sandhu's money would be safe.
- [27] On March 3, 2016, M. Virk gave Ms. Sandhu two documents: A Land Title Act Form B private mortgage registering the principal amount of \$200,000 at an annual interest rate of ten percent (or \$1,666 per month) against an undivided half interest in a property in New Westminster. The balance of the mortgage was to be paid on January 4, 2017. Ms. Sandhu understood this mortgage to be security for the first \$200,000 she transferred to Donici.
- [28] Ms. Sandhu was also given a promissory note signed by Donici confirming receipt of the other \$200,000 on February 24, 2016, to be repaid on or before June 24, 2016. Interest was to be paid at the rate of \$1,666 per month or ten percent per annum. In this promissory note, Donici also agreed "not to take any loan on the property situated at [Street address redacted] 84th Avenue in Delta" until she paid off the promissory note.
- [29] Both the mortgage and the promissory note were allegedly prepared by Pannu, a lawyer in Surrey. Ms. Sandhu never met with Pannu and was never advised to get independent legal advice. M. Virk told Ms. Sandhu the mortgage had been registered. It later turned out this was not true.
- [30] Approximately three months later, M. Virk again contacted Ms. Sandhu and asked for more money to complete the project. Ms. Sandhu described M. Virk as "bringing the same type of dialogue," which I take to mean that M. Virk again expounded upon her probity, religious adherence, and business acumen. M. Virk also told Ms. Sandhu that she made a \$1 million for Ms. Sandhu's brother-in-law.

- [31] Ms. Sandhu was told to purchase a bank draft for \$100,000 payable to Kuldeep Virk, who she was later told was M. Virk's husband. M. Virk told Ms. Sandhu that she would secure the loan against the Virks' house. On May 9, 2016, Ms. Sandhu purchased a \$100,000 bank draft payable to Kuldeep Virk from the same branch of the TD Bank, using funds from a home equity line of credit. M. Virk picked up the bank draft from Ms. Sandhu at her house.
- [32] Ms. Sandhu heard nothing from the Virks until August 2016, when once again M. Virk promised that the project was very near completion, but they needed more money. M. Virk once again repeated many of the same things. She was a person of high moral and religious virtue, who was a successful businesswoman who had made over \$1 million for Ms. Sandhu's brother-in-law.
- [33] On August 2, 2016, Ms. Sandhu secured what turned out to be the final \$100,000 for the Virks: a \$60,000 bank draft payable to Kuldeep Virk from her home equity line of credit; and a \$40,000 bank draft, again payable to Kuldeep Virk from her bank account.
- [34] Later in August, Ms. Sandhu received two almost identical promissory notes dated August 2016, signed by K. Virk and witnessed by a lawyer and notary public in Surrey, Naresh Aggarwal. Each note promised to repay the principal amount of \$100,000, plus interest at the rate of 10 percent per annum. One note indicated that the interest payments of \$833.33 were due on the "2nd" of each month. The other note indicated the same amount of interest was payable on the 9th of every month. The promissory note stated that the:
- ... borrower, upon payment of all accrued and unpaid interest, shall have the right to prepay the whole or any portion of the outstanding principal amount at any time and from time to time without notice, bonus or penalty.
- [35] Furthermore, each note indicated interest would accrue at the rate of ten percent per annum both before and after maturity. No maturity date is indicated. Ms. Sandhu had no input into the contents of the promissory notes or legal advice before receiving them. No interest payments have ever been made, and the principal amounts remain outstanding.
- [36] Over the next months, Ms. Sandhu became increasingly anxious despite M. Virk's continued reassurances that her money would be repaid. Ms. Sandhu would call M. Virk regularly and be convinced not to worry. However, eventually M. Virk stopped returning calls. It was not until May 15, 2017, that M. Virk eventually came to Ms. Sandhu's home. The reassurances continued. Ms. Sandhu was told not to worry. Her money was not going anywhere. Everything was fine. She would be repaid.
- [37] Ms. Sandhu was sadly beginning to realize that M. Virk could not be trusted. She telephoned her brother-in-law who told her that he had been told by M. Virk that she had already repaid Ms. Sandhu. He also denied that M. Virk had ever made him any money. Ultimately, there was a phone call between Ms. Sandhu's brother-in-law and M. Virk in which he told her to return all of Ms. Sandhu's money or he would report her to the police. I note that phone call, as I understand it, was overheard by Ms. Sandhu.

- [38] Finally, on May 15, 2017, M. Virk handwrote a note acknowledging the amount of the debt, the interest rate of ten percent, and a promise to start repaying "big amounts by June 30, 2017." No payments were ever made by June 30, and so Ms. Sandhu again went to see M. Virk at her house. Referencing her faith in God, M. Virk told Ms. Sandhu to trust her because "we are sisters in faith." M. Virk continued her deceptions, this time telling Ms. Sandhu that her young daughter had written a book recognized worldwide that would make "millions." M. Virk promised Ms. Sandhu she would be the first to be paid back.
- [39] Eventually, Ms. Sandhu learned from a law firm in Surrey that none of the money she had lent to the Virks had been secured by a mortgage properly registered on the title of a property. Ms. Sandhu contacted the lawyer, Pannu, identified as having prepared the mortgage documents, but learned nothing that reassured her that the loan was properly secured. Ms. Sandhu also contacted Donici to ask when she was going to pay back the money she received in February 2016. Donici told Ms. Sandhu that all the money she had received had been paid to the Virks. Ultimately, Ms. Sandhu was able to get one mortgage in the amount of \$200,000 properly registered against a property.
- [40] By 2019, Ms. Sandhu was beginning to experience "pain and depression." She described not being able to sleep and was extremely anxious about losing all this money. She had to sell her house and buy something smaller. She describes the sadness of not being able to help her daughter to study law. She blames herself and thinks about being "ripped off" every day. Ms. Sandhu is devoutly religious and is particularly troubled by M. Virk's reliance on faith to convince Ms. Sandhu to invest her money with the Virks.
- [41] Over time, Ms. Sandhu learned that the Virks had defrauded other people. She attended the RCMP and the BC Securities Commission, but neither organization has apparently investigated the Virks. Ms. Sandhu learned that on September 6, 2016, a judgment in the amount of 1.6 million dollars had been secured against the Virks' property on 141 Street in Surrey, and that on August 24, 2017, the court had issued warrants for the arrest and committal of the Virks for failing to attend and answer questions at an examination in aid of execution.

Summary of Findings of Fact

- [42] The following is a summary of my findings of fact:
1. Ms. Sandhu met M. Virk through her brother-in-law, who vouched for M. Virk's trustworthiness and efficiency in running her investment company, Hope Capital Investments.
 2. Throughout their interactions, M. Virk repeatedly relied on her Sikh faith and probity to encourage Ms. Sandhu to invest money in a construction project in Dubai.
 3. Ms. Sandhu loaned \$600,000 at an annual rate of interest of ten percent to M. Virk and K. Virk to help finish the construction project in Dubai.

4. On February 16, 2016, based on information received from M. Virk, Ms. Sandhu transferred \$200,000 to Georgeta Donici anticipating a return of ten percent per annum, and that her money would be secured by a second mortgage on a property in Delta owned by Donici.
5. On February 24, 2016, M. Virk contacted Ms. Sandhu and assured her the project was nearing completion and that they needed another \$200,000. Ms. Sandhu purchased a \$200,000 bank draft payable to Donici.
6. On March 3, 2016, M. Virk gave Ms. Sandhu two documents, a Land Title Act Form B private mortgage with the principal sum of \$200,000, interest at 10 percent per annum payable monthly, with the balance due on January 4, 2017, and a promissory note signed by Georgeta Donici promising to repay the received amount of \$200,000 by June 24, 2016, with interest of \$1,666 to be paid monthly.
7. Approximately three months later, based upon the same representations by M. Virk about the Dubai project and her personal virtues and business acumen, Ms. Sandhu lent two additional tranches of money. On May 9, 2016, Ms. Sandhu purchased \$100,000 bank draft payable to Kuldeep Virk. On August 2, 2016, Ms. Sandhu purchased a \$60,000 and a \$40,000 bank drafts, both payable to K. Virk. On August 12, 2016, Ms. Sandhu received two promissory notes signed by Kuldeep Virk acknowledging receipt of the total \$200,000 and promising repayment of the total principal with interest at ten percent per annum.
8. Despite continuing to promise repayment of the moneys received from Ms. Sandhu, the Virks have repaid no principal and no interest to Ms. Sandhu.
9. Ms. Sandhu has been financially and emotional damaged by the conduct of the Virks. On the other hand, the Virks have not been investigated by the police or punished in any way from the fraudulent scheme they used to deceive Ms. Sandhu of \$600,000.
10. The Virks have not defended this action in any way. As recently as April 6, 2025, the Virks have confirmed by email to plaintiff's counsel that they received \$600,000 from Ms. Sandhu and have again said they will "return the funds."

Conspiracy and Joint Tortfeasors

- [43] The plaintiff has pleaded that the Virks, along with Donici, were co-conspirators in a scheme to defraud Ms. Sandhu. As discussed in *Cruise Connections Canada v. Szeto*, 2015 BCCA 363, the tort of civil conspiracy "consists not of the agreement per se, unlike a criminal conspiracy, but of the actions taken pursuant to an agreement." This is important because it means that one co-conspirator is only liable for the actions they commit in furtherance of the conspiracy rather than being vicariously liable for what everyone else did.
- [44] In this case, this could mean, were I to find that the Virks and Donici engaged in a conspiracy to defraud Ms. Sandhu, that K. Virk is only liable for the fraudulent transactions he engaged in, being \$100,000 in May 2016 and \$100,000 in August 2016. However, again, as noted in *Cruise Connections Canada*, supra, the potential limits of liability of co-

conspirators is largely theoretical, since it is readily accepted that tortfeasors who act in concert in pursuit of a wrongful goal are joint tortfeasors, and each is liable for the actions of the other joint tortfeasors.

[45] There are three conditions to establish joint liability:

- a) The defendant must have assisted the commission of an act by the primary tortfeasor;
- b) The assistance must have been further to a common design on the part of the defendant and the primary tortfeasor that the act be committed; and
- c) The act must constitute a tort as against the claimant.

Osborne v. Pavlick, 2000 BCCA 120, at para. 25.

[46] Whether or not the Virks participated in a conspiracy, I have no difficulty concluding that they are joint tortfeasors and that they acted in concert to defraud Ms. Sandhu. It is clear that M. Virk developed and implemented a scheme to defraud Ms. Sandhu. This scheme continued for many months and involved multiple transactions. K. Virk assisted M. Virk, the primary tortfeasor, by committing tortious acts in furtherance of that scheme.

[47] It is important to recognize that throughout the operation of the fraudulent scheme, M. Virk and K. Virk were married and resided together at the address set out on the promissory note signed by K. Virk in August 2016. Most importantly, however, is that K. Virk received "loans" from Ms. Sandhu after M. Virk repeated the same false representations she had made earlier about the project in Dubai needing funds to be completed.

Breach of Loan Agreement

[48] My findings of fact clearly establish that the Virks have breached their verbal agreement with Ms. Sandhu to borrow money, to use that money to further a development project in Dubai, and to repay that money with interest set at ten percent per annum. In other words, the Virks are indebted to Ms. Sandhu for the principal sum of \$600,000 plus interest at ten percent per annum. However, because the plaintiff also seeks a declaration under s. 178(1) of the BIA, that the judgment in this action should survive any discharge from bankruptcy, I will also consider whether the defendants should be liable for having committed the tort of civil fraud.

Civil Fraud

[49] I have no hesitation in concluding the defendants committed the tort of civil fraud. The tort of civil fraud requires that the plaintiff prove, on a balance of probabilities, four elements:

1. A false representation made by the defendant;
2. Some level of knowledge of the falsehood of the representation on the part of the defendant, either through knowledge or recklessness;

3. The false representation caused the plaintiff to act; and
4. The plaintiff's actions resulted in a loss.

Bruno Appliance and Furniture, Inc. v. Hryniak, 2014 SCC 8, at para. 21.

Analysis

1 False Representation Made by the Defendant

[50] The plaintiff has established on a balance of probabilities that the representations of M. Virk about the purposes for borrowing the money from Ms. Sandhu were false. The evidence discloses that M. Virk made numerous false statements to Ms. Sandhu to encourage her to lend or invest her money with M. Virk:

1. She claimed to be a successful business person who had made more than \$1 million for Ms. Sandhu's brother-in-law. According to Ms. Sandhu, her brother-in-law told this was false. Although this evidence is hearsay, I am prepared to rely on it for its truth because I am satisfied it is inherently trustworthy.
2. Within days of receiving the last tranche of money from Ms. Sandhu, the Virks were judged to have defaulted on two private mortgages and to owe over \$1.6 million.
3. Ms. Sandhu has never been provided with any evidence that the Dubai project was real. The manner in which M. Virk, particularly, has treated Ms. Sandhu, for example, relying upon her self-serving claims of probity, reinforced by assertions of religious adherence, convince me well beyond a balance of probabilities that M. Virk was being deceitful. Had the project been real, one would have expected M. Virk to have explained in detail why the money was needed and why the project was taking so long to complete.
4. The loans were never properly secured by a mortgage.

2 Some Level of Knowledge of the Falsehood of the Representation of the Part of the Defendant, Either Through Knowledge or Recklessness

[51] Again, the circumstantial evidence satisfies me on a balance of probabilities that the Virks, particularly M. Virk, had knowledge when dealing with Ms. Sandhu that the representations about the Dubai project needing money to ensure completion were entirely false. Had the Virks themselves believed the project was genuine, they would undoubtedly have done something more to show Ms. Sandhu they at least believed it was a real project.

[52] It is of course important to note that this action is undefended. There is no evidence to undermine the conclusion the Virks were fully aware that the reasons for borrowing the money from Ms. Sandhu were false.

3 The False Representation Caused the Plaintiff to Act and,

4 The Plaintiff's Actions Resulted in a Loss

[53] Elements 3 and 4 of the test can be considered together. Quite clearly Ms. Sandhu lent money to the Virks because of what M. Virk told her about the purpose of the loans, that they would be quickly repaid and that she would receive ten percent interest per annum. Equally clearly, Ms. Sandhu has suffered a financial loss of \$600,000.

[54] I am satisfied the Virks have committed the tort of civil fraud.

Damages

[55] I am satisfied that under either cause of action, breach of the loan agreements or civil fraud, the plaintiff is entitled to an award of damages of \$600,000 plus interest at ten percent per annum. Counsel has advised that the total award including interest to the date of trial is \$1,141,397.26. I am further advised that settlement from other parties has realized the sum of \$330,000. I therefore award the plaintiff judgment in the amount of \$811,397.26 plus post-judgment interest. I appreciate, counsel, that that figure may need to be adjusted to account for the delay between trial and the date of judgment. You have liberty to do that.

Aggravated and Punitive Damages

[56] The plaintiff is also seeking aggravated damages in addition to the compensatory award for breach of the loan agreement or the tort of civil fraud. In *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, Justice Goepel writing for the court summarizes the distinction between aggravated and punitive damages and the principles to be applied in determining the amount to award under each head of damages at paras. 72 and 78:

[72] Aggravated damages and punitive damages are discrete sets of damages potentially available for wrongful dismissal. In *Honda Canada Inc. v. Keays*, 2008 SCC 39, the Court set out the distinction between aggravated and punitive damages as follows:

[62] Damages for conduct in the manner of dismissal are compensatory; punitive damages are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own. This distinction must guide judges in their analysis.

[78] In *Whiten* at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages. The factors include:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;

- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
 - d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
 - e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and
 - f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.
- [57] While in very simple terms aggravated damages are intended to compensate the plaintiff for intangible injury, for example humiliation, anguish, and damaged self-esteem caused by the defendants' conduct, punitive damages are directed towards deterring and denouncing the defendants' conduct. The plaintiff must show evidence of mental distress, and courts should be cautious in making an award based on mental distress: *Milly v. Kapelus*, 2022 BCSC 1730, at para. 22 and following.
- [58] In addition, in considering punitive damages, a court should be cautious not to award more than what is necessary, in combination with compensatory damages, to achieve the goals of denunciation, deterrence, and retribution.
- [59] In this case, it is obvious that Ms. Sandhu has been greatly distressed by the conduct of the Virks. Ms. Sandhu was encouraged by M. Virk's pronouncement of religious adherence and overall probity to trust her. Ms. Sandhu did exactly that. Yet her trust of the Virks was wholly misplaced, and this has left Ms. Sandhu feeling humiliated, anxious, and depressed.
- [60] The impact of such brazen and continuing dishonesty by M. Virk, interwoven with references to their shared religious faith, was inevitably going to cause significant intangible injury to Ms. Sandhu. Her distress and humiliation were palpable as she gave evidence. The Virks' conduct continued for over a year; promises and assurances repeatedly made and repeatedly broken. This is not a case of one or two false statements or one or two assurances or reassurances, but rather a case involving repeated and enduring dishonesty.
- [61] Ms. Sandhu has not received any repayment and not a single dollar of interest despite being provided promissory notes that promised her monthly interest payments commencing September 2 and 9, 2016. This pattern of dishonesty has had a very significant impact on Ms. Sandhu's emotional and physical well being. I award Ms. Sandhu \$75,000 in aggravated damages.

- [62] In considering whether to award punitive damages in addition to compensatory damages, I must consider whether these compensatory damages are insufficient to accomplish the goals of deterring and denouncing the defendants' conduct and to achieve the goal of retribution. Although the overall award of compensatory damages is significant, the misconduct of the Virks is highly reprehensible. Together, over a period of more than a year, the Virks defrauded a working single mother of over \$600,000 by taking advantage of and manipulating Ms. Sandhu's trusting nature.
- [63] The plaintiff was extremely vulnerable. The Virks appear to have been highly skilled at exploiting that vulnerability. Although the police were notified, no charges were ever filed. The Virks' conduct has therefore gone unpunished. I am satisfied that an award of punitive damages is necessary to deter and denounce what the Virks did to Ms. Sandhu and to ensure that there has been retribution. Considering the harm caused, their degree of misconduct, including the number of episodes of dishonesty and the period of time over which this misconduct has continued, and the fact there has been no other form of punishment, I am satisfied that an award of \$90,000 in punitive damages is appropriate.
- [64] I note this punitive damage award is higher than that awarded in either *McMillan v. Bergman*, 2021 BCSC 1360, \$65,000 for conduct described as opportunistic; or *Milly v. Kapelus*, 2022 BCSC 1730, \$70,000 for conduct that included an abuse of the court's process. I am, however, satisfied the higher award is justified because the Virks' misconduct occurred repeatedly over a lengthy period and involved multiple and repeated acts of dishonesty for which they have yet to receive any punishment.

Declaration Pursuant to S. 178 of the BIA

- [65] Section 178(1)(e) of the BIA reads as follows:

178(1) An order of discharge does not release the bankrupt from

- (e) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability that arises from an equity claim.

- [66] As discussed in *Cruise Connections Canada*, the test for both false pretenses and fraudulent misrepresentation under s. 178(1)(e) requires finding that the bankrupt was deceitful in obtaining property. The provision targets morally blameworthy conduct that gave rise to the debt. An order under s. 178(1)(e) ensures that the dishonest and deceitful debtor is not able to use bankruptcy legislation to avoid the consequences of their misconduct.

- [67] It is irrefutable that the Virks were deceitful when they obtained loans from Ms. Sandhu.

- [68] I am therefore prepared to make a direction that the full amount of this judgment survives bankruptcy pursuant to s. 178(1)(e) of the BIA.

Costs

- [69] The plaintiff seeks special costs to be assessed. The plaintiff alleges that the Virks' overall disregard for the Supreme Court Civil Rules, particularly their inadequate response to civil claim and failure to make discovery of documents, justifies an award of special costs.
- [70] The principles governing an award of special costs were summarized by our Court of Appeal in *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284, at paras. 53-56:
- [53] Special costs are usually awarded when one party has engaged in reprehensible conduct: *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3, at 134. While a special cost award provides a greater degree of indemnity against its actual legal expenses, in the ordinary course "[s]pecial costs are not compensatory; they are punitive": *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177, at para. 56. They are typically awarded to address conduct in the course of the litigation that is deserving of censure and rebuke: *Grewal v. Sandhu*, 2012 BCCA 26, at para. 106, leave to appeal ref'd [2012] S.C.C.A. No. 120.
- [54] While special costs are usually awarded for the whole proceeding, it is open to a judge to make a partial award if it would be disproportionate to award special costs for the entire proceeding: *Gichuru v. Smith*, 2014 BCCA 414, at para. 91, leave to appeal ref'd [2014] S.C.C.A. No. 547.
- [55] The seminal test for special costs was set out in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 1994 CanLII 2570 (BC CA), 9 B.C.L.R. (3d) 242 (C.A.), where Lambert J.A., after an extensive review of the authorities, concluded:
- [17] ... it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.
- [56] An award of special costs is discretionary and it does not follow as a matter of right from a conclusion that a party's conduct is deserving of rebuke: *Walker v. John Doe*, 2014 BCSC 294, at para. 57.
- [71] It is important to recognize that special costs are awarded for conduct in the course of the litigation rather than conduct that gave rise to the litigation. I am not satisfied that the failures to comply with the rules identified by the plaintiff in the context of a trial that went undefended are fairly characterized as "reprehensible," even as that word is interpreted in its milder form, being conduct that is deserving of reproof or rebuke. Accordingly, I am not prepared to exercise my discretion to award special costs.

[72] Taking account of my comments earlier about giving counsel leave to adjust these amounts to take account of the time between the date of the trial and the date of judgment, the total damages are: pecuniary damages of \$1,141,397.26 less the amount recovered from settlement, which I understand to be \$330,000, aggravated damages of \$75,000, and punitive damage of \$90,000.

[73] There will be a declaration that the entire judgment debt survives any bankruptcy pursuant to s. 178(1)(e) of the BIA.

Costs

[SUBMISSIONS ON COSTS]

[74] THE COURT: I will award \$20,000 in costs.

[75] Thank you, counsel.

"The Honourable Justice Fowler"

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