
CANADA / JUDGMENT

Wu v. Lee

2016 BCSC 592

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 592 Wu v. Lee

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wu v. Lee,

2016 BCSC 592

Date: 20160406

Docket: S117414

Registry: Vancouver

Between:

Chiu-Chan Wu Su and Chih-Hsiung Wu

Plaintiffs

And

Irene Wai Yi Lee and Corey Lei-Hsuan Wu

Defendants

Docket: E111581

Registry: Vancouver

Between:

Corey Lei Hsuan Wu also known as

Corey Lei-Hsuan Wu also known as Corey L. Wu

Claimant

And

Irene Wai Yi Lee also known as Irene Wai Lee

Respondent

Before: The Honourable Mr. Justice Pearlman

Reasons for Judgment

Counsel for the Plaintiffs:

Helen Chiu

& JB Rotstein

Counsel for Corey Lei-Hsuan Wu:

Anna L. Perry

Counsel for Irene Wai Yi Lee:

Terence W. Yu

Place and Dates of Trial:

Vancouver, B.C.

October 20-24, 27-31

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April 27-May 1, 2015

Place and Date of Judgment:

Vancouver, B.C.

April 6, 2016

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INTRODUCTION

- [1] In related civil and family law proceedings, the parties contest the ownership of two properties located in Vancouver and Burnaby, British Columbia and personal property, including bank and investment accounts held in Canada, the United States, Taiwan and the People's Republic of China. Their evidence concerning the existence, extent and sources of their wealth is diametrically opposed.

- [2] The plaintiffs, Chiu-Chan Wu Su and Chih-Hsiung Wu, claim against the defendants, Irene Wai Yi Lee and Corey Lei-Hsuan Wu for the recovery of two properties located on Barker Crescent in Burnaby and Beach Avenue in Vancouver, British Columbia. The plaintiffs are the mother and father of the defendant Corey Wu. The defendant Irene Lee is their daughter-in-law.
- [3] The plaintiffs say that through hard work and Mr. Wu, Sr.'s astute investments in a motel and sporting goods store in the United States, they accumulated assets worth more than \$6,000,000 and after emigrating from Taiwan to Canada, they drew upon those assets to fund the purchase of the Barker Crescent and Beach Avenue properties.
- [4] Irene Lee says that throughout the marriage Corey Wu engaged in a sophisticated scheme of day trading, and conducted much of his trading activity through accounts opened in the names of his father, or his brother Te-huan Wu, also known as Paul Wu, both in Canada and abroad, in order to avoid income tax. She contends that Corey Wu earned the income to purchase the disputed properties through day trading. Irene Lee says Barker Crescent and Beach Avenue are family assets. She maintains Corey Wu voluntarily transferred his interest in those and other disputed assets to her pursuant to the parties' August 15, 2010 separation agreement.
- [5] According to Irene Lee, a computer file referred to as "ASTK" recovered from a hard drive formerly in the possession of her husband, corroborates her position by showing thousands of stock trading transactions performed by Corey Wu, and the disposition of the profits of his stock trading.
- [6] A key issue in these proceedings is whether the ASTK file is authentic, or an elaborate forgery. As I discuss later in these reasons, the ASTK file, and two computers on which the ASTK file, or variants of that file were located, were the subject of expert forensic analyses conducted by Mr. Iain Kenny of MNP on behalf of Irene Lee, and Mr. Nigel Holmes of TCS Forensics on behalf of Corey Wu.

THE PARTIES AND KEY FAMILY MEMBERS

The Plaintiffs

- [7] Mr. Wu, Sr., who emigrated from Taiwan to Canada in 2006, is 68 years old.
- [8] Mr. Wu's first language is Mandarin. His ability to speak, read or write English is limited. He testified through an interpreter.
- [9] In Taiwan, Mr. Wu had a successful career as an engineer. From 1996 until his retirement in 2006, he was employed by the Taiwan Highway Department. Mr. Wu testified that he also received non-taxable income for travelling allowances and making speeches to engineering or business groups. He also formed a company with friends to manufacture purses and bags for foreign companies. In 1980, Mr. Wu's father-in-law passed away, leaving him and Mrs. Wu an inheritance of 30 million Taiwan dollars, which Mr. Wu managed. Mrs. Wu confirmed

that she inherited 30 million Taiwan dollars from her father. I understand that amount to be equivalent to approximately \$1,200,000 Canadian.

- [10] Mrs. Wu testified that she does not read or speak English. Like her husband, she gave her evidence through a Mandarin interpreter.
- [11] Mrs. Wu was 67 years old at the time of trial. She was employed in Taiwan as sales manager for a life insurance company from 1992 until her retirement at age 59 in 2006.
- [12] Mrs. Wu testified that in addition to her taxable employment income, she also earned commissions from real estate agencies and through direct sales. She was paid in cash for that work and did not declare this income to the tax authorities. Accordingly, she was not taxed on that income. Mrs. Wu estimated that she had non-taxable income in 2002 of around \$90,000 Canadian, and non-taxable income in 2003 of approximately \$120,000 Canadian. Mrs. Wu's taxable income from her employment in 2001, 2002 and 2003 was the equivalent of \$214,000 Canadian in 2001, \$182,000 Canadian in 2002 and approximately \$145,000 Canadian in 2003.
- [13] In cross-examination, Mrs. Wu agreed that during the years 2001 through 2005 her taxable employment income from the insurance company was about the same as the amount of income she received each year from real estate commissions and direct sales. Mrs. Wu also agreed she had not declared the half of her income earned from those sources because she was paid in cash.
- [14] Mrs. Wu gave evidence, which I accept, that in Taiwan, her annual income, from all sources, and her husband's, were about the same.
- [15] Mr. and Mrs. Wu resided at Southoaks Crescent, in Burnaby, British Columbia in a condominium they say Corey Wu purchased using their funds and held for them until they became Canadian citizens.

Corey Wu

- [16] Corey Wu was born and raised in Taiwan. At high school, he majored in electrical engineering. From 1992 to 1994, he attended Texas A and M University, where he obtained his Bachelor's Degree in electrical engineering. Mr. and Mrs. Wu supported him and paid for his tuition while he attended university in the United States. The plaintiffs have produced wire transfer documents to verify their evidence that they sent funds from Taiwan to Corey Wu in Texas to pay for his tuition and other expenses while he attended the University there.
- [17] Following his university graduation, Corey Wu worked in the United States for approximately one year, where he earned an annual income of \$22,000.
- [18] He married his first wife, Ms. Amy Lee, in Texas and moved to British Columbia with her in 1996. They separated in November 1997, and were subsequently divorced.

- [19] Corey Wu and Irene Lee married on November 8, 1999 in Vancouver and separated on July 22, 2010. They have two children, Max Zao-Ming Wu, born November 6, 2002 and Troy Yu-Ming Wu, born November 6, 2004. They both reside with Irene Lee at the Barker Crescent property.
- [20] Corey Wu, who is 44 years old, worked during the marriage as a customer service consultant and systems specialist for CREO Canada and Kodak Graphic Communications.
- [21] After Corey Wu moved from the United States to British Columbia, he found employment with CREO, a manufacturer of high tech printing equipment in January 1997. Corey Wu testified that from 1997 to 2001 or 2002 he worked shifts in CREO's response center providing worldwide customer support. He said that while performing shift work at CREO he worked up to 60 hours per week, either at CREO's office in Burnaby, or working the 6:00 p.m. to 6:00 a.m. night shift at home. From 2002 to 2004 or 2005, he served on a products specialist team and then returned to the response center for about one year. In late 2006, he was promoted to a technical liaison position. Mr. Wu said that while employed at CREO and its successor Kodak, his work week varied from 40 hours to as much as 80 hours per week.
- [22] Corey Wu now resides in Taiwan where he is employed as a yoga instructor.

Irene Lee

- [23] Irene Lee is a 41-year-old flight attendant. Before embarking on her present career, she obtained a Bachelor's Degree in Commerce, and worked for a real estate firm. As she acknowledged in cross-examination, her education and early employment have provided her with a good grounding in business and financial matters. Since the separation, Irene Lee has continued to reside at Barker Crescent.

Paul Wu

- [24] Paul Wu is Mr. and Mrs. Wu's younger son. He is now 41 years old. Since graduating with his Bachelor of Visual Arts Degree in 2001, he has worked as an elementary school arts teacher in Taipei. His annual employment income is approximately 800,000 NTD, or about \$32,500 Canadian.
- [25] Paul Wu lives with his wife and two young children in an apartment owned by his parents in Taipei. He travelled to Vancouver to visit his family in 1997, 2000, 2004, 2006, 2008, 2009 and 2013, typically for visits of one to two months.

George Lee

- [26] George Lee is Irene Lee's father. He is a retired Hong Kong police officer who both during his police service and after his retirement engaged in a variety of entrepreneurial activities. Mr. Lee assisted Irene Lee in negotiating the separation agreement she made with Corey Wu in August 2010, and which both parties now seek to set aside or vary.

LITIGATION HISTORY

- [27] On May 24, 2011, Corey Wu commenced the family law proceeding by his notice of family claim, by which he sought orders for divorce, parenting arrangements and child support. He made no claim for the division of property. The claimant, who was then represented by his current counsel, pleaded that the August 15, 2010 separation agreement resolved by agreement, all matters between the parties except matters relating to the children.
- [28] On July 4, 2011 Irene Lee filed her response and counterclaim, by which she sought orders relating to parenting arrangements, child support, and for the reapportionment and division of family assets allegedly not disclosed by Corey Wu when the parties separated.
- [29] By their notice of civil claim filed November 3, 2011, Mr. and Mrs. Wu, as plaintiffs, claimed against Irene Lee and George Lee for unjust enrichment and damages for breach of trust conversion and extortion and for an accounting. Mr. and Mrs. Wu allege that Irene and George Lee had wrongfully deprived them of their beneficial interest in the Barker Crescent and Beach Avenue properties.
- [30] In the family law proceedings, Corey Wu filed an amended notice of family claim on November 3, 2011, adding George Lee as a respondent and making claims against him essentially identical to those advanced by his parents in their notice of civil claim.
- [31] In the civil action, George Lee counterclaimed against Mr. and Mrs. Wu on November 21, 2013. On February 24, 2012, Mr. and Mrs. Wu discontinued their action as against George Lee and on January 9, 2013 the Honourable Mr. Justice Butler ordered the dismissal of George Lee's counterclaim against the plaintiffs.
- [32] On March 6, 2012, the plaintiffs filed an amended notice of civil claim by which they added Corey Wu as a defendant, and claimed that in breach of trust he had wrongfully converted their property by transferring Barker Crescent and Beach Avenue to Irene Lee.
- [33] In the family law proceedings, on June 26, 2013, Corey Wu withdrew his claim against George Lee.
- [34] On November 29, 2011, the Honourable Mr. Justice Sigurdson ordered that the civil action and the family law proceedings be joined and heard at the same time. On March 28, 2012, Master McDiarmid made an order, by consent, varying the order of Mr. Justice Sigurdson to provide that the issues of divorce, custody, access and guardianship of the children would be heard separately. Accordingly, on the trial of these proceedings, neither Corey Wu nor Irene Lee sought any relief relating to the children of the marriage.

POSITIONS OF THE PARTIES

Mr. and Mrs. Wu

- [35] The plaintiffs maintain that they put up the purchase price for both Barker Crescent and Beach Avenue, and paid for renovations to Barker Crescent and for the purchase of gymnasium equipment installed there, all on the understanding that Corey Wu would hold both properties in trust for them.
- [36] In the civil action, the plaintiffs claim against Irene Lee and Corey Wu for declarations that the Barker Crescent property and Beach Avenue condominium, and all revenue derived from those properties are held in trust for the plaintiffs. Mr. and Mrs. Wu also seek orders for an accounting and damages for breach of trust and conversion of property. They claim aggravated and punitive damages against Irene Lee for failing to return their property, and causing them emotional and mental distress by threatening them with physical or financial harm.

Corey Wu

- [37] Corey Wu admits the whole of his parents' case. He denies that the ASTK file is his, or that he engaged in stock trading at any time, other than briefly between 1999 and 2000. He says suffered a net loss of about \$5,000, and as a consequence, ceased trading. Corey Wu invites the Court to find that his father and mother accumulated substantial wealth in Taiwan before immigrating to Canada. The plaintiffs and Corey Wu say Mr. and Mrs. Wu, Sr. used their own funds to purchase the Barker Crescent and Beach Avenue properties. Corey Wu says that his father placed money with him, and with his brother Paul Wu, from time to time to avoid taxation, and that Mr. Wu, Sr. also generously supported him before and during his marriage to Irene Lee.
- [38] Corey Wu transferred his interest in both properties to Irene Lee pursuant to the separation agreement made following the breakdown of the defendant's marriage. Corey Wu says that he breached his parents' trust and entered into the separation agreement under duress, as a result of the threats of George and Irene Lee and his fear that George Lee would cause him, or his parents, financial or personal harm.
- [39] In the family law proceeding, Corey Wu now seeks an order setting aside the separation agreement on grounds of duress, undue influence and unconscionability. He also applies for an order for the equal division under Part 5 of the Family Relations Act, R.S.B.C. 1996, c. 128 of funds not disclosed by Irene Lee at the time of the parties' separation. Further, Corey Wu seeks a determination that the condominium property known as the Merchant Square property in New Westminster, British Columbia, acquired by the respondent after the parties separated, is family property. Corey Wu also claims against Irene Lee for aggravated and punitive damages.

Irene Lee

- [40] Irene Lee holds title to both the Barker Crescent and Beach Avenue properties. She contends that Corey Wu purchased both properties with income that he earned through stock trading and says that she is entitled to retain the properties pursuant to the terms of the separation agreement.
- [41] Irene Lee seeks a variation of the separation agreement to include the division of assets that Corey Wu allegedly failed to disclose when the separation agreement was executed in August 2010. Ms. Lee contends those undisclosed family assets included a UBS investment account; overseas bank accounts in Taiwan legally or beneficially owned by her husband totalling over \$980,000; funds earned in various trading and investment accounts; the undisclosed portion of an RBC term deposit, a CIBC term deposit and HSBC GIC; and undisclosed real property in Taiwan.

ISSUES**Credibility**

- [42] Credibility is the critical issue in this case. In light of the numerous conflicts permeating the testimony of Mr. and Mrs. Wu, George and Irene Lee and Corey and Paul Wu, it will be necessary to make findings respecting the credibility and reliability of their testimony.
- [43] In assessing the testimony of Mr. and Mrs. Wu and Paul Wu, I take into account the fact that their first language is Mandarin, that each has a limited understanding of written and spoken English, and that because each testified with the assistance of an interpreter, their evidence passed through the filter of translation from Mandarin to English.
- [44] In *Bradshaw v. Stenner*, 2010 BCSC 1398, Madam Justice Dillon summarized the law concerning the assessment of credibility at paras. 186 to 187:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[45] In *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356-357 (B.C.C.A.), the Court emphasized the credibility of interested witnesses cannot be gauged solely by an assessment of their personal demeanour. The real test required an examination of the consistency of the witness's story with the surrounding probabilities and currently existing conditions. The court must assess its "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions".

[46] In this case, I must also bear in mind the observation of Southin J., as she then was, in *Le v. Milburn*, 1987 CarswellBC 2936 at para. 1:

When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame.

[47] Those principles guide the Court's assessment of credibility in this case.

Other Issues

[48] In the civil action, the following issues arise for determination:

- (a) Did the plaintiffs or Corey Wu provide the funds for the purchase and improvement of Barker Crescent and for the purchase of the Beach Avenue property?
- (b) Are the plaintiffs entitled to a declaration that Irene Lee holds Barker Crescent and Beach Avenue in trust for the plaintiffs, and for order transferring ownership of those properties to the plaintiffs?
- (c) Are the plaintiffs entitled to orders for an accounting and payment of all revenue derived from those properties?
- (d) Are the plaintiffs entitled to damages for breach of trust and conversion, and if so, in what amount?

- (e) Did any party fabricate evidence relating to the ASTK file in order to gain an advantage in this litigation?
- (f) Did Irene Lee with the assistance of George Lee threaten, coerce or intimidate Mr. and Mrs. Wu, Sr. in order to gain an advantage in this litigation?
- (g) Did Irene Lee withhold or fail to disclose material evidence in order to gain an advantage in this litigation?
- (h) Are the plaintiffs entitled to aggravated or punitive damages, or to an award of special costs?

[49] The issues arising in the family law proceeding are as follows:

- (a) Divorce.
- (b) Should the separation agreement dated August 15, 2010 be set aside on grounds that the claimant suffered duress, coercion or undue influence, or that it is unconscionable?
- (c) Should the separation agreement be set aside on the basis that the claimant and the respondent were both aware that Mr. and Mrs. Wu, Sr. were the beneficial owners of the Barker Crescent and Beach Avenue properties and other assets which the separation agreement purported to divide?
- (d) Should the separation agreement be set aside on the principle of *nemo dat qui non habet*, i.e. that a person cannot transfer more than his own interest in property?
- (f) Should the separation agreement be set aside on the ground the claimant failed to disclose family assets?
- (g) If the separation agreement is set aside, then what orders should the Court make for the determination and division of any family assets?
- (h) If the family assets include assets located outside the territorial jurisdiction of this Court, how should the Court allocate and value those assets in giving effect to Part 5 of the FRA?
- (i) Did Irene Lee with the assistance of George Lee threaten, coerce or unduly influence Corey Wu during the negotiations leading to the making of the separation agreement?
- (j) Did Corey Wu suffer compensable physical or psychological injuries caused by any action of Irene Lee, and if so, what is the quantum of his damages?
- (k) Did Irene Lee and George Lee fabricate the ASTK file or any other documentary evidence?
- (l) Is Corey Wu entitled to an award of punitive damages?
- (m) Has there been conduct on the part of any party deserving of the Court's rebuke by an order for special costs?

EVIDENCE AND FINDINGS OF FACT

Acquisition of Southoaks Crescent

- [50] Although no one disputes the plaintiffs' ownership of Southoaks Crescent, all parties focused some attention on the evidence relating to Corey Wu's initial purchase of that property and the subsequent transfer of title to Mrs. Wu. The plaintiffs and Corey Wu say that he acquired Southoaks Crescent with funds provided by Mr. Wu and owed the same duty to hold the property in trust for his parents that he later breached when he transferred his interest in Barker Crescent and Beach Avenue to Irene Lee. For her part, Ms. Lee disputes that Mr. Wu, rather than Corey, funded the purchase of Southoaks Crescent. She also points to frailties in the plaintiffs' evidence that Corey Wu agreed to hold that property in trust for them until they acquired Canadian citizenship.
- [51] Mr. Wu and Corey testified that in March 1996, during a time of heightened tensions between Taiwan and the People's Republic of China, Mr. Wu sent US\$40,000 to Corey with instructions that he hold those funds for the benefit of his parents. Their testimony is supported by documentary evidence of a wire transfer of US\$40,000 from a Taiwan bank account of Mr. Wu's to Corey Wu in Texas.
- [52] Mr. Wu testified that in 1997, after Corey had immigrated to Canada, he and Corey discussed the purchase of property in the Lower Mainland. Corey told his father he had found a property that could be purchased for \$172,000. Mr. Wu gave evidence that he had continued to transfer funds to Corey in Canada, and told him he should purchase the property. Later, Corey Wu informed his father that had purchased Southoaks Crescent, a two bedroom condominium located in Burnaby, British Columbia.
- [53] In his direct examination, Mr. Wu testified that at the time of the purchase of Southoaks, he thought one had to be a Canadian citizen in order to purchase property in Canada. He assumed the law in Canada was the same as the law in Taiwan, which he understood prohibited the purchase of real property by foreign citizens. Accordingly, the arrangement he made with Corey was that his son would hold title until Mr. and Mrs. Wu became Canadian citizens, and then transfer the property to them.
- [54] Mr. and Mrs. Wu did not apply to immigrate to Canada until February 2002. I heard no evidence that they were planning to relocate to Canada as early as the spring of 1997, when Southoaks Crescent was purchased.
- [55] When Mr. Wu travelled to Canada for the first time in September 1998, Corey was living at Southoaks Crescent. Both Mr. Wu and Corey gave evidence that it was only then that Corey disclosed he had used \$9,000 of the money his father had remitted to him to pay expenses he incurred when he moved from the United States to Canada, and had used a further \$13,500 of his father's funds to purchase a car. Corey Wu also informed his father that he had financed the purchase of Southoaks by a mortgage.

- [56] Mr. Wu says that he had sent Corey sufficient funds to pay the full purchase price of \$172,000 for Southoaks. Mr. Wu testified that he was disappointed to learn that his son had mortgaged the property and had used \$22,500 of his money, without his authorization, for purposes other than the purchase of the Southoaks property. According to Mr. Wu, at that point he began to lose confidence in Corey, and thought that his son was untrustworthy.
- [57] In or about October 2007, Corey Wu and his first wife, Amy Lee, purchased Southoaks Crescent. Title was registered in both their names, as joint tenants, on October 10, 1997. Each contributed \$32,750 to the down payment from funds provided by their respective parents. As counsel for Irene Lee submits, the registration of title to Southoaks Crescent in the names of both Corey Wu and Amy Lee is difficult to reconcile with the plaintiffs' assertion that Corey agreed to acquire and hold that property for them until they became Canadian citizens.
- [58] After Corey Wu and Amy Lee separated, Corey purchased his former spouse's interest in Southoaks for \$32,750. Corey Wu says he did so using his father's funds.
- [59] Corey Wu paid the monthly mortgage, strata fees, tax and utility payments for Southoaks from his CIBC checking account ***733.
- [60] Between 1998 and 2005 Corey Wu and Irene Lee lived at George Lee's home at Normandy Drive in Burnaby, British Columbia rent-free. Throughout that time, they collected rent from the Southoaks condominium. Counsel for Irene Lee suggested to Corey Wu in cross-examination that he kept the rent from Southoaks because he was the owner of that property. Corey denied he was the beneficial owner and maintained that his father permitted him and Irene to retain the rent as long as they paid all expenses for the property.
- [61] Both Mr. Wu and Corey testified that in September 1998, after Corey disclosed that he had used \$22,500 of his father's funds to pay personal expenses and to purchase a car, he transferred 1,800 CREO share options, then valued at \$21,600, to his father in order to repay the monies he owed to Mr. Wu. As an employee of CREO, Corey Wu had acquired those options at a price of \$12.00 per option. Mr. Wu and Corey also gave evidence that between October and December of 1998 at his father's request and using his father's money, Corey acquired an additional 2,100 share options from other CREO employees at prices ranging between \$11 and \$13 per share.
- [62] In February 2000, when CREO shares could be traded on the market, Corey Wu sold 2,000 shares at \$53.25 per share. His father realized a profit of \$96,000 on the 1,800 CREO share options that Corey had transferred to him to satisfy the \$22,500 debt.
- [63] In total, Corey Wu held 3,900 CREO options. When he sold all of the shares, their fair market value totalled \$200,912.

- [64] Of that amount, Corey Wu only wired \$57,031 to his father. Corey Wu claims that the total amount realized on the sale of the CREO shares was returned to his father either by the wire payment, or in the form of other payments he made on behalf of his father, including payment of the mortgage on Southoaks Crescent.
- [65] Corey Wu recalled that when he commenced employment at CREO in 1997, his salary was somewhere between \$32,000 and \$35,000. He declared total income of \$48,000 for 1998 and \$52,436 for 1999. For the year 2000, his line 150 income increased to \$186,425.09, as the result of the sale of his CREO stock options that year. He has produced transaction confirmation slips from Nesbitt Burns confirming his sale of the CREO shares in 2000. These documents are the only paper records of any sales of shares or stocks by Corey Wu.
- [66] Corey Wu testified that he only engaged in trading stocks, other than the CREO options, between 1998 and 2000 and that he ceased trading after he suffered a loss of approximately \$5,000. His evidence that he lost \$5,000 in stock trading is supported by his T1 General Income Tax return for 2000, in which he declared a capital loss of \$5,180 on trades in stocks and mutual funds. I will return later in these reasons to the evidence relating to Corey Wu's alleged day trading activities throughout his marriage to Irene Lee.
- [67] When giving his evidence concerning transfers of funds from and to his father, Corey Wu referred to Exhibit 26, Tab 5, a chart he prepared as an aide memoire. That chart purports to show numerous transfers of funds between Mr. Wu and Corey Wu from 1993 to 2002. Mr. Wu was not examined on all of the transactions listed in Exhibit 26, Tab 5. The plaintiffs and Corey Wu have produced records of some, but by no means all the transfers of funds described in the chart. Accordingly, in my assessment of the evidence relating to the transfers of funds between Mr. Wu and Corey, I give little weight to Corey Wu's chart, except where particular transfers or other dispositions of funds are supported by contemporaneous documentary evidence of those transactions.
- [68] The chart lists transfers of funds from Mr. Wu to Corey from March 12, 1996 through September 11, 1998 totalling \$205,240. Of the 15 transactions listed, eight are supported by wire transfer documents. For the remainder, Corey Wu and his father relied on entries from Mr. Wu's bank books showing cash withdrawals for the dates and amounts in question. The latter documents provide no evidence of the purpose of the withdrawals or the ultimate destination of the funds withdrawn from Mr. Wu's accounts.
- [69] Corey Wu testified that he remembered receiving the amounts shown in his chart. However, he said that the Canadian Imperial Bank of Commerce was unable to produce copies of bank statements prior to 1999. Accordingly, he has no record of receiving funds from his father prior to 1999, other than those for which wire transfers exist. I accept his evidence that he was unable to obtain copies of his pre-1999 bank statements from the CIBC.

- [70] Following the sale of the last of the CREO options in June 2000, Corey Wu used \$28,665 from the proceeds of that sale to pay taxes and an additional \$39,271.87 to pay out the mortgage on Southoaks Crescent. He says his father authorized those payments.
- [71] In May 2011, after Mr. and Mrs. Wu had become Canadian citizens, Corey Wu transferred title to Southoaks Crescent to his mother.
- [72] On the balance of probabilities, I am satisfied that Mr. Wu provided the funds to pay Corey Wu's share of the down payment for Southoaks Crescent and the amount required to purchase Amy Lee's interest. I make that finding taking into account Corey Wu's modest employment income in 1997 and the evidence of wire transfers of funds from Mr. Wu. I also accept that Mr. Wu provided the funds Corey used to purchase the 2100 additional CREO options between October and December 1998.
- [73] However, the fact that Corey Wu only remitted \$57,031 to his father from the sale of his CREO shares leads me to conclude that Corey Wu retained and used some of the sale proceeds for his own purposes, including the payout of the mortgage on Southoaks Crescent. While I have found that Mr. Wu contributed funds to the purchase of Southoaks Crescent, I am not persuaded, on the balance of probabilities, that the plaintiffs and Corey made an arrangement by which he would acquire and hold Southoaks Crescent, and then transfer the property to them when they became Canadian citizens. The purchase of Southoaks Crescent by Corey Wu and Amy Lee as joint tenants, and their equal contributions to the down payment are inconsistent with the arrangement asserted by the plaintiffs. Further, I give a little weight to Mr. Wu's evidence that he assumed that Canadian law, like Taiwanese law, prohibited foreigners from owning real property. While Mr. Wu gave evidence that he understood the law in Taiwan barred foreigners from purchasing property, the plaintiffs adduced no evidence to prove the applicable Taiwanese law.

Mr. and Mrs. Wu's immigration application

- [74] In February 2002, Mr. and Mrs. Wu applied to immigrate to Canada. They sought permanent residence under the Family Reunion category. Corey Wu and Irene Lee sponsored their application.
- [75] Irene Lee assisted Mr. and Mrs. Wu by filling out the application forms, with some help from Corey Wu.
- [76] In Mr. Wu's application, his occupation is described as "IT Manager for Computer Centre", and his intended occupation in Canada is "Retired".
- [77] In cross-examination, counsel for Irene Lee suggested to Mr. Wu that in completing his application for immigration he had misrepresented his current occupation by describing himself as an IT Manager. Mr. Wu denied that allegation. He said he did not fill out the form and that it was Irene who did so. He claimed that Irene Lee came by his home with a form, that she was in a hurry, and just asked him to sign the documents, which he did, using both

his Chinese and English signatures. He denied that he met with Irene to give her the information necessary to complete the form, and that she translated the form for him. When counsel put the proposition to Mr. Wu that he had not even looked at the information he was giving to the government in support of his application to immigrate to Canada, his response was that was his mistake. When counsel pointed out the application required a declaration by the applicant that the information was truthful, complete and correct, Mr. Wu responded that he did not understand the declaration when he signed it.

- [78] In my view, it is contrary to the preponderance of probabilities that Mr. Wu would have shown so little interest in a document essential to his and his wife's admission to Canada as landed immigrants. However, I also have no doubt that Irene Lee and Corey Wu were fully aware of the contents of Mr. Wu's application for immigration, and that Mr. Wu worked as a highways engineer in Taiwan, rather than as an IT Manager. If this was a misguided attempt to "guild the lily" and to thereby bolster Mr. Wu's application, Corey Wu and Irene Lee were both complicit. In any event, in assessing Mr. Wu's credibility, I attach far more weight to the evidence concerning his financial affairs than to a single erroneous entry in his immigration application.

Barker Crescent

- [79] By 2002, Mr. and Mrs. Wu began to think about retiring and moving to Canada. Mr. and Mrs. Wu came to Canada as landed immigrants in April 2005. Mr. Wu returned to Taiwan on May 8, 2005, in order to put his and Mrs. Wu's affairs in order before settling in Canada. The plaintiffs say they planned to purchase a house where they would live with Corey Wu, Irene Lee and their two grandchildren.
- [80] Mr. Wu testified that about two weeks after he returned to Taiwan, Corey called and said that he had found a house on Barker Crescent that was suitable and was worth about \$700,000.
- [81] With respect to the Barker Crescent property, Mrs. Wu testified that after they landed in Canada in April 2005, she, Mr. Wu, Irene and Corey had a discussion about Mr. and Mrs. Wu buying a house. Mr. and Mrs. Wu had brought money to Canada to buy a home. Mrs. Wu said Irene Lee asked her what their budget was and that she said \$1 million Canadian would be fine, although she was not familiar with house prices in Vancouver. After Mr. and Mrs. Wu returned to Taiwan in May 2005, they told Irene and Corey to keep looking. Corey located the Barker Crescent property and Mr. Wu handled the finances for its purchase.
- [82] Again, Mr. Wu says that he put up the full purchase price of \$720,000 for the Barker Crescent property and understood that when the sale completed on July 16, 2005, title would be registered in the name of Corey Wu. Mr. and Mrs. Wu say they understood that Corey Wu would hold the property in trust for them until they became Canadian citizens, at which time Corey would transfer title to them.

- [83] Mr. Wu testified in direct that after the purchase of the Barker Crescent property had completed, Corey Wu told him that some improvements were necessary, including a fence and an electric gate at a cost of around \$10,000. Mr. Wu told Corey to go ahead and to take the money to pay for Barker Crescent from his HSBC bank account.
- [84] Mr. Wu was asked in direct about what discussions he had with Corey and/or Irene about buying a larger house for the family while he was in Canada between April 23 and May 8, 2005. He said he talked to Corey and Irene about buying a house but "I don't quite recall right now." What he did recall was that the house was purchased after he went back to Taiwan. Mr. Wu said he sent the purchase money from Taiwan and that he talked to Corey and told him that after he received the money and bought the house "Don't forget to transfer title back to me after I become a Canadian citizen." Mr. Wu also said that, "We did not really talk about how we were going to register the title." He said he had understood that only a Canadian citizen could buy property and thought that the arrangements for holding title would be the same as the arrangements made for the purchase of the Southoaks property.
- [85] The purchase and sale of Barker Crescent completed on July 18, 2005. Title to the property was registered in the names of Corey Wu and Irene Lee.
- [86] Corey Wu confirmed his father's evidence that title was to be transferred to Mr. and Mrs. Wu, Sr. when they became Canadian citizens. When asked in direct what discussion he had with his parents about title, Corey Wu said that he did tell his parents that his name was on title, but did not tell them that Irene was also on title. He said his parents only learned about that when he told them in Taiwan in May 2011 that Barker Crescent had been registered in both his and Irene's names and that he had transferred title to Irene Lee.
- [87] Corey Wu maintains he told Irene Lee on two occasions that Barker Crescent would be returned to his parents when they became Canadian citizens. Corey Wu claims to have had this conversation with Irene in 2005 when they helped his parents to purchase the property, and again in 2010 in anticipation of his parents becoming Canadian citizens. As a sponsor for his parents, Corey Wu was well aware that they would be eligible for Canadian citizenship in 2011. It is not consistent with the probabilities of that situation that in July 2010 Corey Wu would agree to the registration of title to Beach Avenue in Irene Lee's name if, as he claims, he was under an obligation to transfer the property to his parents upon their attaining Canadian citizenship.
- [88] After the purchase of the Barker Crescent property, Mr. Wu says that he agreed to Corey's request to withdraw money from his HSBC account to pay for renovations to the basement to improve the rental suite and to convert the basement audio-visual room to a gymnasium at a cost, inclusive of gym equipment, of about \$8,000. Mr. Wu says he instructed Corey Wu to take money from Paul's account in Canada to pay for the home gymnasium renovation. He was unable to recall the particular account in Paul's name from which the funds were to be withdrawn.

- [89] Mr. Wu also testified that at the request of his son and daughter-in-law he paid for extensive renovations to the Barker Crescent property in 2010, which included the installation of a new kitchen, renovations to the living room, repairs to the roof and painting the exterior of the home, at a total cost of about \$60,000. Mr. Wu said the money to pay for those renovations came from CIBC and RBC accounts in the name of Paul Wu, and Mr. Wu's own HSBC account. He said all of the money in those accounts was his and had come from Taiwan, or from funds that Mr. Wu had paid into Paul Wu's Pension account in the United States. Mr. Wu said some of the money went directly from his account in Taiwan to Paul Wu's account in the United States. He also said some of the return from his motel investment went to Paul Wu's Pension account, as did some of the money from his sports store investment.
- [90] According to Irene Lee, by the late spring of 2005 as a result of Corey Wu's trading, she and her husband knew they had accumulated enough cash to buy a home. Irene Lee said she found the Barker Crescent property in June, 2005. When she met with the owner she learned that he had already accepted an offer on the property. On the advice of George Lee, they made a back-up offer, with no conditions. Irene said that when she and Corey Wu began looking for a home they had about \$600,000 U.S. cash. Barker Crescent was listed at \$760,000 CAD, which was a little above the couple's price range. According to Irene Lee, the reason why Corey Wu had to check with his father before the parties made their offer was to ensure that he held sufficient funds in an offshore account in his father's name to enable him to make the offer, and to instruct his father to send the money. According to Irene Lee, Corey, after speaking with Mr. Wu, Sr. reported back to her, "It's okay - he has enough money."
- [91] Irene Lee recalled a brief discussion with the notary who said Barker Crescent would be held in the names of both spouses.
- [92] Irene Lee testified she, Corey Wu and the children moved into Barker Crescent in August or September of 2005 and that Corey Wu's parents returned to Vancouver from Taiwan in April 2006. Mr. Wu stayed briefly, and then left again. Irene Lee said that she and Corey Wu agreed to let Mrs. Wu stay at Barker Crescent until Mr. Wu returned to Vancouver. The Southoaks condominium had been vacant since 2005. Irene Lee and Corey Wu agreed that they would leave it vacant in order to keep it available for Mr. and Mrs. Wu. Irene Lee testified that after Mr. Wu returned to Vancouver in September 2006 she expected that her parents-in-law would move to Southoaks Crescent. According to Irene Lee, Mr. and Mrs. Wu had overstayed their welcome at Barker Crescent by the time they moved to Southoaks in December 2006. She claims that both she and Corey Wu agreed in November that it was time for his parents to move to their own space at Southoaks.
- [93] Irene Lee also maintains that there were no discussions with Mr. and Mrs. Wu, Sr. about transferring title to the Barker Crescent property to them after they became Canadian citizens, and that her parents-in-law never asserted they owned the Barker Crescent property.

- [94] Irene Lee denies that Mr. and Mrs. Wu paid for any of the renovations to Barker Crescent. She asserted she and Corey paid for all of the renovations with "family money".
- [95] Mrs. Wu confirmed she and Mr. Wu arrived as landed immigrants in Canada in 2005, and only stayed a couple of weeks before returning in April 2006. After Mr. Wu returned to Taiwan on May 8, 2006 she lived at the Barker Crescent property with Irene Lee, Corey Wu and the two grandchildren until December 2006. At that time, she and Irene Lee had a falling out. According to Mrs. Wu, Irene insulted her. She and her husband decided to move to Southoaks. It is common ground that Mr. and Mrs. Wu moved to Southoaks in December, 2006, after relations between Mrs. Wu and Irene had become strained.

Beach Avenue

- [96] Mr. Wu testified that in the early summer of 2010, Irene Lee and Corey Wu proposed that he purchase the Beach Avenue property. They described it as a hotel style apartment located at Hornby and Beach Avenue in Vancouver. The price was approximately \$200,000 and the unit would be managed by a management company and would earn income of about \$900 per month. Mr. Wu thought this was a good investment. He testified "I said we should buy it. You two go ahead and buy it."
- [97] Mr. Wu gave evidence that he asked his son Paul to remit about \$200,000 from his Taiwan Cathay United Bank account to his CIBC account in Vancouver. Mr. Wu said he also wrote a cheque on his own HSBC account and then deposited that cheque to Paul's CIBC bank account and told Corey to pay the purchase price for the Beach Avenue property. According to Mr. Wu, Paul had given a Power of Attorney to Corey Wu on Mr. Wu's instructions, so Corey was able to withdraw money from Paul Wu's CIBC account.
- [98] Mr. Wu testified that \$220,000 was remitted from Paul Wu's CIBC bank account to Corey Wu's bank account and that the purchase price for the Beach Avenue property was paid by certified cheque drawn on the joint account of Corey and Irene. Banking records produced by the plaintiffs show the transfer of \$227,922.49 from Paul Wu's CIBC bank account to the CIBC joint account ***733 of Corey Wu and Irene Lee on July 15, 2010. The following day, Corey Wu provided the notary public, Mr. Anderson, with funds in the amount of \$227,922.49 in order to complete the purchase of Beach Avenue. Title to Beach Avenue was registered in the name of Irene Lee.
- [99] Mr. Wu said that when he asked Corey to pay the purchase price, his son asked him in whose name the property should be registered. Because Mr. Wu thought the Beach Avenue property was just for investment and could be sold in a short time, he told Corey Wu that title could be registered under either his name or Corey's name. Mr. Wu testified that he never told Corey Wu that title could be registered in Irene Lee's name.

- [100] Mr. Wu acknowledged that before the Beach Avenue purchase of July 2010, he understood that he did not have to be a Canadian citizen, or even a Canadian resident, to purchase property in Canada.
- [101] Mr. Wu was asked why, once he understood, as he said he did by 2008, that he did not have to be a citizen to own property, he did not insist that Barker Crescent be transferred into his name. Mr. Wu said that by that time he thought he would become a Canadian citizen soon and was not in a hurry to have the property transferred into his name.
- [102] For her part, Irene Lee testified that she and Corey Wu agreed that it would be a good idea to invest in property; that she found the Beach Avenue condo in May or June of 2010; and that Corey instructed the realtor that the property would be purchased in her name. According to Irene Lee, there was never any discussion with Corey's parents about them purchasing Beach Avenue.

The Divorce Notice

- [103] The purchase and sale of the Beach Avenue property completed on or about July 17, 2010. Five days later, on July 22, 2010, Irene Lee and her father George Lee came to Mr. and Mrs. Wu's home at Southoaks. George Lee produced a document outlining Irene Lee's demands for a divorce (the "divorce notice").
- [104] Irene Lee testified that on July 19, 2010, as she was about to depart on a flight to China she determined that she no longer wanted to be in a relationship with her husband, who was having an affair with another woman. She called George Lee, and told him that she wanted a divorce. At that point, her father said he would help her in writing up a notice of the divorce and had done so by the time Ms. Lee returned to Vancouver on July 21, 2010. Irene Lee claimed that her only involvement in the preparation of the divorce notice was to ask for her father's assistance. She looked through the notice before she signed it, but said she was preoccupied and did not review the document in detail.
- [105] Mr. Lee testified that Irene called him sometime between July 18 and July 20, 2010 to tell him that she wanted to divorce Corey Wu. Mr. Lee says he prepared the divorce notice over the next couple of days while Ms. Lee was working an Air Canada flight. Upon her return, Irene signed the divorce notice. Mr. Lee was unable to recall whether Irene had read the notice before she signed it.
- [106] On July 22, 2010, Irene and George Lee met with Mr. and Mrs. Wu, Sr. to present the divorce notice at the Southoaks Crescent property. Irene Lee thought the meeting lasted 20 to 30 minutes. She said Mr. and Mrs. Wu did not say much and that they obviously did not expect the news that their son and daughter-in-law were going to divorce.

[107] Mr. Wu testified that he was shocked that his son and daughter-in-law were separating. He was concerned about what would happen to his two grandchildren. Therefore did not read the document that George presented. He said that George produced both a Chinese and an English language version of the document but left only two pages of the English version after tearing up the rest.

[108] After George and Irene left, Mr. Wu contacted Corey, and later that evening he read the document in detail. Mr. Wu testified references in the document to criminal penalties and to investigation by the Canada Revenue Agency frightened him. He said he felt "threatened, very nervous and scared".

[109] The divorce notice included a letter from Irene Lee addressed to Corey Wu informing him that the marriage was "shattered" and that she had decided to apply for a divorce. The second page of the document was a statement certifying that Irene Lee had authorized her father to "take charge of her divorce" and conduct all negotiations on her behalf. The divorce notice also contained a memorandum which provided in part:

1. For the divorce procedure, the involved parties may choose (a) to enter upon amicable negotiations, reach a consensus and lay down a separation agreement outside the court, or (b) to place the case before the court for a verdict.

...

4. In the case that the court is chosen to handle this case, the submitted financial statements and other attached documents will become the court's files, which may be allowed to be used by other law enforcement departments in the future.
5. When calculating taxable income, the Revenue Canada Agency may estimate the income by adding the total expenditure to currently accumulated assets. The amount of the taxable income plus the interest and fine will not be less than existing accumulated assets (part of the data is listed below). The current situation is unlikely to be accepted as an error or simple tax shelter behavior; instead, it may be deemed as an attempt, which may lead to imprisonment criminal behavior and result in special investigation. Nevertheless, these choices are all optional.
6. We have been planning this for some time and have compiled and listed all records of marital assets in date order. All of the records correspond to the deposit dates and amounts in respective banks and as such are very likely to be accepted as proof of assets by the court.

[110] Page 4 of the divorce notice provided:

The following are part of the marital assets:

1. All controllable money, whether in the name of either party or others, deposited in banks or financial institutions outside Canada (including bank deposits in Taiwan, China and Hong Kong).

2. All controllable money, whether in the name of either party or others, or in any currency, deposited in banks or financial institutions in Canada.

3. Term deposits, interest secured deposits, funds, real estate investments, etc. registered in the name of either party or others.

4. To name a few of assets owned in a month of 2009:

- The deposit registered in Taiwan under the name of Ta Hsuan Wu or others: US\$978,833.
- The margins deposited in respective stock platforms.
- \$29,158 deposit at CIBC under the name of Lei Hsuan Wu
- \$110,706 deposit at RBC under the name of Ta Hsuan Wu
- \$40,800 deposit at RBC under the name of Lei Hsuan Wu
- \$120,000 investment at UBS
- \$138,366 deposit at CIBC under the name of Ta Hsuan Wu
- \$91,714 investment at CIBC under the name of Lei Hsuan Wu
- \$107,924 deposit at TD Bank under the name of Ta Hsuan Wu
- \$45,000 deposit at CIBC under the name of Chih-Hsiung Wu
- \$84,049 investment deposit at HSBC under the name of Lei Hsuan Wu.
- \$252,174 deposit at HSBC under the name of Lei Hsuan Wu
- \$114,074 GIC interest secured deposit at HSBC
- Two real estates at Burnaby

[111] Mr. Lee was asked why none of Irene Lee's assets other than "two real estates at Burnaby" were included in the assets listed at page 4, paragraph four, of the divorce notice. His response was that everyone, including Corey, understood Irene's assets. However, at page 3 of the divorce notice, Mr. Lee wrote "All marital assets in Canada or outside of Canada have been documented."

[112] Mr. Lee agreed the assets listed at page 4, paragraph four, were those listed in the Performance target versus Actual document for the month of October 2009.

[113] Mr. Lee claims that Corey Wu downloaded the ASTK and Performance Target versus Actual files to a computer at Normandy Drive on January 29, 2010 and that Corey Wu showed the files to him after he had downloaded them.

[114] The plaintiffs maintain all of the items listed at page 4, paragraph four of the divorce notice are Wu family property, including the "two real estates at Burnaby", which are the Barker Crescent and Southoaks Crescent properties.

- [115] Mr. Lee asserted that the two "real estates" are the Barker Crescent and Beach Avenue properties, although Beach Avenue is located in the City of Vancouver.
- [116] Mr. Wu thought that the divorce notice conveyed a threat from George and Irene Lee that unless Irene Lee's demands were met he might suffer adverse financial consequences, if the Taiwanese or Canadian tax authorities investigated his affairs. Mr. Wu also said he was concerned because George Lee was a retired Hong Kong police officer, who he thought might try to frame him.
- [117] Mrs. Wu recalled that Irene had arranged to come to Southoaks around 1 pm. on July 22, 2010, and that she was surprised when Irene arrived with George Lee. She remembered that George Lee was angry, said bad things about Corey and that George had brought documents with him. Mrs. Wu said she did not have an opportunity to read any of those documents. During the time that Mr. Lee and Irene were in the Wu home, which Mrs. Wu estimated as a little over an hour, Mr. Lee did all of the talking and Irene was "just like a puppet". Mrs. Wu said that she did not see Irene again after July 22, 2010.
- [118] Mrs. Wu said that after she read the divorce notice, her concerns were that George Lee would contact the tax department and that he would then go to Taiwan to report Mr. and Mrs. Wu for "money laundering". She feared they might even go to jail.
- [119] In cross-examination by Mr. Yu, when pressed, Mrs. Wu acknowledged that there was no allegation of money laundering in the divorce notice, but said that Mr. Lee, while he was at Mr. and Mrs. Wu's home on July 22, 2010, asserted that the plaintiffs were laundering money. She thought that meaning was hidden in Mr. Lee's letter. Mrs. Wu did not explain why she thought any allegation of money laundering might be taken seriously by the Canadian or Taiwanese tax authorities.
- [120] Mrs. Wu testified that she thought the list of family assets set out in the divorce notice letter was ridiculous. In cross-examination, she acknowledged that she only knew what her husband told her about each of the items listed. For example, she identified the \$110,706 deposit at the Royal Bank of Canada as an asset of hers managed by her husband. However, she had no personal knowledge about that asset, other than what her husband told her.
- [121] Mrs. Wu said that after she and Mr. Wu received the divorce notice, Mr. Wu did not keep her informed of discussions he was having with George Lee about resolving her son and daughter-in-law's matrimonial dispute. Later, she did acknowledge that Mr. Wu had told her that he had met with George Lee on July 26, 2010 but said her husband did not tell her that he and Mr. Lee had discussed a separation agreement.
- [122] On July 23, 2010, George Lee told Mr. Wu that he must deal with Mr. Lee as Irene's agent, rather than talk to Irene.
- [123] On July 24, 2010, Mr. Wu persuaded George Lee to permit Irene to meet with him.

- [124] When Mr. Wu and Irene met at Southoaks on July 27, 2010, Irene Lee insisted that she wanted the divorce, despite Mr. Wu's efforts to dissuade her.
- [125] Mr. Lee emphasized that although he was aware that Irene's marriage with Corey was in jeopardy as early as the fall of 2009, he did not prepare the divorce notice until shortly before July 22, 2010. According to Mr. Lee, during the fall of 2009, Irene Lee called him to tell him that Corey had had an affair with one of her colleagues. Although Mr. Lee concluded that the marriage was "broken" at that time, he said nothing happened until mid-July 2010 when Irene called him to say that she had made up her mind to divorce Corey and needed Mr. Lee to initiate action while Irene was away for two or three days on an international flight. Mr. Lee drew up the divorce notice. He said he obtained the information regarding assets incorporated in the divorce notice from the ASTK file and the Financial Target and Actual file. He prepared the divorce notice in both Chinese and English. Mr. Lee confirmed that when he and Irene met with Mr. and Mrs. Wu at Southoaks Crescent, he presented the notice to Mr. Wu. Mr. Wu did not want the divorce to proceed, and according to Mr. Lee, pushed the notices away. Mr. Lee said he left complete sets of the divorce notice in both English and Chinese. He denied he took back or ripped up the English version at the end of the meeting. According Mr. Lee, Mr. Wu did not want to have any conversation about the contents of the notice and did not want the divorce to proceed.
- [126] Mr. Lee explained that rather than just delivering the divorce notice to Corey, he presented the document to Mr. Wu out of respect for him as the "senior member" of the family. In my view, in delivering the divorce notice to Mr. Wu, Mr. Lee was motivated not by respect for Mr. Wu, but rather by a desire to persuade the Wu family that it was in their interests to conclude a settlement on terms favourable to Irene and thereby avoid any potentially embarrassing or costly disclosure of their financial circumstances.
- [127] In cross-examination, Ms. Perry reminded Mr. Lee of his testimony in direct that in January 2010 Corey Lee had informed him that he had made over \$1 million from stock trading in 2009 and that he was concerned about his brother holding over \$1 million of his funds in Taiwan. Mr. Lee agreed that in January 2010 he was aware that Corey Wu had funds in Taiwan. Counsel then pointed out that those funds were not included in the list of assets Mr. Lee had prepared during the negotiations leading to the separation agreement of August 15, 2010 (see Exhibit 25 tab 15). Mr. Lee asserted that although both he and Irene knew about the funds in Taiwan, they were not included in the list but "were taken into consideration". I find Mr. Lee's evidence on this point to be implausible. It is by no means consistent with the probabilities of the situation that existed at the time the parties were negotiating a settlement agreement that they would not expressly address the allocation or division of an asset of this value, if it existed.
- [128] Mr. Lee claims that assets that Corey Wu held overseas were intentionally not listed because Corey Wu wished to evade paying tax on the income he had earned from stock trading.

[129] Although Mr. Lee testified he used the Financial Target versus Actual file to prepare the asset list attached to the divorce notice, the information in that file was only current to September 2009. According to George and Irene Lee, Corey Wu continued to day trade to July 2010. Accordingly, the asset list in the divorce notice did not account for any assets accumulated between September 2009 and July 2010.

[130] It was suggested to Mr. Lee in cross-examination that he and Irene had been planning for the separation since 2009, and that they had intended, since that time, to acquire ownership of a substantial portion of the Wu family assets through the separation and divorce. On August 11, 2010, Mr. Lee sent an e-mail to Irene Lee, copied it to Corey Wu, which included the following statement:

When you called me in 2009, and I knew there would be a battle, and I was prepared.

[131] When Ms. Perry suggested to Mr. Lee that he and Irene decided in 2009 to use Wu family documents to create the fiction of Corey day trading and had delayed presentation of the divorce notice until July 2010 because Irene wanted to acquire more from the Wu's, Mr. Lee denied any such intention. However, he agreed that in January 2010, the kitchen at Barker Crescent was renovated and that there were also renovations and repairs to the exterior of that property. Although Mr. Lee denied any knowledge of the conversion of the basement home entertainment room to a home gym in March 2010, Corey Wu testified Mr. Lee used the home gym at Barker Crescent. When pressed, Mr. Lee remembered that he recalled showing an acquaintance around the Barker Crescent property, and showing him the gym.

[132] As we have seen, the Beach Avenue condominium was purchased in Irene Lee's name in July 2010, shortly before she and her father presented the divorce notice. While Irene Lee contends she made a spontaneous decision to divorce her husband a few days before July 22, 2010, both she and her father struck me as persons who carefully calculate how best to maximize any financial opportunity that may come their way. Elsewhere in these Reasons I refer to correspondence authored by Mr. Lee in which he takes pride in his ability to acquire control of investment projects. Similarly, Irene Lee had no reservations about using credit cards issued in the names of Mr. Wu and Paul Wu to pay her expenses. I find that it is more probable than not that Irene and George Lee timed the delivery of the divorce notice to follow registration of title to Beech Avenue in Irene's name, and that by doing so, they believed they would enhance their bargaining position, at least with respect to Irene's claim to that property.

[133] Mr. Lee testified that within a week of delivery of the divorce notice, he met again with Mr. Wu, and Corey and Irene at Normandy Drive. George Lee claims that Mr. Wu confirmed that everything should be settled between Corey and Irene.

[134] According to Mr. Lee, sometime later Corey and Irene came to his home, explained they had reached an agreement and wanted to settle. He says that while Corey and Irene were talking to him he made some notes about the division of family property. Mr. Lee maintains that Corey and Irene told him how the assets were to be divided and that he did not dictate

the terms of settlement. Specifically, Mr. Lee denies that he told Corey that \$575,000 was the amount that Corey had to pay to Irene. He claims that Irene and Corey provided that information to him.

[135] Mr. Wu denies that after delivery of the divorce notice he participated in any discussions with George Lee, Irene or Corey about the terms of a separation agreement. According to Mr. Wu, on July 28, 2010, George Lee sent him an e-mail stating that he would only communicate with Corey Wu or his lawyer about their differences.

[136] Mr. Wu recalls that a few days later he phoned Corey to ask him if there had been any improvement in his relationship with Irene Lee. Mr. Wu said Corey told him that things were a lot better than before.

George Lee's August 9, 2010 e-mail

[137] However, according to Mr. Wu, matters soon took a turn for the worse. On August 9, 2010, Mr. Wu received an e-mail from George Lee that he claims contained stories which suggested that if Mr. Wu listened to George Lee nothing would happen, but that if he did not listen, his son or wife would be beaten. Mr. Wu said that Mr. Lee's e-mail caused him lots of fear.

[138] Mr. Lee's email of August 9, 2010 was addressed to Irene Lee and copied to Corey Wu, Mr. and Mrs. Wu and Paul Wu. His first story concerned a celebrity in Hong Kong who was photographed at hotels in the company of prostitutes. Mr. Lee concluded his story with the following:

.. The photos were only a warning to him that if he takes any more reactions, it would just get worse. He knew there was a limit to the warning, and as it was impossible for him to take any action towards his enemy who hid in the dark and would take the back doors, he therefore listened to the opinions suggested by others and renounced some of his chairman titles. Since then, there were no more news about what he was doing in the hotels.

[139] I reproduce below the full text of Mr. Lee's second story:

The story of a commentator in Hong Kong-

If you've been paying attention to Hong Kong's news, you'll know a commentator named Raymond Wong (Wong Yuk Man). He is an author, a radio host, a legislator, and is also the chairman of the League of Social Democrats. He has been thought of as a fearless fighter. However, one day, he announced his withdrawal from the public all of a sudden. After the announcement, he immediately stopped talking in public and disappeared. He then spent quite some time in Taiwan before returning to Hong Kong. When he re-appeared in public and received an interview, he shed a few drops of tear, but did not say the reason for his previous disappearance. The fact is that he offended some cross-board taboos in his criticism of a national leader and did not pick up the warnings given to him. In a gathering with some friends, a less-

talkative friend told him that it was better for him to spend more time with his wife at home. In the evening of the same day, his wife complained that, without any due reason, someone disputed with her in the grocery market and slapped her on the face several times. He probably still did not get it. After a period of time, on another occasion, a friend with whom he was not that familiar with, told him that it was hard to take good care of young people these days, and that he should spend more time with his son at home. When he came home that night, his wife told him that his son was seriously beaten at the basketball court that afternoon and the head was all swollen.

From that moment, he has come to realize many things, and begun to know how to deal with things better in the future.

Indeed, as plants grow towards the sun and water flows towards the center of the earth, it is natural that, when planting, you treat your plants as plants; when raising animals, you treat your animals as animals. The same holds true when you deal with humans, you treat them like a human. This is the rule of thumb, how can you violate it?

[140] In cross-examination by counsel for Corey Wu, Mrs. Wu identified the e-mail from George Lee of August 9, 2010. She received a copy of that e-mail on the evening of August 9, 2010. Mrs. Wu testified that she read it when she received it and understood that Mr. Lee, through the stories he set out in the e-mail, was implying that if Mr. and Mrs. Wu listened to him, nothing would happen, but they could suffer either physical or financial harm if they refused to cooperate. Mrs. Wu testified that she knew George Lee used to be a police officer in Hong Kong and was worried that he would try to frame her and her husband. She understood the second story in the e-mail as a message from Mr. Lee that if they did not listen to him they or members of their family might suffer violence. Mrs. Wu said she felt that she was being threatened and black-mailed. However, she did not take any steps to protect herself. She said that after August 9, 2010 there were no more e-mails from Mr. Lee.

[141] At the conclusion of the cross-examination and re-examination of Mr. Lee, the Court asked Mr. Lee why he had sent the August 9, 2010 email. Mr. Lee claimed he and Mr. Wu always exchanged news stories from Taiwan and Hong Kong, and that these were stories he had summarized from the Hong Kong press. However, Mr. Lee addressed this email to Irene and copied Corey and the rest of the Wu family. Mr. Lee admitted to having authored this document. He sent the e-mail while the parties were in the midst of negotiating the divorce settlement. It is hardly likely that at that time Mr. Lee had any interest in exchanging articles of interest from the Hong Kong and Taiwan newspapers with Mr. Wu. Further, it makes no sense that Mr. Lee would "summarize" stories from the Hong Kong press, rather than simply send the original articles. Mr. Lee's evidence is not credible. I find that Mr. Lee composed and sent the e-mail of August 9, 2010 with the intention of inducing Corey Wu and his parents to accept a divorce settlement on his terms.

- [142] Around 9:00 or 10:00 p.m. on the evening of August 9, 2010, Mr. Wu received a call from Corey who was distressed and wanted Mr. Wu to come to his home. When Mr. Wu drove to Barker Crescent, he found Corey lying on the grass outside the house. Mr. Wu stayed with his son until the police and an ambulance attended. Mr. Wu testified that he thought Corey had attempted suicide, but acknowledged that he does not know what really happened that evening.
- [143] Corey Wu also testified that on August 9, 2010, after receiving George Lee's email, he was so disturbed that he purchased cocaine from a street dealer in an attempt to commit suicide. He said that after using some of the cocaine, he "chickened out", called for an ambulance, and then called his father. When the police attended, Mr. Wu surrendered the remainder of his cocaine and told them he did not want anything more to do with it.
- [144] Corey Wu testified that on August 11, 2010 Irene took him to George Lee's house. He claims that George Lee told him that in Asia people could go to the gangster boss, make a deal, and then never see each other again. According to Corey Wu, George Lee told him that if he gave the amount Mr. Lee wanted for Irene, Mr. Lee would not come after him again. Corey Wu said that he was in pain at the time. He claims that as a result of the severe stress he experienced following delivery of the divorce notice, the breakdown of his marriage, and George and Irene Lee's aggressive bargaining tactics, he had ground his teeth to the point where several were damaged and required immediate repair. When he met with George and Irene Lee on August 11, 2010, the injuries to his mouth had not healed. He said he agreed to the amount demanded by Mr. Lee and signed the separation agreement.
- [145] Corey Wu claimed that he only discussed the details of the separation agreement on the one occasion at George Lee's house. George Lee, his wife Doris Lee, and Irene Lee were also present. Corey Wu claimed that he was really afraid and feared that his parents would be harmed financially or physically if he did not comply with George Lee's demands. Corey Wu also knew that at the time his parents were applying for Canadian citizenship. He did not want that jeopardized. Corey Wu also knew there might be a problem about Taiwanese tax evasion and was afraid that George Lee, who had so much information about his family's affairs, might use that information to harm his parents.
- [146] Corey Wu testified that after he received the demand letter of April 15, 2011 from Ms. Lee's solicitors (Exhibit 25, tab 29) which communicated Irene Lee's demands for extraordinary expenses for the children and the alleged failure on his part to disclose assets, he became more distraught and decided to return to Taiwan. When he arrived in May 2011, he told his parents about the transfer of the Barker Crescent and Beach Avenue properties to Irene. According to Corey Wu, his parents told him to "make things right" and cut off their financial support for him.

Separation Agreement

- [147] Corey Wu, claimed he did not tell his parents anything about the separation agreement.

- [148] The separation agreement, dated August 15, 2010, is Exhibit 25, tab 16. Corey Wu testified that he, George Lee and Irene all participated in drafting the provisions for division of assets, and that they used a Self-Counsel Press precedent. Corey Wu maintains that at George Lee's insistence, in order to create the appearance of an equal division of assets, the values of his assets were "bulked up". For example, in paragraph 11(A), which lists the husband's separate property, Corey Wu's RBC term deposit is valued at \$145,000, which he said was about \$100,000 more than its actual value. An RBC summary of investments dated December 31, 2009 showed the value of the term deposit at that time as \$40,880, and its maturity date as September 11, 2012. However, as Irene Lee points out, the Financial Target versus Actual file listed both the RBC term deposit in Corey Wu's name and an additional RBC term deposit in the name of Ta Hsuan Wu, in the amount of \$110,706 as an asset of Corey Wu and Irene Lee.
- [149] Paragraph 14B of the separation agreement provided for Corey Wu to make a lump sum payment of \$50,000 to Irene Lee within six months. Mr. Wu was able to pay \$20,000 of that amount within the time stipulated. He paid the remaining \$30,000 after receiving the April 15, 2011 demand letter.
- [150] Corey Wu testified that he received advice from his solicitor, Ms. Perry, before he executed the separation agreement.
- [151] Corey Wu identified Exhibit 25, tab 15, page 2 as the document setting out George Lee's demand for the amount of money he wanted Corey to transfer to Irene by the separation agreement. That note provides for \$250,000 in Irene's ING account to go to Irene. Corey Wu says these were assets accumulated from the couple's salaries over the course of the marriage, and as such, are family assets subject to equal division. The note also shows \$47,600 held in a TD account. Corey Wu identified this as Irene Lee's stock investment account. He said that Irene held half of that amount in her TD account before the marriage and that he did not know how the account had increased to \$47,600. The next entry refers to \$310,000 sent to China. Corey Wu testified that amount represents funds that Paul Wu sent to China for an investment and says these funds belong to his brother. Paul Wu has brought separate proceedings against Irene Lee for the repayment of these funds.
- [152] The note then refers to an additional \$575,000 "left behind". Corey Wu said this meant Irene was to receive another \$575,000.
- [153] Corey Wu testified that on the second page of the note he wrote out how the division was to be implemented. That included crediting to Irene \$250,000 she moved from the CIBC joint account***733 to her ING account, and the transfer of Barker Crescent into Irene Lee's name only.
- [154] Corey Wu was asked to comment on the items listed in paragraph 11(A) as his separate property. He maintains that the RBC term deposit should have been valued at \$40,800 rather than \$145,000, and is not a family asset because the funds belong to his parents. He agreed that \$35,000 held in the CIBC account was his but said that \$4,000 in an HSBC

account belonged to Mr. Wu,. The Toronto Dominion Bank GIC of \$147,000 was also his father's property. With respect to the \$180,000 RRSP, Corey Wu testified that although this asset is held in his name, most of the money belongs to his father.

- [155] Turning to paragraph 11(B) of the separation agreement, which purports to list the wife's separate property, Corey Wu testified that his father paid for the Honda Odyssey vehicle. He agreed that the \$40,000 held in the President's Choice account and the TD Waterhouse account of \$45,000 are Irene Lee's property. He also agreed that the CIBC RRSP in the amount of \$19,000 belongs to Irene. Corey Wu maintained that the Barker Crescent property ought to have been valued at \$1.2 million rather than \$1 million and agreed that the value of the Beach Avenue property at the time of separation was \$230,000.
- [156] Corey Wu agreed that he entered into the separation agreement dated August 15, 2010 with Irene Lee, that he signed the separation agreement on August 30, and that his solicitor, Ms. Perry, filed the separation agreement in this court on August 31, 2010. Corey Wu signed an acknowledgement of independent legal advice but claims he did not know what it meant and that he signed the separation agreement under duress. At the time he signed the separation agreement, Corey Wu had the benefit of representation by experienced family law counsel. It is unlikely that he did not receive an explanation of the essential terms of the separation agreement, or that he was not fully aware of the meaning of his acknowledgment of independent legal advice.
- [157] By paragraph 14 of the separation agreement, Corey Wu agreed to transfer his one-half interest in the Barker Crescent property to Ms. Lee for the value of \$500,000. He recalled executing the transfer. Mr. Wu also made the \$50,000 payment required by paragraph 14(b) of the separation agreement in two installments of \$20,000 and \$30,000.
- [158] By paragraph 16 of the separation agreement, he and Ms. Lee agreed that each and every recital of fact in the separation agreement was true and accurate, that each had general knowledge of the other's assets and liabilities, and that each signed as a free agent, without pressure or intimidation.
- [159] Corey Wu was shown a copy of the Financial Target versus Actual file at Exhibit 27, tab 35. That document purports to show the assets he and Irene Lee held between 2002 and 2009. Corey Wu denied that he and Irene created that document to track their assets. However, he agreed that he held most of the accounts listed on his side of the ledger in that document. Corey Wu asserts that Irene and George Lee created the document as part of their preparation for the divorce and division of matrimonial property. The value of the Southoaks and Barker Crescent properties in Exhibit 27, tab 35, as at October 2009 is \$1,350,000, which corresponds to the values of \$350,000 for Southoaks and \$1 million for Barker Crescent incorporated in the separation agreement. Irene Lee led this evidence to refute Corey Wu's claim that the values of the property allocated to him in the separation agreement were "bulked up" or overstated, while the values of Irene's assets were underestimated.

- [160] Corey Wu maintains that in order to conclude the separation agreement he had to obtain George Lee's agreement to the division of assets, and that George Lee determined how the assets would be divided.
- [161] Corey Wu was referred to an e-mail dated August 21, 2010 that he sent to George Lee in which he expressed concern about Irene having homestay students in the Barker Crescent property with his children. Counsel for Ms. Lee suggested that this was the only concern he expressed about the separation agreement and its implementation. Corey Wu responded by saying that the e-mail chain he was shown had been cut and pasted, suggesting that it was incomplete. Corey Wu also said that he only agreed to sign away the Barker Crescent property under threats from George Lee and that he did not want his father to know anything about signing his property away.
- [162] While Mr. Wu was aware of the divorce notice, Corey Wu says that he, Irene and George Lee all had a common interest in keeping the particulars of the division of assets to themselves, and not sharing that information with Mr. Wu.
- [163] The separation agreement at paragraphs 9 and 10 provided for Mr. Wu to pay child support of \$1,250 per month based on his Guideline income of \$85,000. Corey Wu testified that the Guideline income was accurate and that his only source of income at that time was his Kodak salary.
- [164] Irene Lee gave a different account of the events leading to the separation agreement of August 15, 2010. She testified that in August 2010 the parties started discussing a separation agreement. They both agreed Ms. Lee would be the primary caregiver for the children; that she would retain the Barker Crescent property; and that Corey Wu would keep his offshore accounts and Southoaks. Irene Lee would hold Beach Avenue and retain her own bank accounts. According to Irene Lee, she called her father and asked him to sit down and listen to how she and Corey were going to implement the terms of separation they had worked out.
- [165] On or about August 11, 2010, Irene Lee and Corey Wu went to Normandy Drive where they met with George Lee.
- [166] According to Irene Lee, Mr. Lee produced a couple of pieces of paper and asked the couple to tell him what their assets were. They told George Lee they had the three properties, registered retirement savings plans, and registered education savings plans, which he categorized as fixed assets. Irene claims that her father then reviewed the Financial Target versus Actual document for October 2009 and that she and Corey agreed that it listed their total assets valued at \$4.37 million. Irene Lee claims that she and Corey agreed that they would each receive about \$2.185 million in fixed and liquid assets.

- [167] The values of the assets listed in the separation agreement and the Financial Target versus Actual file are generally consistent. Although the Financial Target versus Actual file only provides asset values to October 2009, I find that it formed the basis for the division of assets included in the separation agreement.
- [168] With regard to the making of the separation agreement, I prefer the evidence of Irene Lee to that of Corey Wu. Irene Lee testified that based on the total value of the family assets of \$4.37 million, as shown in the Financial Target versus Actual document, she was satisfied as long as she received her equal share of \$2,185,000. The total value of financial and other assets she held in her own name of \$605,000, Barker Crescent at \$1,200,000, Beach Avenue at \$230,000 and her RRSPs and RESPs came to about \$2,135,000. In order to make up the \$50,000 shortfall, the parties agreed that Corey Wu would pay that amount to her. Both the Financial Target versus Actual document and the handwritten notes made by George Lee and Corey Wu provide support for Irene Lee's testimony. I find the separation agreement was intended to effect an equal division of the parties' assets, as listed in the Financial Target versus Actual document.
- [169] Irene Lee claims that she left it to Corey Wu to control the drafting of the separation agreement. He wanted to consult with a lawyer, and did s. Irene Lee testified that Ms. Perry drafted the separation agreement. I find that while Ms. Perry may have made some minor revisions to the separation agreement, the parties drafted it themselves using a Self-Counsel Press kit.
- [170] In or about mid-September 2010, Corey Wu stayed at Southoaks Crescent for a few days witness his parents. In late September, Mr. and Mrs. Wu took a 29-day driving holiday to the west coast of the United States. When Mr. and Mrs. Wu returned to Vancouver, Corey had left Southoaks Crescent. According to Mr. and Mrs. Wu, he assured them that "things were okay" at that point.
- [171] In November 2010, Mr. and Mrs. Wu returned to Taiwan, where they remained through the spring and summer of 2011. According to Mr. Wu, before they left, Corey told them that he was not divorced. Mr. Wu said that after receiving that information, he was not worried. Corey did not discuss the terms of his separation agreement with his parents.
- [172] Counsel for Irene Lee put to Mrs. Wu that the reason why she and her husband left for Taiwan in November 2010 was because she knew that in September 2010 Corey and Irene had made a separation agreement that resolved their matrimonial dispute. She denied that she knew about the separation agreement in the fall of 2010.

- [173] During her cross-examination by Ms. Perry, Mrs. Wu gave evidence that she and Mr. Wu went back to Taiwan in the fall of 2010 because they were concerned for their son Paul's safety. She said she feared that George Lee might act on the threats contained in his e-mail of August 9, 2010. She also feared George Lee's threat alleging money laundering and was concerned that she and her husband might not be granted Canadian citizenship if George Lee acted on his e-mail threats.
- [174] Mrs. Wu also gave evidence that after the August 9, 2010 e-mail, she received no further e-mail communications from George Lee. During September and October 2010 Mr. and Mrs. Wu went on a driving holiday in the United States. In my view, it is improbable that if Mr. and Mrs. Wu were concerned about Paul Wu's safety in Taiwan as a result of communications they had received from Mr. Lee to August 9, 2010, they would have deferred their return to Taiwan until mid-November 2010.
- [175] Following the delivery of the divorce notice, Corey Wu continued to reside at Barker Crescent. According to Irene Lee, he left the Barker Crescent property on September 15, 2010 and took all the computers with him.

Mr. Wu's Knowledge of Separation Agreement

- [176] Mr. Wu testified that in September 2010 he was unaware that Irene Lee and Corey Wu had entered into a separation agreement. He maintained that after receiving George Lee's email of August 9, 2010, which he regarded as threatening, he blocked Mr. Lee's email. As a consequence, Mr. Wu says he did not receive the emails from George Lee at Exhibit 5, tabs 84, 85 and 86 which refer Corey engaging a matrimonial lawyer and to the parties negotiating a "marital agreement". He denied receiving Mr. Lee's email of September 19, 2010 which indicated that the claimant and the respondent had entered into a separation agreement. Mr. Wu also denied that the reason why he had not responded to any of George Lee's email correspondence was that he was aware that his son and daughter-in-law had made a separation agreement and understood that the matrimonial assets listed in Irene Lee's divorce notice letter of July 22, 2010 were not assets that belonged to him.
- [177] In May 2011, Corey Wu travelled to Taipei. Corey testified that it was only then that he disclosed to his father that he had transferred title to the Barker Crescent and Beach Avenue properties to Irene Lee, and apologized for doing so. Mr. Wu said that he was extremely angry and told his son that he was an untrustworthy person. He also informed Corey that he intended to sue him and Irene for fraud and breach of trust.
- [178] Both Mr. and Mrs. Wu testified that Mr. Wu told Corey he had to correct what he had done and requested that Corey go back to Vancouver to find a lawyer for him.
- [179] When Corey Wu commenced his family law claim against Ms. Lee on May 24, 2011, the only relief he sought was a divorce and an order respecting parenting arrangements for the children. At para. 3 of the Notice of Family Law Claim, his counsel pleaded the separation agreement of August 15, 2010 as resolving all matrimonial matters except child-related

issues. When Corey Wu brought these proceedings, he did not contend that he had entered into the separation agreement under duress or that George and Irene Lee had dictated its terms.

Mr. Wu's Finances

- [180] Mr. Wu testified that between 1987 and 2006 he invested about \$1.8 million U.S. in motels in the United States. He claimed to have recovered the full principal amount of his investment plus dividends, for a total of \$2.6 million U.S. by 2008.
- [181] According to Mr. Wu, between 2001 and 2004, he and a friend, Mr. Jack Lin, who has since passed away, invested in a sporting goods business in the United States. Mr. Wu claims to have invested about \$650,000 U.S. He testified that he recovered the full amount of his investment and made a profit of about \$200,000.
- [182] Exhibit 1 tab18 (the "Chih Memo"), is a flow chart prepared by Mr. Wu which purports to show income he received and payments he made between 1999 and 2007, including monies he invested in his United States motel and sporting goods store ventures and the returns he received on those investments. The flowchart also shows transfers of funds from Mr. Wu's Taiwan Citibank account to accounts in the name of his son Paul with brokerage firms in the United States and monies paid to Paul's bank accounts in Canada. Mr. Wu maintains that the funds transferred to or from Paul's accounts were his money.
- [183] Mr. Wu has not produced any documents to confirm his ownership of an interest in either motels or a sporting goods business in the United States. Some of the supporting documents do show that funds were wired from Mr. Wu's Taiwan accounts to a Mr. Jack Lin, who Mr. Wu claims was his partner in the sporting goods venture.
- [184] Mr. Wu also prepared exhibit 7, the motel flowchart, which purports to show monies he invested in the motel project and every return he received on that investment between 1986 and 2006. According to Exhibit 7 chart C. 3 Mr. Wu invested a total of \$1,684,944 in the motel up to September 9, 2006. Mr. Wu stated in direct examination that some of the amounts set out in the supporting tables were based on his memory and might not be entirely accurate. Table C8 shows the amounts of money that Mr. Wu allegedly paid into Paul Wu's US brokerage account from the motel investment between June 14, 2005 and November 17, 2005. The total amount is \$330,000.
- [185] Mr. Wu prepared Exhibit 8, his sports shop investment flowchart, which purports to show the amounts he invested in the sporting goods venture and the returns he received. He maintains that he received a return on that investment, to his own account in Taiwan in 2006 of \$199,517. Mr. Wu claims that he arranged for the transfer of another \$608,500 from his sports store investment to Paul Wu's US brokerage account and sent a further \$70,000 to Paul Wu's Taiwan bank account.

- [186] Exhibit 9 is another flow chart prepared by Mr. Wu for the purposes of this litigation purporting to show the sources of the money he used to purchase the Barker Crescent property.
- [187] Exhibit 10 is Mr. Wu's flowchart of the money used to purchase the Beach Avenue property. Mr. Wu says that he was the source of all of the funds that passed through the accounts of Paul Wu and were then used to pay for the Beach Avenue property. Mr. Wu testified that he sent funds from his Taiwan Citibank account to Paul Wu's United States brokerage account. He also referred to table E3 which shows funds allegedly received from Mr. Wu's motel investment deposited to Paul Wu's Cathay United bank account in Taiwan.
- [188] Exhibit 11 is another flow chart prepared by Mr. Wu for this litigation which purports to show monies held in Paul Wu's accounts from 2005 to 2009 that allegedly belonged to Mr. Wu. Again, the supporting tables purport to show money Mr. Wu sent to Paul from his US motel investment and from his sporting goods investment, as well as monies sent from Paul Wu's US brokerage account to his Citibank account in Taiwan.
- [189] Counsel for the plaintiffs had Mr. Wu identify the banking documents he relies upon to support the movements of funds shown in his various flowcharts. Mr. Wu has shown withdrawals from his bank accounts in Taiwan, and the accounts of his wife in Taiwan, that correspond with the amounts purportedly wired for the motel investment as listed in table C1 of Mr. Wu's motel investment flowchart (Exhibit 7).
- [190] Similarly, Mr. Wu identified banking documents showing deposits and withdrawals corresponding to the amounts shown in his sporting goods investment flowchart (Exhibit 8) as having been wired from accounts of Mr. and Mrs. Wu in Taiwan for investment in the sports shop.
- [191] Mr. Wu's bank documents record the dates and amounts of various deposits and withdrawals to and from numerous accounts held by the plaintiffs, or Paul Wu. However, none of the banking documents identify either the motels or the sporting goods store as the source of any of the funds either deposited to Mr. Wu's Citibank account or transferred to accounts in Paul Wu's name.
- [192] With respect to the Barker Crescent purchase, Exhibit 1, tab 13, includes a bank statement for Mr. Wu's HSBC account in Canada showing the transfer of \$704,933.39 to William Anderson, the notary acting on the purchase of Barker Crescent. That Exhibit also shows transfers into Mr. Wu's HSBC account of \$ 62,981.50 on June 6, 2005, \$399,981.50 on July 7, 2005 and \$273,441.50 on July 7, 2005. Mr. Wu says these were the funds used for the purchase of Barker Crescent. He says he arranged for the transfer of these funds to his HSBC account from Taiwan Citibank accounts in Paul Wu's name, or his own name, and that he owned all of those funds. Corey Wu wrote the cheque to Mr. Anderson on July 16, 2005 for the purchase of the Barker Crescent property.

- [193] Similarly, for the purchase of the Beach Avenue property, Mr. Wu says that the purchase monies came from funds held in accounts in the name of Paul Wu, but that the money belonged to him. Mr. Wu says he used monies transferred from accounts in Paul Wu's name in Taiwan to Paul Wu's CIBC account in Vancouver to pay the \$227,922.49 purchase price for Beach Avenue.
- [194] Mr. Wu was shown Exhibit 4, tab 70, the buyers' statement of adjustments for the Beach Avenue property prepared by the notary, Mr. Anderson. That document identifies the purchaser, in bold type, as Irene Lee. Mr. Wu acknowledged that he received the statement of adjustments before he paid for the purchase of the Beach Avenue property but says that the only part of the document he could understand were the figures. Mr. Wu contends that he did not learn that the Beach Avenue property was held in the name of Irene Lee until much later. That explanation is difficult to reconcile with his evidence that he was able to prepare his various flow charts in English.
- [195] Counsel for the plaintiffs also reviewed with Mr. Wu the banking documents he relies upon in support of exhibits 11 and 12, the flowcharts concerning Paul Wu's funds. Again, those records are generally consistent with dates and amounts of the deposits, withdrawals and transfers set out in Mr. Wu's flowcharts. Mr. Wu explained that minor discrepancies in the amounts of a number of the deposits were attributable to the banks deducting transaction fees. He explained other discrepancies as "typos" or the result of his having obtained information from different sources.
- [196] Mr. Wu explained that part of the reason for transferring money from his accounts to Paul Wu's accounts was for "estate planning". He explained that in Taiwan there is a gift tax. Where a person gifts property during his lifetime he may be taxed at a rate as high as 50%. Mr. Wu testified that if the amount of the gift exceeds a certain amount, the donor must disclose the transaction and if he fails to do so he may be subject to harsh penalties.
- [197] Mr. Wu said that in his plan for saving taxes he would send money to Paul Wu's United States brokerage account and then have the brokers send the money back to Paul's Taiwan account.
- [198] Mr. Wu also identified various financial records at Exhibit 1, tabs 12, 14, 16 and 17 showing that he had sent money from Taiwan to various brokerage accounts in the United States long before the acquisition of the Barker Crescent and Beach Avenue properties. He relies on this evidence to counter Irene Lee's contention that the purchase monies for these properties were generated from stock trades conducted by Corey Lee through various foreign brokerage accounts, including accounts he controlled that were opened in the name of Mr. Wu.

The Chih Memo

- [199] Mr. Wu testified that he created the tables comprising the Chih Memo in 2004, 2005 and 2008, and that he also created the "Paul memo" at page 9 of Exhibit 1, tab 18 in 2007. Mr. Wu agreed that he did not provide those documents to counsel for the plaintiffs until October 2014. When asked why he waited so long to produce those documents, Mr. Wu responded that the information they contained was his personal record. He said he tried his best to produce documents like banking records and that he used his personal records to fill in gaps. He said that at the end when he had no more resources, he produced his personal records. That is hardly a satisfactory explanation for the late disclosure of a document purporting to show deposits and withdrawals from Mr. Wu's Taiwan Citibank account.
- [200] Mr. Wu claims that he authored the Chih Memo, beginning in 2004 and continuing in 2005 and 2008 and that it records the movement of funds in and out of his Taiwan Citibank account. Despite the fact that the entries for 2004 and 2005 were allegedly made while Mr. Wu was in Taiwan, all of the dates he recorded use the Roman calendar rather than the Taiwan calendar. Dates under the Taiwan Calendar are eleven years earlier than the corresponding dates under the Roman calendar. For example, the Taiwanese date 1994.03.21 would be March 21, 2005 on the Roman calendar.
- [201] Further, despite Mr. Wu's limited command of English, all of the entries in the Chih Memo are in the English language.
- [202] Mr. Wu gave evidence that he prepared the Chih Memo both for his own reference and as a financial record that would enable his sons to understand his investment holdings if anything happened to him. However, the Chih Memo provides little or no information about where funds that passed through his Citibank account were ultimately held.
- [203] Yet more troubling is the fact that the plaintiffs did not produce the Chih Memo until October, 2014. If indeed this document was created between 2004 and 2008, it ought to have been produced following commencement of this litigation in 2011. Mr. Wu has offered no satisfactory explanation for the late production of the Chih Memo.
- [204] In his affidavit #3 sworn October 7, 2014, Mr. Wu deposed that the plaintiffs had produced all of the Taiwan Citibank account statements they were able to obtain and that to obtain any additional statements would require personal attendance at the bank in Taiwan.
- [205] Following this Court's order of October 9, 2014 for further production of banking documents by the plaintiffs, Mr. and Mrs. Wu, through their counsel, produced an amended list of documents which listed further bank statements from Citibank in Taiwan, including statements for the 12-month period from September 16, 2004 to September 15, 2005. When asked about production of the additional bank statements, Mr. Wu said that he did not apply to the bank in Taiwan, which had no records prior to 2006. Rather, after the Court made its order to produce all documents, he did so. He described the additional documents as some odd documents that he retained, and that he gave to his lawyer.

- [206] But for this Court's order of October 9, 2014, those documents would not have been produced.
- [207] As counsel for Irene Lee notes in his written submissions, the dates and the amounts of the transactions recorded in the Chih Memo are almost identical to the entries in the ASTK file that Ms. Lee relies upon as recording Corey Wu's stock trading. The plaintiffs contend that George Lee and Irene Lee fabricated the ASTK file from bank statements they had in their possession.
- [208] However, Corey Wu testified that his father's Taiwan Citibank statements were never in Vancouver. Neither the plaintiffs nor Corey Wu have established on a balance of probabilities that either George Lee or Irene Lee had any of the Taiwan Citibank statements. Mr. Wu's late production of Taiwan Citibank statements following the Court's order of October 9, 2014 suggests that he had possession and control of at least some of those records in British Columbia. However, I find that neither George Lee nor Irene Lee had access to Mr. Wu's Taiwan Citibank accounts or used them to create the ASTK file.
- [209] George Lee listed and disclosed the ASTK file in the spring of 2012 while he was a defendant in these proceedings. Documents produced by the plaintiffs after Mr. Lee's production of the ASTK file contain information that corresponds to entries in the ASTK file.
- [210] Those documents include, in addition to the Chih Memo produced on October 14, 2014, the following:
- (a) Taiwan Citibank statements of Mr. Wu for the periods October 21, 1999 to November 15, 1999, February 16, 2000 to March 15, 2000, May 16, 2005 to July 15, 2005 and December 16, 2005 to June 15, 2008;
 - (b) Taiwan Citibank statements for Mr. Wu produced October 14, 2014 for the periods October 16, 1999 to March 15, 2000, April 16, 2000 to July 15, 2000, November 16, 2000 to June 15, 2001, June 16, 2002 to March 15, 2002, June 16, 2002 to August 2002, September 16, 2002 to December 15, 2002 and September 16, 2004 to September 15, 2005;
 - (c) Exhibit 3, tab 47A produced October 17, 2014, a Penson wire transfer request dated November 18, 2004 for the transfer of \$48,165.34 from Choice Trade to a Taiwan Citibank account in the name of Ta-Hsuan Wu (Paul Wu). That transfer is identical to a transaction in the ASTK file record for the same date.
- [211] As I have previously noted, in responding to Irene Lee's application for the production of further financial records of the plaintiffs, Mr. Wu swore an affidavit (Exhibit 22) in which he stated he had produced all the Taiwan Citibank statements available to him and that it would be necessary to attend at the Citibank branch in Taiwan in order to obtain any additional documents. Yet after the Court ordered further production by the plaintiffs Mr. Wu was able to produce additional Taiwan Citibank statements within a matter of days. Neither Mr. nor Mrs. Wu returned to Taiwan prior to production of those records. I find that Mr. Wu was less than candid with the Court when he swore that he would be unable to

produce additional Citibank documents without returning to Taiwan.

- [212] The plaintiffs produced no Taiwan Citibank statements for the 21 month period from January 2003 to September 2004.
- [213] The ASTK records closely correspond to the Taiwan Citibank statements that Mr. Wu did produce. Had the plaintiffs produced the Taiwan Citibank statements for the missing 21 months, those records may have shed some light on the genesis of the monies used to purchase Barker Crescent in 2005.
- [214] The fact that the Chih Memo is in English and uses the Roman calendar, and was not disclosed until October 2014 leads me to conclude on the balance of probabilities that it was not prepared by Mr. Wu as a contemporaneous record of any of the transactions it purports to document.
- [215] In 2005, at or around the time Mr. Wu claims to have produced portions of the Chih Memo, he says he sent a list of his assets in Chinese to Corey for translation. It is highly unlikely Mr. Wu prepared the Chih Memo in English at the same time he was seeking Corey Wu's assistance to translate another document dealing with his assets that he had prepared in Chinese. Among the Wu family, only Corey Wu, with his full command of English, had the skills and knowledge required to create the Chih Memo.
- [216] I agree with the submission of counsel for Irene Lee that it would be easier to create the Chih Memo from the information contained in the ASTK file in order to provide an alternate explanation for the source of the funds used to acquire the Barker Crescent and Beach Avenue properties than it would be to fabricate the ASTK file from the Chih Memo.
- [217] Taking all of these factors into account, I find, on the preponderance of the probabilities, that the Chih Memo is neither a contemporaneous nor an accurate record of the plaintiffs' financial transactions and that Mr. Wu, Sr. likely prepared the Chih Memo with Corey Wu's assistance shortly before its disclosure.

Sports Store and Motel Investments

- [218] With respect to his sports store investment, Mr. Wu said that he had an agreement in writing with his friend Jack Lin but had lost that document. Mr. Wu was able to provide few particulars of the sports store investment. He said the store was in Los Angeles, but he never attended. He said originally Jack Lin had one store and that afterwards he intended to open a chain and asked Mr. Wu to join in. Mr. Wu said that eventually it became a sort of chain store. He did not remember the English name and said all of the documents were lost. Mr. Wu testified the records relating to the sports store investment were stored in cardboard boxes and were lost either during renovations of the Wu's apartment in Taiwan in 2008 or as a result of a flood in 2009.

- [219] Mrs. Wu also gave evidence that during the spring of 2008 the balcony of the Wu's home in Taiwan flooded and the plaintiffs lost some documents which they had stored while renovating their home. Mrs. Wu did not remember what documents were lost in the flood.
- [220] Mr. Wu claimed that between 2001 and 2004 he invested approximately \$660,000 U.S. in the sporting goods store and earned a total profit of approximately \$200,000, and that between 2004 and 2008 he was repaid all of his capital.
- [221] In cross-examination, counsel for Irene Lee referred Mr. Wu to Exhibit 1, tab 17, a series of documents he produced showing wire transfers of funds to Corey Wu from 1993 to 2000. These documents, which were neither lost nor spoiled, coincide with the time Mr. Wu was allegedly investing in the motel. Mr. Wu claimed that when he stored the documents he kept the transfers to Corey in an old suitcase that was not damaged in the flooding of his apartment.
- [222] Mr. Wu said he invested in the motel with another friend, John Huang, who lives in Chicago. Mr. Wu agreed that he was not able to produce any documents to prove the motel investment.
- [223] Mr. Wu was asked if he had requested that Mr. Huang provide him with any documents he might have regarding the motel investment. His response was that recently Mr. Huang's health was not that good and that he is not running the motels anymore. Mr. Wu said he did ask Mr. Huang about the motel investment documents but said nothing about Mr. Huang's response to his inquiry. He agreed that while he had bank books recording the withdrawals of funds from his various accounts at various times, he had no documents that actually showed the transfer of money to Mr. Huang for the motel investment.
- [224] Again, Mr. Wu said he had a written agreement with John Huang regarding the motel investment but was unable to provide a copy of that agreement because it was spoiled along with other documents. Mr. Wu also claimed that he had a loan agreement concerning the monies he had advanced to Mr. Huang from 1987 to 1994 for the motel but said that document was destroyed at the same time as the other documents. Mr. Wu also claimed to have had an investment agreement in writing with Mr. Huang, but said the documents concerning that agreement and his investment in the motel were also destroyed. He said the investment was to purchase a new motel but he was unable to recall the name of the motel.
- [225] Mr. Wu was asked about where he had remitted the money he invested in the sporting goods store between 2001 and 2004. He said he remitted the money to addresses provided by Mr. Lin; that he had forgotten where he sent the money; and that all of the information concerning those transfers was spoiled. He could not remember the name of the bank in the United States to which he sent funds for investment in the sporting goods store.

- [226] With respect to his investments in the motel, Mr. Wu said that he remitted some money to relatives of Mr. Huang in new Taiwan dollars ("NTD") in 1995 and 2000 and that he remitted some money directly to Mr. Huang. Mr. Wu described in some detail how he, on some occasions, took cash to his bank's foreign currency department, exchanged the cash for U.S. dollars, received documents for the remittance from the teller and took copies of those documents home. Mr. Wu professed not to know whether the remittances in foreign currency were made by wire transfer until he was shown the chart at Exhibit C of his affidavit #3, sworn October 7, 2014. Pages 30 to 33 of that chart relate to the alleged motel investment and refer to multiple wire transfers in NTD. Mr. Wu agreed that monies were wired out in NTD from 1987 to 2000, but said that in 2006 he exchanged 13,100,000 NTD for \$403,803 in U.S. funds and then wired the U.S. funds out in a series of transactions between January and December 2006.
- [227] I find that it is entirely inconsistent with the probabilities of the situation that Mr. Wu would invest hundreds of thousands of dollars over a significant period of time in motel and sporting goods businesses in the United States that provided him with a handsome return on his investment, would make each investment with a close friend with whom he was in regular contact, and yet is unable to provide even the name of each business. I also find Mr. Wu's evidence that all of the documents relating to both the motel investment and the sporting goods investment were lost, either during renovations of his apartment or as a result of a flood, to be implausible.
- [228] Mr. Wu was cross-examined on his authorship of Exhibit 7, his flowchart of the motel investment. Despite his limited understanding of English, he maintained that he had produced the chart and the attached tables and had done so without the assistance of Corey, the only member of the Wu family with a good working knowledge of the English language. Mr. Wu testified that he had cut and pasted the headings which appear at the top of Table C1 of Exhibit 7 from the chart his lawyers prepared at Exhibit 22, page 32. When counsel pointed out that there were differences in the two headings, Mr. Wu then said he had typed some of the English words on Table C1. He also maintained that he found each of the documents from the plaintiff's list of documents that are listed in the right hand column of C1 as references for particular transactions recorded in that table. Mr. Wu asserted that after his lawyers had numbered the documents, he was able to find each document and then put it at the appropriate place in his table. That would require Mr. Wu having a significantly better grasp of the English language than he has acknowledged.
- [229] In cross-examination, Mr. Wu contradicted his previous testimony about whether funds sent from Taiwan to the United States for the motel investment were transferred in NTD. Initially, Mr. Wu had confirmed the accuracy of the chart attached as Exhibit C to his affidavit of October 7, 2014, showing that he wired funds to the United States for the motel investment in 1995 and 1996 in NTD. On the following day of his cross-examination, he was referred to Exhibit 7, Table C2, which showed funds in NTD being exchanged to U.S. dollars and then wired to the motel. Mr. Wu agreed that the amounts allegedly sent to the motel in

1995 and 1996 were first converted from NTD to U.S. dollars and then wired out.

- [230] During his cross-examination, Mr. Wu acknowledged that he had made various errors in the tables he prepared for Exhibit 7. Mr. Wu attributed his mistakes to his poor English. He denied that Corey Wu had prepared the charts for him. In some instances, including his entry at line 2 of Table C4, he said that when he wrote that funds were "wired out in NTD" he meant that the funds came from his NTD bank account but had to be converted to U.S. dollars before they were wired out. Counsel pointed out to Mr. Wu that in Table C2 he used the phrase "NTD EX USD TO MOTEL" when he meant that money was converted to U.S. dollars and then wired to the motel.
- [231] Mr. Wu was asked again about whether he had any document to verify that he had loaned money to Mr. Huang. Mr. Wu said the loan was made privately and there was no document but that the amount was agreeable to both parties. This contradicted his earlier evidence that loan documents were lost in the flood at his Taiwan apartment.
- [232] Mr. Wu also asserted that in creating the Tables in Exhibit 7, he copied and pasted some English phrases or words from the chart prepared by his counsel at Exhibit 22. For example, he said that he copied most of the entries in Table C4 from Exhibit 22. Counsel then pointed out to Mr. Wu that Table C4 is not a copy of the Table at Exhibit 22, pages 30 to 32, and that each Table contains different entries for the 2000, 2004 and 2006 return on investment. In Exhibit 22, the total for 2006 is \$184,111 while in Table C4, the total for 2006 is \$193,802. Mr. Wu then sought to explain the discrepancies by saying that he had made some corrections when he created Table C4.
- [233] During his cross-examination on November 10, 2014, Mr. Wu was asked about the Chih Memo, his flowchart of funds in and out of his Taiwan Citibank account. He said that his reference to transfers "to AM" meant transfers to his brokerage accounts in the United States. He recalled having an Ameritrade account and an account with the brokerage firm RGT during the period 1999 to 2000. Mr. Wu has no paper records of any stock trading activities conducted through these brokerage accounts. He said the transactions took place a long time ago and that the papers had been thrown away or lost.
- [234] Mr. Wu agreed that by 2004 he had brokerage accounts in his name with Ameritrade, RGT, Choice Trade and Equity Trade. He repeated his evidence that he also transferred money into brokerage accounts opened in the name of Paul Wu in order to avoid paying taxes.
- [235] For the multiple references of transfers to "AM" at pages 6, 7 and 8 of the Chih Memo, Mr. Wu was unable to recall to which brokerages he sent the money or to recall which brokerages returned money to him.
- [236] Mr. Wu agreed that he had never traded in penny stocks, but asserted that Paul Wu traded in short term penny stocks through Mr. Wu's account. Paul Wu's evidence was that he traded in accounts in his own name.

- [237] Mr. Wu denied that he had assisted Corey Wu to open accounts in his name so that Corey Wu could do short term trading under Mr. Wu's name. He agreed that he had sent an e-mail to Corey Wu with details of his Taiwan Citibank account, but said he did so because he wanted Corey Wu to transfer funds that belonged to Mr. Wu to Taiwan.
- [238] Later in his cross-examination, Mr. Wu testified that he had made some mistakes with his Tables in Exhibit 7. He said he had completed Exhibit 7 somewhat urgently and had thought that his counsel would review the Tables before trial.
- [239] As counsel for Ms. Lee pointed out, when in direct examination plaintiffs' counsel reviewed all of the Tables comprising Exhibit 7 in considerable detail with Mr. Wu, he had confirmed their accuracy.
- [240] Mr. Wu agreed that Exhibit 7, Table C1, lists funds wired from 1986 to 1994 "to motel" from the plaintiff's Taiwan banks in NTD. He was then taken to the bank book entries corresponding to the transactions listed in Table C1. Most of the withdrawals are identified as cash payments or transfer payments between different branches of the same bank in Taiwan. When pressed, Mr. Wu acknowledged that these transactions did not involve wire transfers. He said that what he meant was that funds were transferred out of his bank accounts in NTD. Table C1 lists over 60 transactions, not one of which was a wire transfer.
- [241] Mr. Wu went on to explain that Table C1 deals with his loan to Mr. Huang made in Taiwan in NTD. According to Mr. Wu, in order to avoid Taiwanese foreign exchange controls, at Mr. Huang's request, he sent the funds to Mr. Huang's friends and relatives. Mr. Wu said that he did not know for sure if the money he advanced to Mr. Huang between 1986 and 1994 went to the United States, or how it found its way to Mr. Huang from his relatives. However, in 1995, Mr. Huang and Mr. Wu agreed the loan, in the amount of \$711,660 USD would become an investment in the motel.
- [242] Mr. Wu's admissions of errors and inaccuracies in his tables and his shifting explanations of the tables lead me to conclude that they are not reliable.
- [243] Mr. Wu agreed in cross-examination that he had produced no documents to substantiate the exchange of NTD to United States dollars. He said he was unable to do so because those documents were lost. Counsel for Ms. Lee reviewed numerous transactions that Mr. Wu claimed involved the exchange of NTD to United States dollars before funds were forwarded to Mr. Huang for the motel loan. For example, at Exhibit 9, page 46, there is an entry for the Taiwanese date 95.03.15 showing 4 million NTD transferred to another account. There is nothing in the bank book to indicate these funds were exchanged to United States dollars. Mr. Wu maintained these funds were transferred to an account in the bank's foreign currency department where they were then converted to United States dollars. When pressed in cross-examination, Mr. Wu agreed that he relied on his memory to explain the purpose of each of the transactions recorded in his bank books.

- [244] Mr. Wu has no documents showing the receipt of funds by Mr. Huang. Although he has some remittance forms showing funds going into Paul Wu's account, he has no documents showing that those funds came from the motel or sporting goods store investments.
- [245] Exhibit 2, tab 31, is a copy of Mr. Wu's bank book for Taipei Bank. Although his Table C2 shows withdrawals from this account as funds exchanged to United States dollars and sent "to motel", the corresponding bank book entries are for cash withdrawals.
- [246] Mr. Wu was referred to Exhibit 1, tab 7, the bank book for his account at Bank SinoPac. On his direct examination he confirmed that on Taiwanese date 84.03.03 (March 3, 1995), he withdrew 200,000 NTD from this account, which was then exchanged into United States dollars and sent to the motel. In cross-examination he claimed he had made a mistake in his direct testimony and that the correct transaction relating to this 200,000 NTD transfer was the entry dated 84.04.07. It was suggested to Mr. Wu that he had changed his testimony because he knew that the Chinese characters for the bank book entry 84.03.03 stated that this was a transfer of 200,000 NTD to another of his Taiwan accounts.
- [247] Mr. Wu was taken to other entries where his bank book showed transfers of funds to another account. It was suggested to him that none of these transactions involved the exchange of NTD to United States dollars. Again, he maintained that in some cases he transferred money to the foreign exchange account of the bank where the funds were then exchanged for United States dollars and sent to Mr. Huang.
- [248] Mr. Wu's Table C2 of Exhibit 7 purports to show a transaction on Taiwanese date 84.04.29 (April 29, 1995), by which he exchanged 600,000 NTD for United States dollars and then sent those funds to the motel. However, his corresponding bank book entry shows that on the same date Mr. Wu transferred 600,000 NTD to another account with the same bank. Contrary to Mr. Wu's evidence, those funds were not exchanged into United States dollars through the bank's foreign exchange department. Rather, Mr. Wu's bank book, at Exhibit 1, tab 7, contains entries for 84.04.29 showing that on that date he made two term deposits of 300,000 NTD each.
- [249] Similarly, another entry in Mr. Wu's bank for Taiwanese date 84.03.03 shows the transfer of 200,000 NTD to a term deposit, rather than the exchange of those funds for United States dollars. Faced with that evidence, Mr. Wu testified that on the same day he had also transferred 200,000 NTD into his account and then wired it out. Counsel for Ms. Lee put the proposition to Mr. Wu that he was well aware that on Taiwanese date 84.03.03 200,000 NTD went into a term deposit, and that the withdrawal transfer account entries in his bank book were transfers of funds to term deposits in his name rather than foreign currency exchange transactions. Despite the bank book entries showing the purchase of term deposits on the same dates and for the same amounts Mr. Wu claimed to have wired out in United States dollars, Mr. Wu disagreed. He asserted some deposits may not be shown in his bank book.

[250] I reject that evidence. The contemporaneous entries in his bank book showing the transfer of funds to another account, and the acquisition of term deposits in identical amounts lead me to find these funds were invested by Mr. Wu in term deposits in Taiwan rather than converted to United States funds and sent to the alleged motel investment in the United States.

Mrs. Wu's evidence re Motel and Sports Store Investments

[251] Mrs. Wu testified that she left the management of her finances, and the family's wealth, to Mr. Wu. She explained that was her husband's role, as the head of the household. While I accept that Mrs. Wu generally left financial decisions to Mr. Wu, for the reasons I discuss below, I find her evidence concerning the motel and sports store investments to be unreliable.

[252] With respect to the investments made by her husband, Mrs. Wu said she was aware that Mr. Wu had invested in a sports store and a motel in the United States. With respect to the sports store investment, she knew that Mr. Wu was involved with an old friend but was not too sure about any other details. She said she never asked her husband about that investment. When counsel for Irene Lee pointed out to her that monies had come out of her accounts for investment in the sports store, she reiterated that her husband handled all of the family finances, that she totally trusted him, and therefore did not involve herself in these transactions.

[253] Mrs. Wu also knew nothing about the motel investment other than that Mr. Wu had a very good school friend, Mr. John Huang, who was also involved. Again, she said the motel investment transactions were handled exclusively by her husband.

[254] Mrs. Wu had a successful career as a manager for an insurance company. In addition, through her own acumen as a businesswoman, she was able to match her employment income through real estate commissions and direct sales activities. I find it improbable that if she and her husband realized substantial returns over many years through investments in a motel and a sporting goods store in the United States that she did not make it her business to learn more about these profitable ventures, particularly when she was apparently contributing substantial sums from her own income to those investments.

[255] It is also striking that in a case where the plaintiffs have produced hundreds of pages of financial documents in order to demonstrate the sources and disposition of their incomes and investment earnings, they have produced no documents providing particulars of the motel or the sporting goods store or showing the interest purportedly held by Mr. Wu in each of those investments.

[256] Mr. Wu was shown copies of applications to open trading accounts in his name with Choice Trade and Equity Trading (Exhibit 33, tabs 6 and 7). He testified that he asked Corey to help him fill out the forms and that Corey filled out and sent to him a copy of each application. In cross-examination, Mr. Wu said that the copy of the Choice Trade application dated July

19, 2004 was not the original document he signed and sent to the brokerage firm. On re-examination, Mr. Wu explained that for each application Corey filled out the form in English and then faxed it to him. Mr. Wu said that he then filled out a clean copy and mailed it to the brokerage firm from Taiwan. In cross-examination, Mr. Wu said the signature on the Choice Trade account application form was probably his. On re-examination, he gave evidence that Corey had prepared the copy of the Choice Trade application at Exhibit 33, tab 6, as a sample for Mr. Wu to follow. Mr. Wu suggested Corey Wu had signed the application in his father's name, and then sent the completed application to Mr. Wu, in order to show him how to fill out and sign his own clean copy of the application.

- [257] Mr. Wu claimed that Paul Wu operated the Equity Trading account and engaged in speculative short-term trading. Mr. Wu said that he wanted Corey's contact information on the applications so that his son could help him with English translation.
- [258] Corey Wu prepared each of the trading account applications adduced in evidence at trial. Each application contains contact information for Corey Wu, rather than his father or Paul Wu. Each application identifies the trading objective as high-risk or speculative. The Equity Trading application also contains a penny-stock trading risk disclosure.
- [259] Mr. Wu testified that he did not engage in high risk trading. All of these facts are consistent with Corey Wu's use of these accounts for short-term day trading.
- [260] Mr. Wu was referred to Exhibit B, tab 13, his joint bank account with Corey Wu at the Canadian Imperial Bank of Commerce. Mr. Wu testified that he opened the account when he first came to Canada in 1998. He said at the time he was not aware of powers of attorney and that he opened the joint account with Corey in order that Corey could manage the money that Mr. Wu sent over from Taiwan. It was put to Mr. Wu that he opened the account on Corey's instructions so that his son would have a Vancouver account to funnel money back from Taiwan. Mr. Wu denied that was the purpose of the joint account.

ASTK File

- [261] Mr. Wu was shown the master ASTK file with data sheet 2011 xls. He denied any involvement in creating the ASTK file and maintained that he had not previously seen this file. Mr. Wu also denied that when he created his "Paul memo" document in 2007 (Exhibit 1, tab 18, p. 9) showing the movement of money in and out of Paul Wu's Taiwan Citibank account, he obtained some of the information for that document from a copy of the ASTK file provided to him by Corey Wu.
- [262] Counsel then took Mr. Wu to numerous entries in the ASTK spreadsheet and compared those entries to entries made by Mr. Wu in the Chih Memo regarding the transfer of funds in and out of Mr. Wu's Taiwan Citibank account. For example, at p. 6 of the Chih Memo, Mr. Wu made an entry for January 25, 2002 showing \$16,000 deposited to his Taiwan Citibank account from his motel investment. The ASTK chart contains an entry for January 25, 2002

showing the payment into Mr. Wu's Citibank account of \$16,000 from profits earned on stock trades on an RGT brokerage account. Mr. Wu was shown numerous examples of instances where he had recorded amounts paid into his Citibank account on particular dates, allegedly from the motel, where the ASTK document showed corresponding amounts being paid into his Citibank account on the same date from the RGT brokerage. In each case, Mr. Wu denied that the amounts he claimed to receive from the motel investment were in fact profits earned from stock trades made through the RGT brokerage.

- [263] Mr. Wu was also taken to an entry in his flow chart for May 3, 2004 purporting to show the transfer of \$30,000 from Citibank to his sporting goods store investment. The ASTK file shows a transfer on the same date of \$30,000 to "capital XM", the acronym used in the ASTK document for another brokerage firm, Xoom. When counsel suggested to Mr. Wu that \$30,000 went from his Citibank account to open a brokerage account with Xoom on May 3, 2004, his response was, "Wrong".
- [264] The Chih Memo at p. 7 contains an entry for December 22, 2004 purporting to show \$40,000 paid into Mr. Wu's Taiwan Citibank account "From Motel". Mr. Wu denied those funds came from the Equity Trading account in his name. He was then taken to the ASTK document which records a transfer of \$40,000 from that Equity Trading account on December 22, 2004.
- [265] Mr. Wu agreed that he had made some errors in the dates and amounts of payments into Paul Wu's Citibank account. He was then shown specific entries in the ASTK document recording the same errors. For example, in his "Paul Memo", at Exhibit 1, tab 18, p. 9, Mr. Wu recorded a transfer into Paul Wu's Taiwan Citibank account on November 25, 2004 of \$40,000, while the banking record for Paul's Citibank account, Exhibit 3, tab 47A, shows a payment of \$48,165.34. The ASTK file also shows a \$40,000 payment into Paul Wu's Citibank account on November 25, 2004.
- [266] Mr. Wu was shown other examples where the date or the amount he recorded did not correspond to the bank documents and where he had acknowledged that he had made errors. In each instance, the ASTK sheet recorded the same error as appeared in Mr. Wu's flow chart. It was put to Mr. Wu the reason why the dates or values in these entries were wrong was because he had copied the erroneous information from entries in the ASTK chart. He denied doing so.
- [267] Mr. Wu also denied all of the money for the purchase of the Barker Crescent and Beach Avenue properties came from trading activities recorded in the ASTK document. He denied that purchase monies for Barker Crescent and Beach Avenue came from Corey Wu's trading activity and asserted that all of the trading was done by himself or Paul Wu.
- [268] In the absence of any documents relating to the alleged motel and sporting goods store investments or showing the motel or the sporting goods store as the source of any funds paid into Mr. Wu's accounts, I find Mr. Wu's evidence about these sources of his wealth is not credible. Numerous entries in the ASTK file record payments to Mr. Wu's Taiwan

Citibank account from brokerage accounts in the same amounts and on the same dates that Mr. Wu claims he was receiving returns on his motel and sporting goods store investments. The fact that the same errors appear in Mr. Wu's flow chart for Paul Wu's Citibank account as appear in the ASTK file supports an inference that Mr. Wu drew some of the information for the Chih and Paul Memos from a copy of the ASTK file.

Paul Wu's Finances

- [269] Paul Wu identified accounts in his name in Vancouver at HSBC, the Royal Bank of Canada, the Canadian Imperial Bank of Commerce (three accounts, two in Canadian dollars and one in U.S. dollars), and UBS. He testified that all of the money held in these accounts belongs to his father and that he had no personal involvement in any of the transactions listed in the various bank statements, other than when his father instructed him to remit funds to these accounts from Taiwan.
- [270] Paul Wu also testified that the money in his Citibank account in Taiwan (Exhibit 3, tab 38) belongs to his father. Again, Paul Wu testified that he did whatever his father told him to do with the funds in this account and never questioned his father because the money was his father's.
- [271] In cross-examination by counsel for Irene Lee, Paul Wu identified the documents at Exhibit 3, tab 38 as copies of the statements for his Citibank accounts in Taiwan. He recalled that he went with his father to apply for these documents in Taiwan, possibly in 2010 but later said he did not remember when he obtained the documents. Paul Wu was asked why there were no statements for the period from July 15, 2005 through December 15, 2005. He said there was a flood at the Wu's home in Taiwan and that some of the documents were lost.
- [272] According to Paul Wu, all of the money in his Citibank Taiwan account belongs to his father. Paul Wu recalls sending money from his Citibank account in Taiwan to other accounts when Mr. Wu gave him instructions by telephone or Skype to send monies out. However, he had very little recollection of where the money from his Citibank Taiwan account went.
- [273] He agreed that it was possible that money had been transferred from his Citibank Taiwan account to a stock trading account with the brokerage Choice Trade in the United States. Paul Wu was sure that the money transferred into the U.S. stock account came from his father. When asked why Mr. Wu would send money to his U.S. stock account, Paul Wu gave two reasons. First, his father wanted to do asset planning and second, he wanted to save taxes.
- [274] Paul Wu said he had no written agreement with his father to use Mr. Wu's money to trade stocks, but that his father permitted him to use the money for stock trading "when necessary".

- [275] Paul Wu testified that from 2002 through 2006 he engaged in short term trading of lower priced stocks and that starting from 2006 on Mr. Wu's recommendation, he dealt in "long term stocks", such as Amazon. Paul Wu said he only traded until 2010. When asked about the volume of his trading activity, Paul Wu said that in 2002 and 2003 he did between 20 to 30 trades a day, although there were some days when the volumes were much lower and some days when he did not do any trading. In cross-examination, he agreed that on Taiwan time, the U.S. markets were open from 9:00 p.m. to 4:00 a.m. He testified there were times when he worked his full school day, and then traded from 9:00 p.m. to 4:00 a.m. He agreed there were periods when he did this every day for a full month in 2003.
- [276] I find Paul Wu's evidence that he was able to teach full time, and then trade for 7 hours a night for a month at a time to be highly improbable.
- [277] Paul Wu said his trading activity was somewhat less in 2004 than 2003 and declined again in 2005 because he was not making too much money. From 2006 onward, he maintained that he traded stocks that he would hold for a few weeks or a few months, rather than for only hours or days.
- [278] Paul Wu testified that when he came to Vancouver in 2004 he stayed at Mr. George Lee's home on Normandy Drive and used Corey Wu's computer set up to trade stocks. He also claimed that he traded stocks using Corey's computer set up when he came to Vancouver in 2006 and stayed at Barker Crescent.
- [279] In cross-examination by Mr. Yu, Paul Wu testified that in 2004 and 2006 his father remitted money to a Penson Financial Services account in his name. He described Penson as a financial management company. Paul Wu initially said his money was kept at Penson but immediately corrected himself to say it was his father's money. Paul Wu did not know how his father remitted money to his Penson account. He recalled that his dad told him he had remitted U.S. \$430,000 to the Penson account in 2006 but acknowledged his only source of knowledge is what his father told him. Paul Wu denied that he owned the Penson account. He reiterated that it was his dad's money in the account. Paul Wu testified that starting in 2006 he had an agreement with his father by which he would keep 60% of the profits he earned on investments and his father would keep 40% of the profits, as well as the capital.
- [280] According to Paul Wu, his father managed the money in the Penson account. He said that his father had the password and account number. He speculated that his father could have asked his friends or Corey Wu to execute transactions on the Penson account.
- [281] When asked whether Penson required his written authorization before transferring funds out of the account, Paul Wu, after a long pause, said that he did not know because he did not make the transfers. He then said his father did ask him to sign documents but he never read their content or details. He did not know whether he would need to sign documents to authorize the transfer of monies out of his Penson account.

- [282] When it was suggested to him that Corey handled transactions on the Penson account, Paul Wu denied that, said that all he knew was that the money belonged to his father, and that if Corey wanted to remit money, he would need his father's approval. Paul Wu agreed that other than what his father told him, he had no idea how money was transferred to his Penson account.
- [283] On re-examination by counsel for Mr. and Mrs. Wu, Paul Wu testified that he gave Powers of Attorney to Corey over bank accounts in Canada in his name because his father had asked him to do so.
- [284] Paul Wu was asked about the UBS account application at tabs 1 through 5 of Exhibit 37, Irene Lee's book of documents. The application, dated September 1, 2009, is for an account in Paul Wu's name. Paul Wu is described as a University Math Instructor who owns a seat on the New York Stock Exchange. Paul Wu agreed that was not accurate and denied that his signature appears on the application. He agreed that he did open a UBS account around September 2009 but denied doing so on the instructions of Corey Wu. He said it was his father who asked Corey to open the account and that Corey Wu filled out the application. He agreed that the Chinese characters on the application represent his name but said he did not put them there. Paul Wu said his father told him that he had asked Corey to sign the application because he thought it would be easier for Corey to handle those documents.
- [285] When Paul Wu was shown the Ameritrade account application in his name dated August 31, 2004 at Exhibit 37, tab 6, he recalled that Corey Wu opened that account for him.
- [286] According to Paul Wu, his brother signed the Ameritrade account application as Ta Hsuan Wu. He claimed his brother faxed the application to him, that he then filled out a clean copy, and then signed the application and mailed it to the brokerage.
- [287] Paul Wu was shown Exhibit 37, tab 10, the Penson Financial Services account in his name. He said his father asked Corey Wu to manage the finances in that account because Corey is the only member of the family who knows English. Paul Wu said he had no personal knowledge of what Corey did with that account because the money in the account was his father's money.
- [288] Paul Wu was asked about his CIBC Dividend Visa card and a CIBC Platinum card in his name. He maintained he had no knowledge about how charges on these cards were paid and denied any personal involvement in the payments made on those cards. He denied that Corey Wu told him that he used the CIBC Dividend card to pay his own living expenses. He maintained that his father controlled the use of this credit card.
- [289] Paul Wu was shown the photo of his CIBC Dividend Platinum card found at Exhibit 2, tab 22. He denied that he signed that card and asserted that Irene had signed his name to the card. He did not authorize either Corey Wu or Irene to use the card.

- [290] Paul Wu testified that he applied for the CIBC Dividend Platinum card because he was planning to make a \$100,000 investment in a cousin's health food business and intended to use the card for some of the expenses of that business. He was unable to recall the credit limit he wanted.
- [291] Corey Wu was asked about the CIBC Dividend Platinum credit card in Paul Wu's name. He testified that he had applied for that card for Paul Wu's intended business investment in January or February 2010. He said he received the card at Barker Crescent and was holding it for his brother. Corey Wu asserts that Irene Lee signed Paul's name on the card and then used it to accrue charges of \$25,000. He says he has agreed to pay that debt and owes Paul Wu \$25,000.
- [292] Paul Wu was also referred to an HSBC Premier MasterCard account in his name and Corey Wu's name. Paul Wu said he never made any charges on the HSBC MasterCard and reiterated that all of the credit cards were applied for with his father's permission.
- [293] Paul Wu agreed that he gave a Power of Attorney to Corey Wu for his CIBC accounts in Vancouver, that he also gave his brother a Power of Attorney for his HSBC account and thought that he also did so for his Toronto Dominion Bank account and his UBS account.
- [294] To summarize, Paul Wu professes to know nothing about the sources of the funds held in the Taiwan Citibank account in his name, his various Canadian bank accounts and the stock trading accounts in the United States in his name, or of the transactions conducted on those accounts, beyond what his father has told him.
- [295] Paul Wu was reminded that earlier in his testimony he estimated his net worth in 2009 at \$1 million U.S., plus an additional 3 million NTD (which is the equivalent to approximately \$120,000 U.S.). When asked whether most of the \$1 million U.S. was held in the United States in his Pension account, Paul Wu's answer was "I forget". He said he forgot how his assets were distributed in 2009 because his father managed his accounts.
- [296] Paul Wu gave evidence that in 2009 he held the 3 million NTD in his salary account, some funds in Taiwan, and insurance.
- [297] He agreed that before February 24, 2010 the money held in his CIBC U.S. dollar account in Vancouver belonged to his father. (The statements for that account are found at Exhibit 14).
- [298] Paul Wu claims that starting on February 24, 2010 he made three transfers of his own money into this CIBC U.S. dollar account. The first was a transfer of \$94,938 from his Cathay United Bank account in Hong Kong (Exhibit 3, tab 4). He maintained that all of the money held in the Cathay United Bank account belonged to him. When asked why he had not included the \$95,000 in U.S. funds sent from his Cathay United bank account in Hong Kong to CIBC in February 2010 as part of his 2009 net worth, he said he was not asked about funds other than the \$1 million U.S. he held in accounts managed by his father and the additional \$120,000 in Taiwan. Paul Wu stated that because counsel did not ask him, he did not mention funds held in other places.

- [299] Paul Wu denied that his father managed his account at Cathay United Bank. He said that he had asked his father to transfer money from his Penson account in the United States to the Cathay United account.
- [300] The statement for the Hong Kong Cathay United Bank account at Exhibit 3, tab 40 shows a transfer into that account of \$96,983 on February 23, 2010 and a withdrawal on February 24, 2010 of \$95,000.
- [301] Paul Wu claimed that the \$95,000 was part of his 60% share of profits from stock trading but did not remember from what account the funds came. He agreed that he stopped trading stocks in 2010. He was unable to remember any of his stock trading accounts for the period 2006 to 2009. It was put to Paul Wu that he could not remember the accounts because it was Corey Wu who had actually done the trading from 2006 to 2009. Paul Wu maintained that he had done the trading but was unable to remember the brokers or particulars of the transactions.
- [302] Paul Wu also claims that he transferred \$100,000 U.S. from the Taiwan Fubon bank account in his name to his CIBC U.S. dollar account on July 6, 2010. Again, he maintains this money came from his U.S. stock account and was part of his share of the profits from stock trades. Paul Wu claimed that his dad kept records and that he had copies in electronic files. When asked to describe the files he said they were spreadsheets with some cells and that was all he could remember. When pressed further, he said the records showed how much trading occurred, but did not specify the broker. He said that from 2006 to 2010 he made long-term investments with very few trades. Sometimes there were just nine trades in a whole year. When asked about the number of trades he did in 2009, he said he did not remember exactly but thought there were four to five trades in that year. Again, Paul Wu's scant recollection of his alleged trading activities renders this evidence both unreliable and implausible, particularly when it is unsupported by any documents, such as statements from his brokerage accounts.
- [303] The third transaction Paul Wu identified occurred on July 5, 2010 and involved the transfer of \$117,000 U.S. funds from his Cathay United Bank account in Hong Kong to his CIBC U.S. dollar account in Vancouver. See Exhibit 3, tab 40, page 2. That document shows deposits to the Cathay United bank account of \$49,983 and \$94,983 prior to the withdrawal and transfer of \$117,000 to the CIBC account on July 5, 2010. Again, Paul Wu testified that he asked his father to transfer the monies into the Cathay United bank account from his share of stock profits from the United States. He maintained the profits were generated from trades in 2009 in Amazon shares. Paul Wu claimed that in 2006 he made a profit of around \$320,000 U.S. from trades on Amazon stock, and that in 2007 the profit from stock trading was \$1 million U.S., again from trades in Amazon stock. He claimed he lost \$230,000 in trading in 2008 but made a profit of approximately \$420,000 in 2009, again trading only in Amazon stock. Paul Wu was unable to remember whether in 2007, when he claims to have made \$1.1 million on stock trades, any money was transferred out of his U.S. stock account. Again, neither the plaintiffs nor Corey Wu have produced any records from brokerage

accounts to verify this alleged trading activity.

Paul Wu cross examination by Ms. Perry

- [304] In cross-examination by Ms. Perry, Paul Wu was shown document 1214.XLS from the MNP report, which shows trades in the SIRI stock. Paul Wu identified SIRI as a stock he traded around 2004 but maintained that the records he kept were not as complicated or detailed as this spreadsheet. He claimed that he started keeping his own records in 2002, and kept them to 2006, when he stopped short-term trading. Paul Wu has not produced any copies of the records he claims he kept.
- [305] Paul Wu identified Exhibit 15, the Screenshot file found by MNP on the external hard drive from the Barker Crescent property, as the platform he used while stock trading on his visit to Vancouver in 2004. He identified the ASTK icon on the screenshot as the icon for his Excel file. Paul Wu said that in 2002 his father used a USB stick to give him a file containing a flow chart of his father's money starting in 2002. Paul Wu said he used this file to record his stock trading activities. He identified the ASTK icon shown in the screenshot as a shortcut to the file where he recorded his trading. He said the original name of the icon was not ASTK and that he changed it in 2002. Paul Wu testified that "ASTK" stands for "About Stock". He said he maintained the ASTK spreadsheet from 2002 until 2006 and took it with him when he travelled to Canada. When he stayed with Corey, he recorded his stock trading on the ASTK file, using one of Corey's computers. Paul Wu testified that when he visited in 2004, he brought his ASTK file. On that visit, he stayed at George Lee's home on Normandy Drive and used Corey's computer equipment there.
- [306] Paul Wu was asked whether in 2004 he downloaded or installed any software on computers at Normandy Drive. He said he downloaded stock trading software to Corey's computer. Paul Wu also testified that he connected the USB stick containing the ASTK file to Corey's computer and transferred the ASTK file to that computer in 2004. He claimed that he entered data on the ASTK file whenever he traded stocks while at Normandy Drive.
- [307] Paul Wu testified that while he was staying at Normandy Drive in 2004 he talked to George Lee and Irene Lee about stock trading, and told them he would be making lots of money using "his way". He also said he showed George Lee and Irene Lee how his trading software program worked, but they did not seem that interested.
- [308] Paul Wu was shown the Bookmarks document from the MNP report. He asserted that in 2004 he had placed the various bookmarks relating to stock trading on his brother's computer, and claimed that he had used them for his own trading activities.
- [309] Neither Paul Wu nor Corey Wu produced a copy of the ASTK file that Paul claimed to have created in 2002, downloaded to Corey's computer in 2004, and used to conduct his trades. No member of the Wu family has produced a single document recording stock trades conducted by Paul Wu at any time.

- [310] Paul Wu's scant knowledge of the trading and banking accounts opened in his name, and of the movement of funds through those accounts, leads me to conclude that his evidence regarding the uses and beneficial ownership of those accounts is unreliable.
- [311] On further cross-examination by Mr. Yu, Paul Wu identified the screenshot image (Exhibit 15) as a screenshot of Corey Wu's computer. Paul Wu maintains that the entry "Pending" in the trade manager box of the lower left hand side of Exhibit 15 indicated a technical problem that was preventing him from completing trades on the Tradestream stock trading platform he was using at the time in Taiwan. He maintained that Corey Wu was able to access the same ID and password as Paul Wu and that he opened the screen to assist Paul Wu in solving the technical problem. Paul Wu says he asked Corey Wu to contact the technical support people for the Tradestream stock trading platform in the United States in order to solve the problem.
- [312] Mr. Yu put to Paul Wu that the word "Pending" appeared in the screenshot because Paul Wu was attempting to purchase SIRI shares at \$6.57 per share when the bid price, as shown in the screenshot was \$6.58 per share. Counsel suggested that "Pending" meant that the order had not been filled because Paul Wu had not matched his bid to the asking price.
- [313] Paul Wu denied that "Pending" simply meant that his order would not be filled until his bid matched the asking price for the shares.
- [314] Paul Wu acknowledged that he knew enough English to be able to execute trades on the Tradestream platform.
- [315] Counsel suggested to Paul Wu that it was Corey who did the trading depicted in the screenshot. Paul Wu denied that allegation, and reiterated that he was doing the trading and that Corey Wu was merely assisting him to solve a technical problem.
- [316] I find that Paul Wu's evidence is not credible on this point. As Ms. Lee's computer forensics expert Mr. Ian Kenny noted, the user name shown on the screenshot images is "Corey". Further, one of the dialogue boxes in the screenshot contains this entry, "Corey - Long 20 Sirius Satellite Radio Inc. (28002335)", which would suggest that Corey Wu was trading in the SIRI shares on that occasion.
- [317] Paul and Corey Wu both claimed the screenshot depicted an occasion in 2004 that he had sought Corey Wu's translation assistance when he was unable to complete a trade. However, Mr. Kenny's analysis of the metadata and SIRI stock trading prices demonstrated that the screenshot was taken on June 30, 2005. Further, all of the trading data and information depicted in the screenshot is in English. It is unlikely that Paul Wu, with his limited command of English, could have successfully engaged in high volume short-term trading using English language trading programs. For all of these reasons, Paul Wu's evidence that the screenshot depicts Corey Wu's remote access to his trading activities in Taiwan is simply not credible.

- [318] On re-examination, Mr. Kenny was asked to assume the screenshot was an image of real time trading in Taiwan, with one party in Taiwan and one in British Columbia, and that the party in British Columbia had remote access to trading in the foreign jurisdiction.
- [319] Mr. Kenny advised that if the trading is occurring overseas, the time shown on the screen would be set to the foreign jurisdiction's time rather than Pacific Time as depicted in the screenshot images. Further, if the British Columbia party were using remote access, he would need to use a stand-alone application, which would be depicted in the screenshot image by a "parent window" providing a view of all of the contents on screen. No such parent window is depicted in the screenshot images. In Mr. Kenny's opinion, which I accept, the screenshot provides a view of a stock trading system operating in British Columbia. I find that the screenshot images depict trading in SIRI shares conducted by Corey Wu from his home computer system in Burnaby.
- [320] Paul Wu was referred to a series of transfers totalling \$310,000 U.S. from his Cathay United bank account in Hong Kong to Irene Lee for investment in Mainland China. He said the money was his. When asked where the money came from, Paul Wu said it was money from his own account which he asked his father to remit to him. He was unable to identify that account. When counsel for Irene Lee pressed Paul Wu on his lack of knowledge of the source of funds he asked his father to remit, Paul Wu responded "I know but I cannot recall exactly. All these were controlled by my father - I don't recall now." When asked how he could identify money in the Cathay United account as his, Paul Wu said that the account was in his name.
- [321] Paul Wu was also referred to the promissory note dated April 5, 2012 by which Corey Wu promised to repay him \$150,000 U.S. by consecutive monthly payments of \$3000 commencing January 1, 2017. That note provided for Paul to advance \$45,000 in April 2012, and for the balance to be advanced within a year. According to Paul Wu, that amount included repayment of \$25,000 of debt Irene Lee incurred on his CIBC Dividend Platinum card without his consent, a \$20,000 loan to pay for Corey Wu's dental work, and \$105,000 that Corey Wu borrowed to pay legal fees.
- [322] Paul Wu produced no document to show he actually advanced \$150,000, or any amount, to his brother. Corey Wu did not list the alleged debt to Paul Wu in his financial statement sworn October 19, 2014.
- [323] Paul Wu testified that when Irene Lee visited Taiwan in May 2010, she stayed in the family home in Taipei where Paul Wu and his partner resided. He claimed that on one occasion, when Irene had been home by herself, he returned from work to discover that a cabinet drawer had not been fully closed. When he investigated, he found some bank statements that had been opened. He said he looked to see if anything had been taken but it did not seem like anything had been lost. Paul Wu also testified that both his passport and his father's passport were in the Taiwan apartment in May 2010. Copies of those documents are part of Irene Lee's document production. Mr. and Mrs. Wu, Corey and Paul Wu all assert

that Irene Lee took copies of the passports when she was in Taiwan in May 2010. Irene Lee denies she took or copied any documents from the Wu's Taiwan residence.

- [324] Counsel for Irene Lee put to Paul Wu the proposition that he and his father had given copies of their passports to Corey Wu to assist him in opening accounts in their names in Canada. Paul Wu said that was not correct. There is no dispute that Corey Wu opened numerous accounts in the names of his father and brother. Neither the plaintiffs nor Paul or Corey Wu have suggested what benefit Irene Lee would derive from taking photocopies of the passports. In my view, it is most consistent with the probabilities of the situation that Mr. Wu and Paul provided copies of their passports to Corey, and that he left those documents at Barker Crescent when he departed in September 2010.
- [325] Overall, I found Paul Wu's evidence concerning his, and his family's financial affairs to be unreliable and, unfortunately, often less than credible.

The Case for Corey Wu

- [326] In support of his position that he did not engage in day trading, Corey Wu testified that throughout his employment with CREO, whether he was working shifts at the office, or working from home, the demands of this work simply did not allow time for the sophisticated and sustained stock trading alleged by Irene Lee. Corey Wu testified that when he worked long hours in his home office, he was engaged in telephone conferences with the CREO research and development teams that he supported, rather than day trading. He also explained that because Irene Lee was employed as a flight attendant on international flights, she was away from home about 30% of the time each month. When Ms. Lee was away for work, Corey Wu had additional responsibilities for the care of children.
- [327] Corey Wu testified that his computer set-ups at both Normandy Drive and Barker Crescent were open for anyone to use and did not require a password for access. He said he had only one external hard drive, and that anyone could store information on it. Corey Wu testified that he never stored the ASTK file on the hard drive and that he "never touched the ASTK file".
- [328] Corey's mother gave evidence that she never observed her son day trading. Mrs. Wu was shown the colour photograph at Exhibit 25, tab 26, page 108, from Corey Wu's documents. That photo depicts a male person, with his back to the camera, seated at a bank of computers. Mrs. Wu acknowledged that the person depicted in the photo looked like Corey, but said she was not sure. She did not recognize the photo as depicting part of Mr. George Lee's residence on Normandy Drive. Mrs. Wu asserted that when she stayed at Mr. Lee's home she did not see anything like the multiple computer setup depicted in the photo at page 108.

[329] Mrs. Wu was then shown the photo at tab 26, page 105, showing a similar computer setup at the Barker Crescent property. She did not recognize the room as Corey's home office and claimed that she never went into her son's home office at any time while she lived at Barker Crescent, between April and December 2006. Bearing in mind the length of time that she and Mr. Wu shared a home with her son and daughter-in-law, that evidence is not consistent with the preponderance of the probabilities.

[330] I find that Mrs. Wu's professed inability to identify Corey Wu's home computer facilities at either Normandy Drive or Barker Crescent was the product of her desire to minimize or deny any evidence that might suggest he was involved in on-line stock trading.

[331] Corey Wu testified that after he received Irene Lee's divorce letter on July 22, 2010 he went back to Barker Crescent and found that almost all of his documents, including his bank statements, his father's and Paul's statements were gone. He said he had requested that Irene Lee return these documents, but she has refused to do so.

[332] Corey Wu's total annual income, as reported in his tax returns for the years 2002 through 2013 is as follows:

2002 - \$61,975

2003 - \$69,012

2004 - \$77,381

2005 - \$85,353

2006 - \$81,050

2007 - \$84,414

2008 - \$88,309

2009 - \$84,827

2010 - \$87,352

2011 - \$158,314

2012 - \$50,631.08

2013 - \$22,416.11

[333] In May 2011, Corey Wu's employment with CREO/Kodak was terminated. His income for that year included a severance payment of \$78,722.41. Corey Wu's line 150 income for 2012 of \$50,637.08 included \$35,000 withdrawn from his RRSP.

[334] Corey Wu is presently employed as a yoga instructor in Taiwan. He testified that his line 150 income of \$22,416.11 reported in his 2013 tax return includes interest on investment income of \$2,034.76 earned from a mutual fund he holds in Taiwan.

[335] The annual income declared by Corey Wu is a far cry from the wealth George and Irene Lee claim he generated through day trading.

Corey Wu's relationship with George Lee

[336] Corey Wu testified he first met George Lee in late 1999. According to Corey, George Lee told him that while he had served as a policeman in Hong Kong he was also involved in a Hong Kong gang, and told stories about his exploits as a gang member. Corey Wu testified that at the time he met his father-in-law he was happy to be associated with someone who seemed to be very powerful but at the same time he was a little afraid of George Lee and did not want to cross his path.

Corey Wu - Cross Examination by Mr. Yu

[337] Corey Wu acknowledged that he had no agreement in writing with his father to hold any accounts or assets in trust for his parents.

[338] Corey Wu was referred to the various trading account applications that he filled out in his father's name (Exhibit 33, tabs 5, 6, 7 and 9). He denied that he traded stocks in his father's name on any of these accounts and maintained that the reason why each of these applications contained his contact information was because he was the only member of the family fluent in English, and so that he could act as a translator for his father.

[339] Corey Wu agreed that after his marriage to Irene Lee, his CIBC***733 account was changed to a joint account in the name of both spouses. He claimed to be unaware that he also became a joint holder of Irene's account at ING after the marriage.

[340] Corey Wu was shown the photographs of computers at Exhibit 16. He was asked about the photo depicting a laptop keyboard and CREO mouse pad. Corey Wu claimed the laptop belonged to his brother Paul Wu. He was unable to explain why, if Paul Wu brought his own laptop from Taiwan, there was any need for him to install stock trading software on Corey Wu's computer.

[341] Corey Wu was asked about the UBS account applications marked as Exhibits 34 and 35. He testified that he applied to UBS to open account number ***258 in the name of Paul Wu. Corey Wu said Mr. Jack Cheng of UBS filled out the application form. He agreed that he provided Mr. Cheng with information about his brother but claimed that Mr. Cheng exaggerated and expanded upon that information by describing Paul Wu as a math instructor who had a trading seat on the New York Stock Exchange, and a net worth of \$4,000,000. In effect, Corey Wu asks the Court to find that Mr. Cheng was a party to a false representation to his employer. I am not prepared to make that finding, particularly where Mr. Cheng has had no opportunity to answer that allegation. I find that it is more probable than not that Corey Wu invented the false qualifications of his brother in the belief that by doing so, he would improve the prospects for approval of the account application.

- [342] Corey Wu says that he concealed from his parents the true state of title to Barclay Crescent and Beach Avenue. If that is so, embellishing an account application would be unlikely to trouble him.
- [343] On or about September 10, 2009, Corey Wu applied to open his own account with UBS. He told Mr. Cheng about his employment with Kodak but maintains the false information in the application that he held \$2 million in real property was another "exaggeration" made by Mr. Cheng to secure approval of the account. Corey Wu denied that he made up a story about his property holdings, but agreed he was "OK" with Mr. Cheng's story. I find Corey Wu had no qualms about misrepresenting his assets in order to achieve his ends.
- [344] Corey Wu denied that he wanted to open accounts in his name and his brother's name to facilitate his own stock trading. He maintains these accounts were opened on his father's instructions and that the reason why accounts were opened in his father's name, his name and Paul Wu's name at UBS was to obtain Canada Deposit Insurance Corporation protection for the amounts invested.
- [345] Corey Wu was examined about the CIBC Dividend credit card issued in Paul Wu's name, and the HSBC MasterCard issued in his name and Paul's name. He confirmed that at the time of the transactions recorded in the CIBC credit card statements, Paul Wu was living in Taiwan. Corey Wu said that he and Irene used the subsidiary card issued in Corey's name. He could not remember who used the primary card.
- [346] It was put to Corey Wu that Irene Lee was the primary user of the HSBC MasterCard in Paul Wu's name. Again, Corey Wu could not remember.
- [347] Counsel for Ms. Lee suggested to Corey Wu that when he told friends and acquaintances that he earned his income by stock trading he was telling the truth. Mr. Wu denied this and said that he and Irene had created a story that he was stock trading because he was embarrassed about living in a big house and driving a big car subsidized by his mother and father.
- [348] In cross-examination, it was suggested to Corey Wu that he, rather than his father, was the author of the Chih Memo. Counsel for Ms. Lee suggested to Corey that he had created the Chih Memo by matching the dates for payments from stock trading transactions recorded in ASTK to the dates of transfers purportedly made by Mr. Wu from the proceeds of his motel and sports store investments. Counsel for Irene Lee described this as a process of the "reverse engineering". Corey Wu responded to that assertion by describing it as a fabrication and a lie. I have already found that Mr. Wu created the Chih Memo with Corey's assistance, and with the aid of the ASTK file.

- [349] Counsel for Irene Lee suggested to Corey Wu that after the separation agreement was signed he removed all of his possessions from the Barker Crescent property while Irene Lee was away working as a flight attendant. Corey contended that he was unable to retrieve some of his possessions, but agreed that he had removed his computers. He denied that he took the computers in order to continue his stock trading and maintained that he required them for work.
- [350] Corey Wu agreed that all of the transactions recorded in the Chih Memo relate to the in-flow and out-flow of money from Mr. Wu, Sr.'s Citibank account in Taiwan. Corey Wu also agreed there were no bank statements for his father's Taiwanese Citibank account at Barker Crescent.

Corey Wu's Evidence Concerning ASTK File

- [351] Corey Wu denies he created the ASTK file, or the related file, Performance.xls.
- [352] The stock trading recorded on the ASTK file began in 2000, although the ASTK file itself was not created until November, 2001. The ASTK file shows that on December 19, 2000, \$40,000 was apparently transferred for stock trading through the RGT brokerage. It was suggested to Corey Wu that he used funds from the sale of his CREO stock options in order to fund his stock trading activity through RGT. Mr. Wu denied that allegation. He also denied showing George Lee his trading activities on the ASTK file or that he stored the ASTK file in "Yahoo Briefcase".
- [353] Corey Wu was also shown the Performance.xls file, which purportedly records stock trading activity to January 2005. On the Performance.xls spreadsheet, there are separate columns for trades through RGT, Zoom, and Choice Trade. Column H shows daily gains. The daily gains realized in 2002 are relatively modest. by 2003, the daily gains were often in the range of \$1,000 or more.
- [354] Irene Lee contends that the profits that Corey Wu realized through his stock trading were transferred to Mr. Wu, Sr.'s Citibank account in Taiwan. For example, the ASTK file, cell 181 shows \$30,015 going to Citibank on January 8, 2003. Corey Wu denied that these funds were profits from trading on his RGT account. Mr. Wu, Sr. was unable to produce Citibank records for 2003 and for the months of January through September 2004. Ms. Lee contends that the amounts Mr. Wu, Sr. claims to have received from his motel and sporting goods store investments were in fact the profits earned by Corey Wu on his day trading paid to Mr. Wu, Sr.'s Taiwan Citibank account.
- [355] Counsel for Ms. Lee suggested to Corey Wu that he had downloaded a version of the ASTK file to George Lee's computer from Yahoo Briefcase in January 2010, and updated data on that version of the ASTK file to 2009. Again, Corey Wu denied doing so.

- [356] In cross-examination, counsel for Irene Lee referred Corey Wu to the Performance.xls file which purports to record stock trading activity from 2002 until January 2005. That document records trading conducted through the RGT, Zoom, and Choice-Trade brokerages, together with the daily gain while trading. Corey Wu denied that he used Performance.xls to track his stock trading activity from 2002 to 2005.
- [357] Counsel for Irene Lee demonstrated the ASTK and Performance.xls files record the movement of funds from stock trading accounts to Mr. Wu's Taiwan Citibank account in the same amounts, and on the same dates that Mr. Wu claims funds from his motel or sporting goods store investments were deposited to his Citibank account. For example, the Performance.xls spreadsheet contains entries for February 11, 2002 showing \$69,365 had accumulated in the RGT brokerage account in the name of Mr. Wu. The ASTK spreadsheet showed that balance falling to \$53,365.85 on February 12, 2002. The bank records for Mr. Wu's Taiwan Citibank account show a \$16,000 deposit to that account on February 12, 2002. The Performance.xls file was located on the hard drive from Barker Crescent, with metadata identifying the author as "Corey". This evidence suggests that Corey Wu transferred \$16,000 from the RGT brokerage account to his father's Taiwan Citibank account on February 12, 2002.
- [358] Corey Wu repeatedly denied that he had performed the transfers of funds from trading accounts to his father's Citibank account purportedly recorded in the Performance.xls and ASTK files. He also denied that he had continued to record his trading activities on another ASTK file from 2005 until 2009, or that he had discussed his use of the ASTK file for that purpose with George Lee at a dinner at Normandy Drive in late January 2010.
- [359] Counsel for Irene Lee confronted Corey Wu with various entries from the ASTK and Performance.xls files purporting to show the movements of funds from one brokerage account to Mr. Wu's Taiwan Citibank account and then to a newly opened account with another brokerage. In each instance, Corey Wu denied that he transferred money from one brokerage to his father's Taiwan Citibank account and then had his father send funds to the new brokerage. For example, Corey Wu denied that on July 22, 2004 he arranged for \$30,000 to be transferred from his father's Citibank account to open a brokerage account with Choice Trade. However, on July 19, 2004, Corey Wu filled out an application, in his father's name, to open a high risk trading account with Choice Trade (Exhibit 33, tab 6). The ASTK file showed a deposit of \$30,000 to "CHO" (Choice Trade) on July 22, 2004. The ASTK file also shows that on July 23, 2004 a new column was created to record Choice Trade activity, and on that date, the Choice Trade account opening balance was \$29,900. Performance.xls also records \$30,000 deposited to the Choice Trade account and subsequent trading activity on that account.
- [360] When pressed, Corey Wu agreed that he might have transferred funds to his father's Taiwan Citibank account on the dates indicated in the ASTK and Performance.xls files at the request of Mr. Wu but maintained these transfers had nothing to do with day trading.

- [361] Corey Wu was shown Exhibit 15, a copy of the screenshot of his home computer. He maintains the screenshot was taken while he was helping his brother solve technical problems. He claims he took the screenshot and sent it to the technical support people in order to help his brother. Corey Wu has not produced any document showing the screenshot was sent to anyone. The screenshot shows the ASTK icon on the home computer screen. There is also a dialogue box containing the words "Corey - long Sirius Radios Inc.". Corey Wu denied that he was trading in Sirius Radio stocks at the time the screenshot was taken.
- [362] The screenshot also shows icons for various stock trading software programs. Corey Wu claims his brother installed the software while he was visiting from Taiwan. He denies he took the screenshot to record his own trading activity.
- [363] He agreed that the trade was on an account in Paul Wu's name, that he had the account information and that it would be possible for him to trade under Paul Wu's name from his home computer, but claimed he had never done that.
- [364] Exhibit 37, tabs 19 through 31 are copies of 2007 and 2008 monthly statements for an HSBC credit card issued in the names of Corey Wu and Paul Wu. Those statements separate the charges to each cardholder, and show charges of \$149 per month to Corey Wu's card during 2007 and 2008 for ESignal software. When asked whether this was stock trading software, Corey Wu responded that he suspected that it was. Exhibit 15 shows the icon for ESignal on Corey Wu's home computer. Corey Wu was paying the monthly charges for ESignal in 2007 and 2008. Paul Wu testified that he had stopped short term stock trading in 2006. I infer that Corey Wu used the ESignal software for trading in 2007 and 2008.
- [365] Corey Wu agreed that he had filled out an application form for opening an account at Choice Trade in Paul Wu's name, although he did not recall that he completed the application around October 2004. He was then referred to the ASTK master file, cell 45, for October 4, 2004, which shows a transfer of \$40,000 to "Paul CHO". He denied that he had transferred these funds or that he traded on Paul Wu's Choice Trade account until November 19, 2004. The ASTK file shows a transfer of \$48,165.34 from this account to Citibank. Exhibit 3, tab 47A, is an international wire request for the transfer of \$48,165.34 from the Choice Trade account in Paul Wu's name to Mr. Wu, Sr.'s Citibank account in Taiwan. Corey Wu claims that his father told him to close the Choice Trade account and transfer the funds to Taiwan.
- [366] It was suggested to Corey Wu that he used accounts in his father's name and Paul Wu's name to conduct his stock trading activities in order to avoid paying Canadian income tax on income he earned by stock trading. Counsel for Irene Lee put the proposition to Corey Wu that he had discussed using Paul Wu's account for the purpose of earning income from stock trading with George Lee, and had also told George Lee that because Mr. Wu, Sr. was about to emigrate to Canada in 2005 he would no longer be able to trade in Mr. Wu, Sr.'s name. Corey Wu denied these conversations or that he had discussed his system for stock

trading with George Lee.

- [367] Exhibit 13, which includes a copy of the September 25, 2008 monthly statement for Paul Wu's HSBC bank account, records a transfer into that account from the Penson brokerage of \$74,990.83 on September 16, 2008. It was suggested to Corey Wu that he sent those funds on September 15, 2008 to his brother's bank account. The account statement shows the funds received and then a transfer out in the amount of \$75,000 U.S. on September 17, 2008. The statement also shows the Canadian equivalent value of those funds of \$80,025 on September 17, 2008, and that \$80,000 was transferred from Paul Wu's HSBC account to an account of Corey Wu. Corey Wu acknowledged that he had a power of attorney over the HSBC account in Paul Wu's name. Through the powers of attorney he held, Corey Wu was in a position to control the whole process of moving funds from his brother's account to his own account.

Corey Wu's financial statements

- [368] In his financial statement sworn October 19, 2014, Corey Wu declared that he had no secured or unsecured debts. He claimed that he forgot about the debt he allegedly owes to his father and acknowledged that he had also not included \$145,000 allegedly owed to Paul Wu. The loan agreement he allegedly made with his brother was made in April, 2012, well before he swore his financial statement. He denied the loan from Paul Wu is a fabrication.
- [369] Corey Wu swore another financial statement on January 3, 2015 in which, for the first time, he listed debts, including the alleged loan from Paul Wu in the amount of \$150,000. Mr. Wu attempted to explain that omission by saying that he did not receive the advance of \$105,000 until after he had filed his October 2014 financial statement. However, by October 17, 2014, when he swore that financial statement, Paul had allegedly already advanced him \$45,000 under the loan agreement.
- [370] In the absence of a record of Paul Wu paying any of the loan monies to Corey, and where Corey Wu did not list the loan as a debt until well after the commencement of trial of this action, I am not satisfied, on the balance of probabilities, that Corey Wu is indebted to his brother for any of the amounts purportedly secured by the promissory note.
- [371] Exhibit 3, tab 47A, the Penson international wire request directing Choice Trade to transfer \$48,165.34 to Citibank in Taiwan, was part of the plaintiffs' document production of October 17, 2014. The copy of the ASTK file from the external drive of Corey Wu's home computer which showed a transfer of the identical amount to Citibank was, according to the MNP forensics report, last saved in 2005 to the external hard drive. Corey Wu acknowledged that he completed the wire transfer request. He knew the amount transferred from the Choice Trade account to his father's Citibank account on November 19, 2004. As among all of the members of the Wu and Lee families, Corey Wu was in the best position to record that transaction in the ASTK file.

- [372] Corey Wu was also referred to the bookmarks file found by MNP on the external hard drive. He testified that the bookmarks listed included his own, Irene's and Paul's. The bookmarks include bookmarks for the RGT brokerage, hyperlinks to Success Trade and Choice Trade and a link to the Penson brokerage. Corey Wu maintains that his brother made these bookmarks, or that if he placed the bookmarks, he did so at the request of his father, rather than for his own trading activities. I have already rejected Paul Wu's evidence that he used Corey Wu's computer for short term highly speculative trading on his trips to Vancouver. It is more probable than not that Corey Wu made the various stock trading bookmarks and used the associated programs to conduct trades on his own computer.
- [373] Corey Wu was also shown a file from Irene Lee's electronic document production entitled "Financial Target v. Actual". He denied that this was a document that he and Irene had produced to document their family assets. He also denied that he used this document to set the values of the assets listed in the separation agreement. As I have previously observed, the values of the assets as of 2009 listed in the "Financial Target v. Actual" file in most instances closely correspond to the values of the assets listed in Schedule A to the separation agreement of August 15, 2010.
- [374] When it was suggested to Corey Wu that he engaged in margin trading in 1999 and 2000, he professed not to understand that term. Corey Wu was then shown Exhibit 33, tabs 6 and 7, the account applications to Equity Trading and Choice Trade which he completed to open accounts in Mr. Wu, Sr.'s name in 2004. When he completed the Equity Trading application, Corey Wu identified the account type as "margin"; the risk exposure as "speculative"; and the investment objective as "short term trading". On the Choice Trade application, he selected "speculative, high risk" as the investment objective. Again, although he completed each of the account applications, Corey Wu denied that he used them for trading. He maintained he had opened them at his father's request because Mr. Wu wanted to diversify his investment vehicles. However, Mr. Wu, Sr.'s evidence was that he did not engage in speculative, short term trading, but held stocks for the long term.
- [375] Corey Wu was referred to Exhibit 5, tab 80, page 4, the asset list contained in the July 22, 2010 divorce notice. Corey Wu claims that item 4 of that list includes various assets of his father. Many of those assets are not listed in the separation agreement. Corey Wu's explanation was "We did not want to move the overseas assets because my parents would find out." However, Mr. and Mrs. Wu, Sr. received a copy of the divorce notice when George and Irene Lee delivered it on July 22, 2010. Corey Wu denies that he still manages the assets held in his father's name overseas. On his application to open the UBS account, Corey Wu indicated that he had overseas assets in Taiwan. He denied that he had acquired those assets with the proceeds of stock trades and said that when he provided the information in support of the application for the UBS account, he was doing everything he could to help his father.

[376] I find that the following documentary evidence corroborates Irene Lee's claim that Corey Wu engaged in high volume, speculative stock trading:

- On July 4, 2004, Corey Wu opened a Choice Trade account in his father's name. Although Corey Wu claimed he opened the account for his father's use, Mr. Wu testified that he only traded in long term stock. The Choice Trade account was for speculative, high risk trading. Although the account was in Mr. Wu's name, the contact information was for Corey Wu (Exhibit 33, tab 6).
- On July 19, 2004, Corey Wu opened an Equity Trading account in his father's name for speculative trading. Again, he provided his own e-mail and telephone number for contact information (Exhibit 33, tab 7).
- Corey Wu used the secondary credit card issued in his name on Paul Wu's HSBC credit card account to pay the monthly fees for E Signal (Exhibit 37, tabs 19, 20, 21 and 23-31). Exhibit 15, the screenshot, also shows the name "Corey" under the E Signal dialogue box. Corey Wu paid the charges for the stock trading software through an HSBC account that Paul Wu testified he did not use. It is more likely that Corey Wu paid for E Signal from month to month for his own use, rather than to ensure it was available for his brother to use on his occasional visits to Vancouver.
- Paul Wu gave his brother Powers of Attorney over all of his bank accounts.
- On November 18, 2004, Corey Wu filled out the Penson wire transfer (Exhibit 3, tab 47A), instructing Choice Trade to wire \$48,165.34 to Paul Wu's Citibank account in Taiwan. That transfer, in precisely the same amount, is recorded in the ASTK file. The plaintiffs did not list or produce the Penson wire transfer until October 17, 2014, long after Mr. Yu had secured both the hard drive from Barker Crescent and George Lee's laptop, and well after Irene Lee or George Lee had any opportunity to fabricate or alter the ASTK file. In cross examination, Paul Wu initially denied that he ever gave instructions to wire funds from Penson to his Taiwan Citibank account. When confronted with Exhibit 3, tab 47A, he then recalled that Corey had faxed the Penson wire transfer to him, and said that he printed it out, and then signed and mailed the document. When Mr. Yu pointed out there was no mailing address, Paul Wu asserted he faxed the document. Paul Wu's confused recollection of the Penson wire transfer renders his evidence unreliable. As the author of the Penson wire transfer, Corey Wu was the person best placed to make a contemporaneous record of that transaction in ASTK.
- On August 31, 2004, Corey Wu applied to open an Ameritrade account, purportedly for Paul Wu's use. Again, he provided his own contact information. Corey Wu's evidence that he signed his brother's name to the application so that Paul Wu would be able to identify where he should sign the document is not credible. As counsel for Irene Lee noted, Paul Wu's name is typed on the application form. Corey Wu also supplied the pin and password required to trade on the account. I find that it is most consistent with the probabilities of the situation that Corey Wu completed the Ameritrade application in order to trade on that account in Paul Wu's name (Exhibit 37, tabs 6, 7 and 8).

Collateral Witnesses for Corey Wu

- [377] In order to counter the evidence of George and Irene Lee that Corey regularly spent his mornings at home day trading before reporting for work at CREO in the afternoons, Corey Wu called several former colleagues from CREO.
- [378] Mr. Sinisa Nojkovic, a former employee of CREO and Kodak who worked with Corey Wu at the CREO response call center from July 1996 to early 2001 explained how the employees worked through a six-week rotation of staggered day shifts and worked night shifts at home every seventh week. He confirmed that Corey Wu worked hard and said that he would have noticed if Mr. Wu had been absent, or had not worked a full shift. His evidence was led to support Corey Wu's assertion that the demands of his employment at CREO simply did not permit him to engage in the long hours of day trading alleged by Irene Lee.
- [379] Mr. Plavsic, who worked at CREO from January 1998 to the summer of 2005 confirmed that Corey Wu was employed in the CREO Response Center when Mr. Plavsic was hired and that they were part of the same team. Mr. Plavsic testified that during his first six to nine months on the job Corey Wu was a technical mentor to him and was always available. He testified that Corey Wu would only arrive at work in the early afternoon when he was scheduled for the 2:00 p.m. to 10:00 shift. Mr. Plavsic explained that in an open plan and collaborative working environment he would have noticed if Mr. Wu regularly showed up late for work. The evidence of Mr. Plavsic and the other former employees of CREO called by the claimant contradicted Irene Lee's assertion that her husband routinely worked Mondays to Fridays at home until 1:00 p.m. and only attended at CREO for a few hours each afternoon.
- [380] Ms. Lesley Macdonald was employed at CREO from 1995 to 2007. She first met Corey Wu in 1997 when she was the manager of the Response Center. Ms. Macdonald, who is a disinterested witness, confirmed that while Corey Wu worked in the Response Center he attended regularly for work and team meetings. She said if he had not been present for shifts his absence would have been noted, and that it would not have been possible for him to meet the requirements of this position if he only attended for three or four hours per day. Ms. Macdonald created the customer product specialist position at CREO. She testified that most product specialists worked more than 40 hours per week and could work up to 60 to 80 hours per week depending on travel and customer demands. She could not recall when Corey Wu was appointed as a product specialist, but gave evidence in cross-examination that he may have returned to the response Center in 2006.
- [381] Ms. Macdonald testified that CREO continued to expand its customer base from the time she joined the company through its merger with Kodak in 2005. While employees were able to work some shifts from home after 2000-2001, there was still a requirement for immediate contact with the office and employees remained accountable for the customer calls assigned to them.

[382] I accept that from 1997 to 2001, Corey Wu worked a rotating shift schedule that precluded him from engaging in day trading from 6:30 a.m. through 1:00 p.m. except when he worked for 2:00 p.m. or night shifts. Both Irene Lee and George Lee embellished their testimony concerning the time devoted by Corey Wu to day trading. I also find that when Corey Wu worked as a customer support specialist, there were times when he was obliged to travel. When he worked from home, the time he had available for trading would be limited by the demands on his time to provide customer support to clients of CREO. Nonetheless, he still retained the flexibility to engage in some day trading on shifts that started in the late morning or early afternoons, and to do some day trading when he worked from home.

Collateral Witnesses for Irene Lee

[383] For her part, Irene Lee called several witnesses to testify about their observations and conversations with Corey Wu concerning his trading activities.

[384] Joseph Chan is a flight attendant employed by the same airline as Irene Lee. They have known each other since 1998. Mr. Chan testified that he and his then girlfriend socialized with Corey Wu and Irene Lee from 1998 through 2009. After Corey Wu and Irene Lee married, Mr. Chan and his girlfriend would drop by at Normandy Drive a couple of times a month. When the claimant and respondent lived at Barker Crescent, Mr. Chan continued to meet them there once or twice a month.

[385] Mr. Chan testified that the first time he discussed stock trading with Corey Wu was shortly after the move to Barker Crescent. When he saw the computer set up there, Mr. Chan inquired whether Corey was day trading. According to Mr. Chan, Corey Wu told him that day trading was one of his new ventures.

[386] Mr. Chan said he had several conversations with Corey Wu about trading stock. Corey Wu said he was trading in penny stocks and explained how Mr. Chan could trade online from home. Mr. Chan testified he usually dropped by at Barker Crescent before noon and that Corey Wu would show him how he traded, and would say that while Mr. Chan waited, he would earn enough to pay for their lunch. Mr. Chan also gave evidence that Corey Wu told him he liked to finish trading by 1:00 p.m. so he could return to work at CREO. He allegedly told Mr. Chan he was able to day trade and work at CREO because his company was flexible. Mr. Chan testified that Corey Wu told him about setting up offshore bank accounts to avoid taxation by the Canadian government. He said Corey Wu gave him advice about day trading, told him not to be greedy and to make enough to cover his commissions. Mr. Chan thought his last conversation with Corey Wu about stock trading was in 2009. He said that as time passed Corey Wu came out for lunch less frequently and that he was "getting more into trading".

- [387] In cross-examination, Mr. Chan said that he never observed Corey trading at Normandy Drive. He testified that he recalled seeing one computer monitor at Normandy Drive and later added that he recalled that Corey Wu had a few laptops there. In cross-examination he reiterated his testimony in chief that he watched Corey trading at Barker Crescent several times and watched him while he earned enough money to cover the cost of lunch.
- [388] I did not find Mr. Chan to be an entirely reliable witness. My impression was that he was telling a story he had rehearsed and, as a friend of Ms. Lee, was endeavouring to assist her to the extent that he could.
- [389] Melissa Kan is also a friend of Ms. Lee. They both have children of a similar age. She testified that in 2005 and 2006 she would drop by Barker Crescent either at 10:00 a.m. or around 1:00 to 2:00 p.m. after lunch about twice a month.
- [390] Ms. Kan gave evidence that when she visited, Corey Wu was always in his home office. She testified that on one occasion when Corey Wu came out of his office, he told her that he had made \$3,000. When she asked how he had done that, Corey Wu told her that he was stock trading. On another occasion Corey Wu showed her the computer set up in his home office. She recalled there were four monitors and that Corey Wu told her that he did his stock trading there.
- [391] Although Corey Wu denied that he engaged in day trading, he testified that he did have discussions about day trading with the collateral witnesses called by Irene Lee. He testified that he and Irene had talked about living in the large home at Barker Crescent and driving an expensive Porsche SUV. Corey Wu asserted this discussion took place with Irene right after the purchase of Barker Crescent, when he "felt a little bit uneasy" about having a lifestyle, supported by his father, that exceeded his and Irene's means. According to Corey Wu, they discussed the need to come up with an explanation for their apparent wealth. In order to do so, Corey said he bragged to Irene Lee's friends about making lots of money by day trading.
- [392] That evidence is less than convincing. If his father financed the purchase of Barker Crescent, then without resorting to deception, Corey could have explained that his father had bought Barker Crescent as a home for the whole family. Further, Corey Wu was not reticent about using funds he held for his father to purchase his first vehicle, and to pay the expenses he incurred when he moved from Texas to British Columbia.
- [393] Robert Lepsoe is an investment professional based in Hong Kong with 19 years' experience as an investment banker and, more recently, as a fund manager. He studied with Irene Lee at UBC in 1993-1994. After Corey Wu and Irene Lee married in 1999, Mr. Lepsoe and his wife socialized with the claimant and respondent. Mr. Lepsoe returned twice a year to Vancouver from Hong Kong and would see the claimant and respondent at Christmas and during the summer.

- [394] Mr. Lepsoe recalled that his first conversation with Corey Wu about stock trading occurred in the summer of 2005 at Barker Crescent. He said Corey Wu had a dedicated trading room with three or four monitors. Mr. Lepsoe described Corey Wu's home office as a conventional trader's work station. Corey Wu explained his intra-day trading, where he would trade large volumes of one or two stocks and close out his positions by the end of each day. According to Mr. Lepsoe, Corey Wu told him that he got up very early each morning for the east coast markets and then went to work at CREO around noon. Mr. Lepsoe also testified Corey Wu told him about using off-shore brokerages and moving assets off shore. He discussed needing to upgrade to high speed internet connections in order to support his trading activity. Mr. Lepsoe said Corey Wu described a method of trading known in the industry as "scalping".
- [395] Mr. Lepsoe recalled a second and similar conversation with Corey Wu about trading at Christmas in 2006.
- [396] Mr. Lepsoe, who is well versed in the world of investing and stock trading, thought Corey Wu knew what he was talking about. He said that Corey Wu liked to talk about his trading, was passionate about it and wanted Mr. Lepsoe to see his trading room. He described the nature of his discussions with Corey Wu about trading as "fairly matter of fact". Corey Wu did not talk about the amounts he made through trading. Contrary to Corey Wu's assertion that he may have bragged to Mr. Lepsoe about trading when under the influence of alcohol, Mr. Lepsoe testified that no alcohol was consumed on either of the occasions when Corey Wu discussed his trading activities.
- [397] In cross-examination, Mr. Lepsoe acknowledged that 2009 was generally a poor year for the stock markets. However, he disagreed that no money could be made in a falling market. Mr. Lepsoe explained negative prices adversely affect buy and hold trades in a down market. However, intra-day traders who rely on market fluctuation and close out their positions before the end of the day are less impacted by market volatility. He gave evidence that "scalpers" can make money in a good or bad market because they do not risk their capital. He said that scalpers can make money when there is liquidity in the market and described this technique as a market neutral trading style.
- [398] Mr. Lepsoe gave a forthright account of his conversations with Corey Wu, was not argumentative in cross-examination, and readily conceded that he had not observed Corey Wu trading.
- [399] Corey Wu's assertion that he simply related to Mr. Lepsoe what he had read about stock trading is not convincing. Mr. Lepsoe knows the industry well and was impressed by what Corey Wu told him about his trading activities, which was consistent with his own knowledge of intra-day, high-volume trading. He recognized that Corey Wu's home office was set up as a typical stock trader's work station. Mr. Lepsoe's evidence supports a finding that Corey Wu was engaged in high-volume short-term stock trading in 2005 and 2006.

[400] Finally, David Lee, the husband of one of Irene Lee's cousins, gave evidence that on a visit to Normandy Drive, Corey Wu told him about high-volume stock trading through an internet trading platform, RGT.com, and showed him a spread sheet on his computer. Mr. Lee recalled his conversation with Corey Wu taking place upstairs in a bedroom at Normandy Drive. Mr. Lee's evidence about the conversation occurring in an upstairs bedroom at Normandy Drive provides some corroboration for Irene Lee's evidence that when Corey Wu started trading, he did so using the computer in their bedroom before he set up a multi-screen system downstairs.

Evidence of George Lee

- [401] Mr. Lee is now 67 years old. He was born in China and educated in Hong Kong.
- [402] Mr. Lee joined the Hong Kong police force in 1967 as a probationary inspector. By 1978, he had been promoted to the position of Chief Inspector which he held until he left the force in 1993. While serving on the police force, he also pursued a variety of successful business ventures involving the importing of furniture and leather from Italy and the export of products from China to Europe. In 1988, Mr. Lee and his family immigrated to Canada. He qualified as a passive investor migrant, which required him to demonstrate that he had the equivalent of \$500,000 Canadian dollars in assets and \$250,000 ready for investment in Canada. While Mr. Lee's family remained in Canada, he returned to Hong Kong until his retirement from the police force.
- [403] Mr. Lee participated in a syndicate of 11 investors who purchased land in Edmonton and developed a neighbourhood mall, the Heritage Plaza. After he returned to Canada in 1992, he qualified as a realtor and practised for a year before deciding he did not like that work. With the other investors in his syndicate, he built and sold some homes. Mr. Lee also worked as a consultant to two large Hong Kong jewellery firms for some time after he came to Canada.
- [404] Mr. Lee testified that in 1996 or 1997 he was audited by the Canada Revenue Agency and was required to pay \$20,000 in unpaid GST related to a home construction project that he and one of his business associates had undertaken. Mr. Lee successfully appealed that decision in December, 2001. As a result, he was not required to pay any amount to CRA for unpaid tax. According to Mr. Lee, his experience with the CRA audit shaped some of the advice he gave to his son-in-law.
- [405] Mr. Lee testified that he first met Corey Wu in September of 1999 when Corey moved into the Normandy Drive residence with Irene Lee.
- [406] Mr. Lee testified that in 1999 and 2000 he spent approximately two-thirds of the year in Hong Kong and one-third in Canada. In 2000, Mr. Lee returned to the Normandy Drive residence from Hong Kong in November to prepare for the tax appeal. Mr. Lee said that he had discussions with Corey Wu about his tax appeal and advised Corey to make sure that he stayed away from CRA. According to Mr. Lee, at that time Corey Wu was trading in stocks.

Mr. Lee said that he was with Corey in the mornings when he was trading in the home office he had established at Normandy Drive. Mr. Lee says that when he warned Corey not to get caught by Revenue Canada, his response was that Mr. Lee should not worry – that was already looked after, and that Corey was using his father's name to handle the trading.

- [407] Mr. Lee testified that Corey told him in November of 2001 about his trading method, which involved choosing the right stock with lots of turnover, and with a sufficient spread between the buy and sell prices to make a small profit per share on a large volume of transactions. According to Mr. Lee, Corey Wu also explained that the objective was not tie up capital in shares, to buy and sell within minutes, and to not hold any shares at the end of the day. Corey Wu also talked about trading commissions being high in Canada and using U.S. brokerages which charged less commission. Mr. Lee also said that Corey told him that he used his father's name to open his trading account and wanted his father to hold his money.

Mr. Lee's Evidence re ASTK File

- [408] George Lee testified that Corey Wu told him about the ASTK file sometime around 2002 or 2003. Mr. Lee claims that Corey told him that he kept his records on the ASTK file and that he stored that file remotely, using Yahoo Briefcase. According to Mr. Lee, Corey Wu gave him the password so that he could see the ASTK file at any time. Mr. Lee claimed that Corey Wu wanted him to be able to see what he was doing so that when they talked about it "we would know what we are talking about".
- [409] Mr. Lee testified that he was interested in the structure of the file and how to link the charts with the data. Mr. Lee claims that from time to time Corey Wu demonstrated how the ASTK file worked.
- [410] Mr. Lee said his pattern of spending two-thirds of the year in Hong Kong and one third of the year in Vancouver continued from 2002 through 2005. When Mr. Lee was at the Normandy Drive residence during that time and Corey was working for CREO, Mr. Lee claimed that Corey would start trading at 6:30 a.m. and would stay in the den until the stock market closed around noon. After the stock market closed, he would nap for 40 minutes to an hour and then go to CREO, which was only a three to four minute drive from the Normandy Drive residence.
- [411] Mr. Lee claimed that he did not access ASTK after 2005. He said that he knew how it worked and had no more interest, and thought that he had opened it from time to time from 2003 to 2005.
- [412] Mr. Lee described the computer setup at the Normandy Drive home as including at least three to four monitors. He said Corey required a minimum of two internet service providers so as to avoid service interruptions.

- [413] Mr. Lee testified that Corey gave him an Acer computer with a smashed screen. Mr. Lee said he removed the screen and used the computer. This was the laptop examined by TCS at the request of counsel for Corey Wu.
- [414] Mr. Lee also testified that Corey would ask him for advice about investments and property development, and that Mr. Lee would provide Corey Wu with examples of projects he should look at. He claimed this occurred between 2008 and 2009. According to Mr. Lee, on one occasion Corey Wu told him that he was worried about having \$1 million in Taiwan and that it was too dangerous to trust his brother with those funds.
- [415] Mr. Lee said that he and Corey Wu would discuss how to put the money somewhere else that would be safer than Taiwan.
- [416] Mr. Lee claims that he explained the Heritage Plaza investment to Corey Wu to show him what a genuine investment looks like, how it works, and how to look for opportunity to take over "genuine investments".
- [417] When Mr. Lee was shown Exhibit 25, tab 8, his report about Heritage Plaza dated September 9, 2009, he claimed that portions of the document had been forged by someone else.
- [418] Mr. Lee was also referred to Exhibit 28, an e-mail chain from Mr. Lee to Corey Wu and Irene Lee dated January 27, 2005. He admitted that he wrote the portion of the e-mail at the bottom of page 1, which is addressed to business associates and concerns an arrangement for the supply of metal clamps for a construction project. However, Mr. Lee denies he wrote the portion of this exhibit that provides advice on how to manipulate data and provide information to business associates that is "noble sounding but insincere in details".
- [419] In his direct examination, Mr. Lee said he obtained a copy of the ASTK file when Corey Wu downloaded it to the Acer laptop in the kitchen of the Normandy Drive residence before a Chinese New Year dinner party in late January 2010. According to Mr. Lee, Corey Wu told him that he had made a profit of over \$1 million from his trading activities in 2009. Mr. Lee says that Corey Wu downloaded both the ASTK file and the Financial Target versus Actual File. Mr. Lee testified that after dinner he went through both files and stored them in a folder on the same computer. Mr. Lee says that he reviewed the Financial Target versus Actual File and noted that it recorded total assets held by Corey and Irene of approximately \$4.3 million. Mr. Lee maintained that Corey had shown him this file before and that Corey liked Mr. Lee to know the value of his assets so that Mr. Lee could give him appropriate advice on investments.
- [420] However, there is no evidence Corey Wu ever acted on any investment advice he received from Mr. Lee.

[421] In his direct examination, Mr. Lee was asked about the assistance he provided to Mr. and Mrs. Wu, Sr. concerning their immigration to Canada. Mr. Lee testified that Mr. Wu approached him for advice about how to complete his list of assets. According to Mr. Lee, Mr. Wu listed assets with a total value of about \$600,000 Canadian. Mr. Lee says he advised Mr. Wu to list his assets in two categories:

- (a) property he was bringing with him to Canada; and
- (b) property he was bringing in the next year.

Mr. Lee testified that the correspondence he received from Mr. Wu was in Chinese. He denied creating any asset lists for Mr. Wu and also denied providing any advice to Mr. Wu about holding accounts offshore in his sons' names.

[422] Mr. Lee denies that he received the e-mail at Exhibit 5, tab 93, dated April 20, 2005, which included a list of the total assets from Mr. and Mrs. Wu, Sr. That email is addressed to both Corey Wu and George Lee. Mr. Lee claimed never to have seen that list before. His evidence on that point is contradicted by Corey Wu who testified that he and Mr. Lee both assisted in the preparation of the list of the Wu Srs.' assets.

[423] In 2005, George Lee provided advice to Mr. Wu, Sr. about immigration to Canada, which included advice on how Mr. Wu could move his money to Canada without running afoul of the Canada Revenue Agency, how to avoid tax, and how to conceal assets.

[424] Mr. Wu identified Exhibit 5 tab 75 as an e-mail he received from George Lee in March or April of 2005 after he asked Mr. Lee for assistance in completing his immigration application. The author of the email, apparently George Lee, suggests that in the past they were both involved in activities that were best not disclosed, and provides advice to Mr. Wu about how to make less than full disclosure of his assets. Tab 77 contains additional e-mails purportedly from Mr. Lee to Mr. Wu in April 2005 providing advice about how to remit money to Canada and how to bring assets into Canada without having them audited by Revenue Canada.

[425] Mr. Lee was shown Exhibit 25, tab 2, which purports to be an e-mail from Mr. Lee to Mr. Wu dated March 30, 2005, also providing advice about concealing assets. Mr. Lee denied that he authored the document. George Lee also claimed that various other e-mails sent or copied to Mr. Wu in which he is identified as the sender were either not sent by him, or were altered by someone else.

[426] Mr. Lee testified that in 2004, Corey Wu told him about his brother Paul trading that year. According to Mr. Lee, after 2004, Corey Wu told him about how he started trading in Paul Wu's name, and explained how he had added columns to the ASTK spreadsheet to record funds that he moved into and out of Paul Wu's Citibank account in Taiwan.

[427] Mr. Lee denies that he ever entered any data in the ASTK spreadsheet or that he changed any figures in the ASTK file that Corey Wu allegedly downloaded at the Normandy Drive property in late January 2010.

Cross-examination of Mr. Lee by Ms. Perry

[428] Mr. Lee confirmed his evidence in direct that from 2002 to 2005 Corey Wu traded in the mornings from 6:30 a.m. to 1:00 p.m. He agreed that Corey Wu was employed at CREO during those years. Mr. Lee said he was in Vancouver about one-third of the time from 2002 through 2005. When asked whether Corey Wu worked shifts at CREO, Mr. Lee's response was, "I don't know." He thought Corey Wu could work any hours he liked. When asked about the rotating shift schedule at CREO, Mr. Lee's response was, again, "I don't know."

[429] When asked whether he could agree that at least on some mornings Corey worked from 6:30 a.m. to 1:00 p.m. at the CREO office between 2002 and 2005, Mr. Lee responded that he could not say and that sometimes he was away from Vancouver during those years.

[430] Mr. Lee's assertion that Corey Wu generally engaged in day trading from 6:30 a.m. to 1:00 p.m. at home between 2002 and 2005 is irreconcilable with the evidence of the former CREO employees regarding both shift schedules and the demands of the positions held by Corey Wu. On this point, I accept the evidence of Corey Wu's collateral witnesses in preference to the testimony of Mr. Lee.

[431] Mr. Lee asserted that Corey had sufficient cash in June 2005 to purchase the Barker Crescent property. The purchase price for Barker Crescent was \$727,000. Line 988, Column AE of the ASTK datasheet purports to show that Corey Wu held \$542,000 U.S. in cash on July 22, 2005. Allowing for the exchange rate of \$1.26, there was still a gap between Corey Wu's cash holdings and the purchase price.

[432] Mr. Lee then suggested that the \$542,000 recorded in ASTK represented ready cash and did not include the amounts that Corey Wu had on deposit with the three United States brokerages he was then trading through. When it was put to him that his evidence on this point was a complete fabrication, Mr. Lee responded that he was repeating what Corey Wu had explained to him.

[433] Mr. Lee denied that he created the ASTK or that he used documents he found at Barker Crescent to create the information recorded in ASTK. Mr. Lee asserted that the ASTK data was all in the bank statements.

[434] Mr. Lee was referred to the transcript of his examination for discovery of May 27, 2013 at p. 161, questions 966 to 967 where he referred to the bank statements of Mr. and Mrs. Wu. In cross-examination, he denied that he had any Taiwan bank statements in his possession. He was then asked how he was able to give evidence on discovery that the bank statements of the Taiwan accounts demonstrated that Mr. and Mrs. Wu only had small amounts of funds. Mr. Lee said that he looked at the passbooks of the Taiwan bank accounts when Mr.

Yu asked for his assistance in translating those documents after they were produced by the plaintiffs.

- [435] Mr. Lee did have the opportunity examine the passbooks for the Taiwan accounts before his examination for discovery. Further, as I have previously noted, Corey Wu testified that his parents' Taiwan bank statements were not kept at Normandy Drive or Barker Crescent.
- [436] Questions 902 to 904 and 917 to 919 from his examination for discovery, which concern communications between Mr. Lee and Mr. Wu about bringing assets into Canada were put to Mr. Lee, as were questions 925 to 929. Mr. Lee acknowledged he gave the answers and they were true. On his discovery, he agreed that he had authored e-mails that he denied sending in his direct evidence at trial. Mr. Lee's explanation was that he had agreed in discovery that the e-mails were his but said that his attitude at the time was "wrong" and that he had just said "yes" because he did not think there was a case against him.
- [437] Mr. Lee was still a defendant by counterclaim at the time of his examination for discovery. He is intelligent and must have understood the importance of answering questions on discovery truthfully and carefully. His evidence that he did not author the e-mails is simply not credible.
- [438] Mr. Lee was referred to p. 3, paragraph 5 of the English translation of the divorce notice (Exhibit 5, tab 80). There, he stated "Revenue Canada may estimate income - the current situation is unlikely to be accepted as an error could lead to imprisonment." Mr. Lee denied that he was threatening Mr. and Mrs. Wu and claims that he was simply giving advice based on his own experience with the Canada Revenue Agency. In my view, Mr. Lee was clearly trying to persuade Mr. and Mrs. Wu, Sr., and Corey Wu that if Irene's terms were not accepted their financial affairs could be made public through the litigation process, with potentially harmful consequences. In short, Mr. Lee was attempting induce the Wu family to accept the terms of settlement he proposed on behalf of Irene.
- [439] Mr. Lee was referred to documents 79 and 31 from Exhibit 41, the list of his document production in this litigation. Document 31 is Mr. Lee's explanation of how Corey Wu traded based on transactions that allegedly occurred on March 3, 2009. The document shows 337 trades in large volumes of shares at low margins, resulting in a profit of \$609.04 at the end of the day. Document 79 is also a document created Mr. Lee as an explanation of Corey Wu's trading activity on March 3, 2009. Mr. Lee testified that he extracted the trading records from a computer at Barker Crescent. He agreed that computer had not been produced and that it was neither the external hard drive nor the damaged laptop that were produced for forensic examination. Mr. Lee testified that the computer in question was still in the living room at the Barker Crescent property.
- [440] Without production and forensic examination of the computer from which Mr. Lee says he extracted the records in question, I give no weight to these documents.

Cross-examination by Mr. Rotstein

[441] Mr. Lee testified that since he immigrated to Canada he has made less than \$100,000 of income in any year. He agreed that he had no experience in running a large business but claimed Corey Wu, who was allegedly making an income much higher than Mr. Lee's from stock trading, could benefit from his business advice.

[442] In cross-examination, Mr. Lee said that he did not actually observe Corey Wu downloading the ASTK file at Normandy Drive, and did not see whether he used a disk or USB. When asked why he had saved the ASTK file, Mr. Lee said that "It cost nothing and may be useful, so I saved it." Counsel for the plaintiffs suggested to Mr. Lee that he had located the ASTK file Paul Wu had brought with him from Taiwan, had saved it to his own computer, and had then altered it. Mr. Lee denied doing so. On cross-examination Mr. Lee denied that in 2011 he had tried to access the ASTK file through Yahoo! Briefcase.

[443] Questions and answers 630 to 632 from his examination for discovery were then put to him:

630 Q Now, when you say that you couldn't access the -- you said you'd last tried to access the Yahoo! Briefcase in 2011.

A After I know that there is a civil claim, there is a claim against.

631 Q You tried.

A I type in the password.

632 Q Why didn't you get into it?

A I type in password, I can't get into it. That's it.

[444] Mr. Lee, when confronted with this evidence, said that he had made a mistake. He asserted that he had not tried to access Yahoo! Briefcase, but had tried to access the Internet. He agreed that his examination for discovery evidence on this point was false. When counsel put to him the proposition that he had made up his evidence about Yahoo! Briefcase, he denied doing so and said he was misled by the question. In my view, the questions put to Mr. Lee concerning Yahoo! Briefcase were clear and fairly stated.

[445] Mr. Lee was asked about his evidence on direct that he advised Corey Wu to make a backup offer in cash for the Barker Crescent property. In cross-examination, he denied that Corey Wu responded by saying "I have to get the money from my father." Mr. Lee then expanded on the evidence he gave in direct examination saying that Corey told him that he had placed funds in his father's account and that he controlled that account. Mr. Lee also testified that Corey had explained to him that his father liked to take Corey's money and place it in term deposits in order to earn a little more interest. Mr. Lee agreed that he was giving evidence about a conversation that taken place in 2005. He denied making up the conversation.

- [446] The more probable version of that conversation as put to Mr. Lee by cross-examining counsel, is that Corey Wu informed him that he would have to check with his father to see if the money was available to make a cash offer.

Mr. Wu's Rebuttal Evidence

- [447] As we have seen, George Lee denied that he had sent or received certain e-mails concerning assets held by Mr. and Mrs. Wu when they immigrated to Canada and asserted that other e-mails he had authored had been altered. In rebuttal, Mr. Wu produced both electronic and paper documents from the Yahoo website where he kept e-mails from George Lee, many of which have been forwarded to him by Corey Wu at George Lee's request. Paper copies of the documents produced by Mr. Wu from the Yahoo server for his e-mail account are contained in Exhibit 49. The documents comprising Exhibit 49, found at tabs 1 through 12 have the same content as many of the documents that Mr. Lee either denied he wrote or received, or claimed were altered.
- [448] Exhibit 49, tabs 1, 2 and 3, contain Mr. Lee's advice to Mr. and Mrs. Wu about what assets they should list and how they may conceal assets. Exhibit 49, tab 3, an e-mail sent by George Lee on April 11, 2005 to Mr. Wu and Corey Wu provides specific advice about listing the value of a partnership investment held by Mr. and Mrs. Wu, including the value of that asset. This document corresponds to Exhibit 25, tab 4, a document from Corey Wu's document production that was put to Mr. Lee during his cross-examination. George Lee denied he wrote portions of that document, including the part of paragraph two setting out values for the partnership investment. Exhibit 49, tab 5 is a copy of the e-mail from George Lee forwarded to Mr. Wu by Corey Wu and received by Mr. Wu on April 11, 2005. I find that Mr. George Lee authored the full text of the e-mail of April 11, 2005 providing immigration advice to Mr. and Mrs. Wu.
- [449] I also find that by April 2005 George Lee was well-informed about the assets claimed by Mr. and Mrs. Wu as a result of his participation in drafting the list of those assets. For example, on April 16, 2005, Corey sent a copy of the asset list to George and Irene Lee and requested Mr. Lee's advice concerning his parents' communications with immigration officers. Mr. and Mrs. Wu listed assets totaling over \$6 million. George Lee takes a keen interest in wealth and how it may be accumulated. Although both George Lee and Irene Lee denied they received the e-mail containing Mr. and Mrs. Wu's asset list, I find that they were both actively involved in assisting Mr. and Mrs. Wu with their immigration to Canada. On the balance of probabilities, by April 2005, they were both well aware of the wealth claimed by Mr. and Mrs. Wu.

- [450] Exhibit 49, tab 6 contains George Lee's advice of June 7, 2005 concerning "steps to taking over the house" at Barker Crescent and making an unconditional cash offer. George Lee addressed his e-mail to Corey Wu and Irene Lee but requested they send a copy to Mr. Wu. Corey Wu sent a copy of George Lee's "takeover procedure" by e-mail to his father on the same day.
- [451] Exhibit 49, tabs 7 and 9 concern a proposal, purportedly authored by George Lee, to acquire control of an investment in Edmonton commercial property. The document setting out the proposal is attached to an e-mail from George Lee to Corey Wu dated September 19, 2009, which Corey Wu forwarded to Mr. Wu. George Lee claims the attachment is a forgery. However, that attachment was included in the e-mail that Corey Wu forwarded to his father the following day. In the text of the attachment, the author asked Corey Wu to consider the investment opportunity with Irene and Mr. Wu. Again, I find George Lee was aware of Mr. Wu's apparent wealth and sought to attract Mr. Wu's assistance in financing his takeover proposal.
- [452] Exhibit 49, tab 11 contains copies of three of four e-mails addressed from George Lee to Mr. and Mrs. Wu in which George Lee provides advice to Mr. Wu about his assets. These documents correspond to documents contained in Exhibit 25, tab 70, on which George Lee was cross-examined. One of the e-mails is dated April 4, 2005. Paragraphs 5, 6 and 7 offer advice about structuring corporate investments to limit financial disclosure. George Lee asserted those paragraphs were forgeries. However, the e-mails at Exhibit 49, tab 11 were produced from the server where they were received and stored. I find that George Lee wrote the complete text of the April 4, 2005 e-mail and did so in the course of providing Mr. Wu with advice concerning his assets, which Mr. Lee understood to be substantial.
- [453] Exhibit 49, tab 11 contains another e-mail sent at 10:05 p.m. on April 4, 2005 by which Mr. Lee provided further advice to Mr. and Mrs. Wu concerning their assets, and immigration to Canada. George Lee's advice included:
7. After arranging the companies, we shall then list out the detailed company data, business ranges, share distribution, et cetera. The listed details shall be decent and explainable to the extent that everyone involved, including yourself, are convinced that they are real and believable. (You can just draft an outline, and then we will study how to fill in the details. I am experienced in writing fictitious stories as if they are real. After so many years working in the police department, making up stuff like it's real is not that difficult.)
 8. Each asset item, you shall fill in the value in local currency, followed by adding the exchange rate against CAD. To make the numbers look real, avoid using round numbers.
- [454] I interject here to note that there is no evidence showing that Mr. and Mrs. Wu chose to follow Mr. Lee's advice.

- [455] The final version of the asset list, listing assets valued at \$6,218,173.41 is found at Exhibit 49, tab 12, attached to an e-mail dated April 11, 2005 sent from Mr. Wu to Corey Wu and George Lee. I have previously found that Mr. Lee both participated in the preparation of the asset list and volunteered advice about how Mr. and Mrs. Wu should manage their assets for immigration purposes. I find Mr. Lee's evidence that he did not receive the final version of the asset list is unbelievable.
- [456] I have found much of George Lee's evidence to lack credibility. Unfortunately, Mr. Lee was often prepared to say whatever he thought would serve his interests, or those of Irene, rather than to provide a candid and forthright account of his role in the events giving rise to this litigation.

Evidence of Irene Lee

- [457] From early 2002 until mid-2006, Irene Lee was at home on unpaid pregnancy, maternity and nursing leaves from her employment as a flight attendant. During these years, Corey Wu was the sole income earner. Particularly while she was at home full-time, Irene was able to observe how, and for what purpose, her husband used his home office.
- [458] In her financial statement of October 27, 2014, Irene Lee swore to a Guideline income of \$59,081.56. Ms. Lee's employment income as declared in her T1 General Income Tax returns for the years 2010 through 2013 was:

2010

\$48,127

2011

\$50,556

2012

\$47,402

2013

\$48,945

- [459] For much of 2014, Ms. Lee was off work for medical reasons. She estimated her total income for 2014 in the amount of \$30,000. Ms. Lee was cleared to return to work as of October 2014.
- [460] When the parties married on November 8, 1999, Corey Wu moved out of the Southoaks condominium and into Ms. Lee's parents' home on Normandy Drive. The parties rented out the Southoaks property, collected monthly rent of \$1,100 in cash, which neither declared on their income tax returns.

- [461] Ms. Lee testified that before the marriage she had an account at TD Bank and that she received her employment income by direct deposit to an account with President's Choice online bank (PC Bank). Corey Wu banked with CIBC. After the marriage, the parties converted each of their own accounts to joint accounts.
- [462] Ms. Lee testified that around 2000, Corey Wu developed an interest in stocks and stock trading.
- [463] In her direct examination, Irene Lee testified that by 2002, Corey Wu was engaged in high-volume stock trading that he started in the early morning whenever he could. She said the 6:30 a.m. opening time for stock trading was crucial and that her husband had to be on screen to catch the moment when prices began to move. According to Ms. Lee, Corey Wu started high-volume margins trading in late 2002 or early 2003, while he was still working hard at CREO. She said that, later by 2008 and 2009, Corey Wu had more flexibility at work and really did not care if he kept his position at CREO.
- [464] Ms. Lee claims Corey told her in 2000 or late 2001 when he first started spending more time trading that he had opened United States accounts in his father's name, and that he had powers of attorney over accounts in his father's name with CIBC and HSBC in Vancouver. Irene Lee testified that Corey started trading at Normandy Drive on a smaller scale than his later trading at Barker Crescent. According to Ms. Lee, when Paul Wu visited the couple in 2009, it was Corey who taught Paul how to trade. Irene Lee testified that Corey talked about how much he made every day and that at the end of each day he entered the closing numbers in the ASTK file. She said the Financial Target versus Actual file listed all of the assets she and Corey Wu owned, and that they reviewed and updated it on a monthly basis.
- [465] Irene Lee testified that Corey told her that he was trading in his father's name around 2000 or 2001, that he had opened brokerage accounts in his father's name and an account in Taiwan where the brokerages could send money, and that he could avoid tax by using foreign accounts. She said later there was a change to trading using Paul Wu's name. According to Irene Lee, Corey told her that in 2005, at the time his parents were planning to immigrate to Canada, he was opening accounts in his brother's name, including offshore bank accounts to enable him to move money back into Canada.
- [466] Ms. Lee also testified Corey maintained multiple brokerage accounts because at times one brokerage might shut him down for too much trading activity. She claimed that Corey was shut down multiple times but could not pinpoint the actual times.
- [467] I find that Irene Lee's evidence that brokerages shut down or prohibited Corey Wu from trading from time to time is not believable. Ms. Lee has produced no documentary evidence of a stock exchange, brokerage, or any regulatory body prohibiting Corey Wu from trading.

- [468] Ms. Lee claimed that from 1999 to 2005 Corey Wu devoted at least half of his time to day trading and spent 20 to 30% of his time working from home for CREO. She asserts he was able to engage in day trading while he was working for CREO.
- [469] Later in her direct examination, Irene Lee gave a second and more detailed account of Corey Wu's trading activities. She said that in late 2000 Corey Wu told her about a trading method, which she described as "scalping" that he had learned from reading books on stock trading. The objective was to find a low value stock and then buy it in large volumes, track fluctuations in its price, and sell it when it would return a small profit. The same stock might be bought and sold on multiple occasions over the same day. Because U.S. brokerage firms generally charged lower commissions than Canadian firms, Corey Wu opened United States trading accounts. Corey Wu told her that he opened trading accounts in his father's name. He also used accounts in his father's name to hold funds in Taiwan and opened accounts in Canada in his father's name over which he held a power of attorney. According to Irene, during the years she was at home during her pregnancies or caring for the children while they were very young, Corey would be trading at home whenever he was not at work. She claimed that around 2001 or 2002 Corey told her that he had started recording his trades in the ASTK spreadsheet. By the summer of 2005 when the parties moved to Barker Crescent, she claims Corey Wu was trading "full on" pretty well every day from 6:30 a.m. to 1:00 p.m. According to Irene Lee, from 2005 through 2010, Corey traded at home from 6:30 a.m. to 1:00 p.m. almost every day unless he had a very important client meeting to coordinate for CREO.
- [470] The high-volume day trading method, as described by both Irene and George Lee required a high level of concentration over many hours as Corey Wu tracked the performance of a particular stock and made carefully timed decisions about whether to buy or sell. The concentrated attention required for that type of activity is simply not consistent with Corey Wu simultaneously performing services for CREO. Both Corey Wu and his collateral witnesses testified that their work involved lengthy telephone conferences with customers and providing clients with immediate, and at times, lengthy technical support. When customer service requests were referred to CREO employees working from home, they were expected to be available to immediately respond to those requests. Irene Lee's evidence that Corey was able to day trade full time while working shifts at home is not plausible. While I have found Corey Wu was able to conduct some day trading while working shifts at home, his ability to do so was constrained to the extent that he was required to meet the demands of his employment.

Use of Stock Trading Money

- [471] Irene Lee testified she and Corey Wu discussed how to use the money he earned from stock trading. She claims they agreed that they would use credit cards in the names of Paul Wu and Mr. Wu to pay every day expenses. Irene Lee testified that she was a little uncomfortable at first but she got used to it. She appears to have had no qualms about using

credit cards in her father-in-law's name or Paul Wu's name for all of her purchases. As Irene Lee put it, "I would have to impersonate Ta Hsuan Wu and his name". Irene Lee identified the CIBC dividend card in Paul Wu's name, a CIBC dividend platinum card, and an HSBC MasterCard in Paul Wu's name as cards she used on a regular basis to finance her household and personal expenses.

- [472] In her direct examination, Irene Lee was also shown monthly statements for an HSBC Premier MasterCard in the name of Mr. Wu, Sr. Irene Lee testified she used that card and that the credit card statements recorded her spending.
- [473] Ms. Lee was shown the external hard drive examined by MNP. She recognized it as a hard drive from the Barker Crescent property. According to Ms. Lee, the hard drive was attached to a home computer that Corey Wu had left behind, that she ascertained that it contained the ASTK file and some other trading files and at Mr. Yu's request, delivered the hard drive to him in order to preserve its integrity.

Irene Lee - Cross-Examination

- [474] Irene Lee claims that Corey Wu did not want his offshore assets included in the separation agreement because he was concerned about his tax liability. She claims that is why most of the Canadian assets were allocated to her while Corey received the offshore assets not listed in the separation agreement.
- [475] Irene Lee testified the ASTK file was updated daily and that she and Corey Wu sat down approximately every month to discuss the Financial Target versus Actual file. When Ms. Perry suggested to Irene Lee that it made no sense to use the October 20, 2009 Financial Target versus Actual document for the division of family assets in July 2010, she claimed that Corey Wu told her that the value of the family assets was about the same, and that she trusted him. Given her strong sense that Corey had betrayed her through his affair with another woman, it is unlikely that Irene reposed much trust in Corey when they made the separation agreement. However, Irene's desire to end the relationship and settle her financial affairs may have led her to accept the Financial Target versus Actual document as a convenient basis for valuing the assets to be divided by the separation agreement.
- [476] In her affidavit sworn September 29, 2014, Irene Lee swore that Corey Wu begin full-time day trading in late 2000, typically from 6:30 a.m. in the morning until the market closed at 1:00 p.m., and that he then went to his regular employment. In her direct examination, she said Mr. Wu spent about 50% of his time at home doing stock trading. In cross-examination, she testified that her husband would spend the time he did not have to be at CREO doing stock trading. Ms. Lee maintained that Corey Wu traded whenever he had the opportunity to do so when he was not working, and that in later years when CREO offered more flexibility about work hours, he became more involved in trading. Her evidence in cross-examination was tailored to conform to the evidence from Corey Wu's former fellow employees regarding his shift work and work-place attendance.

[477] On her examination for discovery of May 17, 2013 by counsel for the plaintiffs, Irene Lee was asked and answered the following questions:

380 Q All right. Now, I understand that through the years that Corey was with Kodak you said he worked doing trading from morning to about 1:00 p.m., correct?

A Yes.

381 Q And I take it you mean five days a week?

A Yes, except for stat holiday.

382 Q Of course. You also said he had a job at Kodak, correct?

A Yes.

383 Q So didn't he have to do his job at Kodak?

A Not until after he trades, finish trading.

384 Q All right. So he was able to fulfil all of his obligations at Kodak?

A I believe he would have or else he would be fired long time ago. He's been trading since 2009, and he's still employed with Kodak.

385 Q You just said 2009. Did you not mean earlier than that?

A No, until 2009 he still -- because I think he got -- or he --

MR. YU: She said he was still employed until 2009.

A He quit sometime, I forgot when, later on and returned to Taiwan.

[478] In cross-examination at trial, Irene Lee confirmed she gave these answers and maintained that they were true.

[479] She was then shown her affidavit sworn July 31, 2013 in which she swore that Corey began full-time day trading in late 2000, and traded from 6:30 a.m. to 1:00 p.m. and then went to his regular employment.

[480] When cross-examining counsel put to her that at trial she was now saying that her husband traded whenever possible, Irene Lee struggled to reconcile her discrepant answer by saying that he did not really start regular day trading in 2000, and by suggesting that he "really started" in 2002. Irene Lee was unable to provide any satisfactory explanation for this discrepancy in her testimony.

[481] Irene Lee acknowledged she has produced no paper records of any stock trading by Corey Wu, other than documents relating to the purchase and sale of her husband's CREO share options. She agreed that she did not have any paper records of any trading transactions other than some documents relating to the opening of trading accounts.

- [482] In her direct testimony, Irene Lee maintained that she and Corey Wu would talk every day about how much he had made and that he kept a spreadsheet to track his daily gains. She said he tried to sell all of the shares he purchased at the end of each day. She did not know if on occasions when he was left holding shares at the end of the day there would have to be a paper trail. While the ASTK file purports to show the detailed movement of funds realized by trading it does not show any daily reconciliation.
- [483] In cross-examination, Irene Lee was shown Exhibit 26, tab 4, the bank statements for the CIBC joint account * 733. **This was an account that Corey Wu originally held and which became a joint account after the parties married. Irene Lee deposited her salary to the President's Choice bank account. Only Corey Wu's salary was deposited to CIBC account * 733,** from which the parties paid the mortgage on the Barker Crescent property. Irene Lee confirmed that she contributed nothing to that account. From time to time, Irene Lee withdrew funds from the CIBC account and deposited them to the ING account. She described these funds as "extra money" which the parties did not need to pay living expenses.
- [484] When cross-examined by Mr. Rotstein concerning her first financial statement sworn November 23, 2011, Irene Lee acknowledged that she knew the statement had to be complete. When cross-examining counsel pointed out that she omitted to list \$310,000 she held in a Chinese bank account, Irene Lee attempted to explain her failure to disclose this asset by saying that she "just forgot" and was only thinking about what she held in Canada.
- [485] Irene Lee did not swear her second financial statement until almost three years later, on October 27, 2014. She was asked when she discovered that she had forgotten about the funds held in the Bank of Communications in China. She admitted that she had travelled to China on various occasions between November 2011 and October 2014 and that she used funds she held in the Bank of Communications to pay travel expenses. Although she used her bank card each time she travelled to China, Irene Lee claimed she did not think about her earlier financial statement. At the time she swore her second financial statement, Irene Lee held \$380,000 in the Bank of Communications account. Her evidence that she forgot about this asset until she prepared her second financial statement is not credible.
- [486] When cross-examined about the source of funds allegedly used by Corey Wu to open stock trading accounts, Irene Lee claimed the money came from the sale of Corey Wu's CREO stock options. When asked whether she had identified a single transfer from any of Corey Wu's Canadian accounts to show the movement of funds to U.S. brokerage accounts, Irene Lee became evasive and argumentative, and was unable to identify a single transfer.
- [487] Irene Lee claims that Corey Wu earned more than \$1 million from day trading in 2009. Yet at the same time, the parties were renting the basement suite at Barker Crescent, for which they earned gross income of \$1,100 per month. When asked why they were renting out the basement suite when Corey Wu was allegedly making so much money, Ms. Lee's response was, "Why not? I don't mind the extra money." If, as Irene asserts, Corey Wu was generating

an annual income of more than \$1 million from day trading, in addition to his salary from CREO, at first blush it seems improbable that the parties would have any interest in renting out the basement suite. However, Irene Lee's blunt answer has the ring of truth. She and Corey Wu shared a common interest in maximizing their financial positions.

- [488] Irene Lee was cross-examined by Mr. Rotstein concerning payment for the 2010 renovations to the kitchen at Barker Crescent. She claimed that she and Corey Wu paid for the renovations, that the contractor was paid in cash, and that the appliances were purchased by credit card. However, Mr. Wu, Sr. wrote a cheque for \$8,715 for the kitchen cabinets. The invoice and Mr. Wu's cheque are, respectively, Exhibits 4, tab 60 and Exhibit 48.
- [489] Irene Lee testified that although she was willing, at the time the parties made their separation agreement, to accept the division of property reflected in that agreement, later on, in April 2011 she discovered that Corey Wu had undervalued the amount held in the UBS account. She says she found the UBS statement which showed \$400,000 in that account, rather than \$120,000 recorded in the Target Performance versus Actual document as of October 2009. This led her to believe Corey Wu had failed to make full disclosure of his assets.
- [490] Irene Lee's explanation for the separation agreement not listing offshore assets is that it was to the parties benefit not to alert Revenue Canada to funds for which they did not pay taxes.

EXPERT EVIDENCE

- [491] Counsel for Irene Lee retained Mr. Iain Kenny, an expert in computer forensic investigation, to analyze an external hard drive located at the Barker Crescent property. Mr. Kenny was asked to determine if there were any records relating to stock trading stored on the hard drive.
- [492] Mr. Kenny obtained a forensic image of the hard drive, which revealed that the device contained mostly family photos and deleted or overwritten file folders. He identified six files related to stock trading. The first was a Microsoft word document named 'screen shot.doc' containing two screen capture images of a Windows Desktop showing multiple layered windows with stock trading information. There were also four Excel spreadsheets and a file called "Bookmark.htm" containing many internet site bookmarks, including a list of active links to online stock, brokerage, banking and trading websites.
- [493] In his report of July 23, 2014, Mr. Kenny explained that for a computer file time line analysis, time stamps are typically verified using operating systems and BIOS time stamp information. That information is obtained from the computer to which the external hard drive is connected at the time a file is created, modified or deleted. The external hard drive does not record BIOS time.

[494] The forensic analysis also examined metadata, which provide information concerning the date and time a particular file was created, modified and last accessed. As Mr. Kenny explained, Microsoft Office documents contain metadata in two locations. One set of metadata is contained within the document itself and is maintained by the Microsoft Office application. A second set of metadata is created and maintained by the operating system.

[495] At page four of his July 23, 2014 report, Mr. Kenny described how both Microsoft Office programs and computers using a Microsoft operating system contain and store metadata:

Microsoft Office programs maintain some pieces of metadata that cannot be altered by the operating system. The date/time properties for document creation and document modification are included in this group. The information in this field is taken from the operating system's time clock. The creation date/time used was changed in Office 2007. Previously, a document was said to have been 'created' when it was first saved. In Office 2007 and each version since, the creation time is set the moment you open a new document. Office 2007 also saw the creation of a new document extension for documents, in the case of a Microsoft Word document we now see a .docx extension rather than .doc.

As a general statement, a computer using a Microsoft operating system stores system metadata for created, modified and accessed dates and times. The last accessed timestamp is typically updated when the file has been accessed. Last accessed dates and time can be updated by a person opening the document or by an automatic system process such as an antivirus scan or the use of a backup system. This date and time is updated whether or not the document was saved after it was accessed. The modification date and time will only change if the document was saved after it was accessed regardless of whether or not any actual changes were made. We can therefore see different modified and accessed times.

The created date/time on a Windows system will be the date and time the file was first saved in a specific location. If we take a document and copy it to a new system, we would expect the creation date and time to reflect when the copy operation was executed. We often see significant differentiations between an application's creation date and time and the operating system's record. This also leads to scenarios where we find a created date that is later than the last modified and accessed dates.

[496] Mr. Kenny located the screenshot document on the external hard drive in a folder called "photo". The metadata information showed that the screenshot document was created on June 30, 2005. Because the document was located on an external hard drive, Mr. Kenny thought the metadata was consistent with the file being created on June 30, 2005 on another device and then being copied to the external drive on December 10, 2005. The metadata showed that the operating system had been accessed on November 6, 2013; however, Mr. Kenny found no metadata suggesting the file had been altered in any way since its June 30, 2005 creation date.

[497] Because the file contained an image depicting numerous windows on a monitor screen, Mr. Kenny thought that the risk of any modification of the file content was extremely low. Modification would require the use of image editing software. Even with that software, Mr. Kenny thought it would be extremely difficult to modify the image without leaving a detectable record of any modification.

[498] As Mr. Kenny also observed, the screenshot image showed a date of June 30, 2005 which was consistent with the creation date information contained in the file metadata. Also, the particular stock featured in the two images was SIRI, or Sirius Satellite Radio Inc. The SIRI's stock price, as depicted in the screenshot images, was in the \$6 range. Mr. Kenny determined that 2005 was the only year between 1995 and 2013 when SIRI was trading in that range on June 30. Ms. Lee's expert concluded that the file metadata and the times shown on the screen image were all consistent with the creation date of June 30, 2005.

[499] For the four Excel spreadsheets located on the hard drive, Mr. Kenny identified the following metadata information:

1214.xls

Astk.xls

Performance.xls

Quote97.xls

Created

December 14, 2004 at 1:59PM MST

November 18, 2001 at 12:32 AM MST

January 2, 2002 at 6:07 PM MST

January 13, 1998 at 2:04 PM MST

File Accessed

November 16, 2013 at 12:00 AM MST

September 28, 2013 at 12:00 AM MDT

November 6, 2013 at 12:00 AM MST

September 28, 2013 at 12:00 AM MDT

File Created

December 5, 2005 at 5:34 PM MST

December 10, 2005 at 6:03 PM MST

December 10, 2005 at 5:34 PM MST

December 10, 2005 at 6:02 PM MST

File Modified

September 28, 2013 at 2:57 PM MDT

August 17, 2004 at 5:44 AM MDT

January 13, 2005 at 5:39 PM MST

December 1, 2003 at 12:05 PM MST

Last Saved

September 28, 2013 at 2:57 PM MDT

August 16, 2004 at 4:44 PM MDT

January 13, 2006 at 6:39 PM MST

December 1, 2003 at 10:36 AM MST

- [500] Mr. Kenny noted that the 1214.xls document was modified on September 28, 2013, which suggested that some change had been made to that document after the claimant and the respondent separated. Mr. Kenny was not able to determine what changes might have been made.
- [501] The Quote97.xls document was a spreadsheet containing programming designed to perform calculations. However, there was no data in that spreadsheet.
- [502] Based on his analysis of the metadata, Mr. Kenny concluded that ASTK.xls and Performance.xls files appeared to be unaltered and seemed to contain information related to stock market trading activities.
- [503] Counsel for Corey Wu engaged Mr. Nigel Holmes of TCS Forensics Ltd. to perform a computer forensic investigation on behalf of their client. Mr. Holmes prepared an expert report dated October 27, 2014 setting out his analysis of a laptop computer from George Lee's home that had been in the control and custody of Ms. Lee's counsel since 2013. Mr. Holmes also analyzed a mirror image of the external hard drive examined by MNP, and various CD-Rs produced by George Lee and Irene Lee as part of the document production in the family law proceedings.
- [504] Counsel for Corey Wu instructed Mr. Holmes to determine if possible, the existence of ASTK.xls, Performance.xls, 1214.xls and Quote97.xls files within the laptop and external hard drive and the CD-Rs, and to compare the available metadata associated with those documents. Mr. Holmes was also asked to comment on Mr. Kenny's report and to determine if possible, the reliability and origin of the ASTK.xls file as referred to in Mr. Kenny's report and on the laptop computer and CD-Rs produced by Irene Lee.

- [505] Mr. George Lee delivered the laptop to counsel for Irene Lee on May 30, 2013.
- [506] On his examination of the laptop, Mr. Holmes determined Mr. Lee was the registered owner, and that the operating system was installed in the laptop on November 7, 2009. The laptop was last shut down on May 30, 2013. Mr. Holmes determined that the username, or user account, was Lee Kwok Gin (Mr. George Lee) and that Mr. Lee's user account required a password to access the laptop.
- [507] Mr. Holmes also found evidence suggesting that Mr. Lee's laptop was connected to an external hard drive matching the same size and description as the external hard drive analyzed by MNP. However, TCS was not able to identify the exact serial number of the external hard drive that had been connected to Mr. Lee's laptop computer.
- [508] With respect to the external hard drive, Mr. Holmes noted that the 1214.xls spreadsheet had an author name of Corey and was last saved by Irene Lee. The Microsoft Office metadata showed that the document had been created, edited, saved or accessed from an Apple computer. The metadata also indicated total editing time of one minute and 21 seconds. Because the spreadsheet contained 900 rows, Mr. Holmes thought that more editing time would have been required to populate the spreadsheet. He thought it was possible that the content could have been copied from another source and pasted into the 1214.xls spreadsheet.
- [509] Mr. Holmes also determined that the ASTK.xls spreadsheet had an author name of cswu and was last saved by user csw. He thought another computer, with the username of csw had been used to access this file.
- [510] For the Performance.xls spreadsheet, the Microsoft Office metadata had an author name of "desktop user" and was last saved by user "Corey".
- [511] Mr. Holmes determined that the file named ASTK.xls was on the laptop computer but had been either deleted or renamed. The ASTK.xls file's contents could not be retrieved from the laptop. Although Mr. Holmes did not find any versions of the ASTK.xls file on the laptop computer identical to the ASTK.xls file on the external hard drive, he did identify 13 files on the laptop that were very similar to the ASTK.xls file on the external hard drive. His analysis of the metadata led Mr. Holmes to conclude that the ASTK.xls file on the external hard drive was the source document used to create the 13 files found within the laptop he examined.
- [512] Mr. Holmes identified metadata showing that seven of the 13 files were created on the laptop in July and November 2012 and that all 13 files were copied between July 28, 2012 and November 17, 2012.
- [513] With respect to the ASTK.xls file on the external hard drive, Mr. Holmes opined:
1. There were multiple potential authors and multiple persons who had opened and saved the ASTK.xls file.

2. The identified author of the ASTK.xls spreadsheet on the external hard drive is cswu and the "last saved by user" is csw. That finding indicated to Mr. Holmes that the document had been edited on two versions of Microsoft Office, both with different author or registered user information.

3 The file system metadata showed the ASTK.xls file was first created or copied to the external hard drive on December 10, 2005 while the Microsoft Office metadata indicated that the (file created) date was November 17, 2001. That evidence suggested that the ASTK.xls file was created on a different computer.

4. Although the ASTK.xls file created date was November 17, 2001 the hard drive had a manufactured date of June 8, 2005.

[514] Mr. Holmes concluded that neither the ASTK.xls file examined by MNP on the external hard drive nor the versions of the ASTK file examined by TCS on the laptop computer, nor the CD-Rs provided by George Lee and Irene Lee were reliable, and were very likely not original documents.

[515] At page 27 of his report, Mr. Holmes summarized his conclusions:

We see no evidence from within the evidence exhibits that would support Corey Lei Hsuan Wu as the primary author / owner of the astk.xls file between 2002 to 2009 time frame as alleged by Irene Lee and/or George Lee. The majority of the components of the astk file versions, as per the associated Microsoft metadata, have a last saved by author of George Lee. Some components were created in 2001 onward and appear to be authored by "cswu" and "csw". This suggests that the Astk.xls and variations on the theme of "ASTK" are manufactured and/or spoiled by one or more people. The metadata suggests George Lee is the last person to have saved the identified ASTK variations on the theme.

1. We have identified the laptop operating system installation date as 2009, the external hard drive manufacture date as 2005, and the Microsoft Office metadata on the astk.xls create time as 2001. The astk.xls document or some component of it was created in or before 2001.
2. We have identified multiple authors / users within the Microsoft Metadata fields within the astk file variations.
3. We have identified multiple versions and creation dates within the Microsoft Metadata fields associated with the astk.xls file and its multiple versions.
4. We are of the opinion that neither the external hard drive nor the laptop computer is the source device used to create the astk.xls file. We cannot identify the original ASTK file or the original source device first used to create the astk.xls file. If the file or device exists, it has not been produced to TCSF.

[516] Mr. Kenny provided a further report, dated December 11, 2014, in response to the TCS report. With one exception, he agreed with Mr. Holmes' findings respecting the laptop. Mr. Holmes thought that an external hard drive matching the same size and description as the

hard drive analyzed by MNP had been connected to Mr. Lee's laptop. Mr. Kenny confirmed the serial numbers of the hard drives did not match, and that the model of hard drive analyzed by MNP was different from the hard drive that had been connected to Mr. Lee's laptop.

- [517] MNP searched the entire contents of the image of the laptop hard drive they received from TCS to identify any documents or Microsoft artifacts containing the phrases "csw" and "cswu". Their search only identified the 13 variants of the ASTK spreadsheet previously found by TCS on the laptop. MNP found no evidence that author information in the names of csw or cswu existed in any other file or space on the hard drive. Mr. Kenny concluded that there was no evidence to show the laptop was used to edit, create, or modify any other documents containing those author names, or that the operating system was configured to use the words "csw" or "cswu" as an author name.
- [518] Mr. Kenny also commented on the integrity of the spreadsheets on the external hard drive. With respect to the ASTK.xls file, Mr. Kenny noted that file was last accessed on September 28, 2013. The remaining metadata showed no evidence that the file was modified or saved at any time after August 16, 2004, the Microsoft XL date last saved. The Excel metadata showed the file was originally created on November 18, 2001, a date earlier than the file system creation date. Mr. Kenny thought this was likely the result of the original file being copied or moved to the external hard drive. Although the ASTK.xls file found on the external hard drive was not the original file, no modification had occurred since August 16, 2004. In Mr. Kenny's opinion, the ASTK.xls file on the external hard drive is the best evidence available of the content of the original file.
- [519] Mr. Kenny also disagreed with Mr. Holmes' statement that there are multiple potential authors and multiple persons who have opened and saved the ASTK.xls file on the external hard drive. Mr. Holmes thought the metadata clearly identified the author as "cswu" and that the last person to save the file was "csw". This indicated a maximum of two persons. In Mr. Holmes' view, it was also reasonable to assume that the two names were possibly variants of each other.
- [520] In response to Mr. Holmes' comment, at page 26 of his report, that the ASTK.xls file on the external hard drive had been edited on two versions of Microsoft Office, Mr. Kenny thought that although it was possible the file was modified before August 16, 2004 on that computer, that did not affect the integrity of the file on the external drive. There is no evidence of modifications after the file was copied to the external drive. According to the metadata, the file had not been modified since 2004.

Testimony of Mr. Holmes

- [521] In his direct examination, Mr. Holmes gave evidence that the time entries in Microsoft Office programs can be readily altered.

- [522] Mr. Holmes disagreed with Mr. Kenny's opinion that the ASTK file found by MNP on the external hard drive is the best evidence of the original file. He thought that without having the computer to which the hard drive was connected it was not possible to provide an opinion on the reliability of the ASTK.xls file. He explained that it is not possible to tell whether a computer system time has been changed by reference to the hard drive only. The information that would assist in determining whether system time has been changed is not available on the hard drive. According to Mr. Holmes, a person with beginner or intermediate computer skills would be capable of changing a user account or creating a new user account.
- [523] In his direct examination, Mr. Holmes agreed with Mr. Kenny's conclusion that the hard drive that had been connected to Mr. Lee's laptop was not the same hard drive that MNP examined.
- [524] In cross-examination, Mr. Holmes agreed with counsel for Ms. Lee that the original author of the 1214.xls was "Corey" on December 14, 2004. Mr. Holmes also agreed that he had found nothing to suggest that the creation and last saved dates for the ASTK.xls file on the external hard drive were not accurate.
- [525] In cross-examination, Mr. Holmes maintained his view that without the original computer to which the external hard drive was connected, he could not accept the ASTK.xls file on the external hard drive was the best evidence of the original contents of that file. He explained that it was too easy to alter the time data and that without access to the metadata on the source computer one could not rely on the information stored on the hard drive.
- [526] On re-examination, Mr. Holmes explained that while there was no evidence of manipulation, in the sense that none was detected, it did not mean that no manipulation had occurred.

Testimony of Mr. Kenny

- [527] Mr. Kenny found no evidence of spoliation of the files stored on the external hard drive.
- [528] In particular, he found no evidence that the ASTK.xls file had been modified since August 16, 2004. In Mr. Kenny's view, the metadata indicated the integrity of the ASTK.xls file had been maintained since August 16, 2004. That in turn led to his conclusion the ASTK.xls file on the hard drive was the best available evidence of the original file. In the absence of the original source computer, the material located by MNP on the external hard drive was the best evidence available.
- [529] With respect to Mr. Holmes' comments concerning the total editing time for 1214.xls file of one minute 20 seconds, Mr. Kenny opined that the data could be copied and pasted within the time, or the spreadsheet could have been populated through the use of an automated tool.

- [530] In cross-examination by Ms. Perry, Mr. Kenny gave evidence that the screenshot dates are consistent with the share values shown in the images. He also thought it would take a great deal of skill to create the data shown in the spreadsheet images.
- [531] Mr. Kenny also agreed if one could locate and examine the original computer to which the external hard drive was connected, that would provide the best evidence of the contents of the ASTK.xls file, and the other spreadsheets found on the external hard drive.
- [532] In cross-examination by Mr. Rotstein, Mr. Kenny was asked about the metadata indicating that the ASTK file was created on November 17, 2001 while the two earliest entries in the file are dated February 12, 2002 and January 25, 2002. Mr. Kenny was asked why one would create a file and not insert any content. He answered that he did not know the purpose for which the file was originally created. Mr. Kenny speculated that the file may have been created in November 2001 and that data prior to 2004 had been removed and replaced with other data.
- [533] Both experts agree the ASTK.xls file was first created on the external hard drive on December 10, 2005 and that the Microsoft Office metadata indicated the file was first created on November 17, 2001. Because the hard drive was not manufactured until June 8, 2005, the ASTK file was first created on another computer, which has not been produced.
- [534] With respect to the external hard drive, Mr. Kenny and Mr. Holmes both agree that the screenshot file metadata indicate that file was created on June 30, 2005 and copied to the external hard drive on December 10, 2005.
- [535] Both experts also agree that the 1214.xls file has an author name of Corey and was modified on September 28, 2013, after Corey Wu and Irene Lee had separated. The experts have not been able to determine what changes were made when the file was modified. The total editing time was 1 minute 21 seconds. Mr. Holmes thought it was possible that the content was copied from another source and pasted it into the 1214.xls spreadsheet.
- [536] According to Mr. Kenny, the bookmark file which has active links to online stock, broker, banking and trading websites was created on December 10, 2005 and last accessed on November 6, 2013. It was last modified on January 8, 2005.
- [537] The ASTK.xls and Performance.xls files have not been altered since August 17, 2004 and June 13, 2005 respectively. The ASTK file has an author name of cswu and was last saved by csw. The author name for Performance.xls is "desktop user". This file was last saved by "Corey". The Microsoft Office program for this file was registered to CREO. I find that Corey Wu created the Performance.xls file using software registered to his employer.

- [538] With respect to the laptop examined by TCS, Mr. Holmes found there was no evidence that laptop was used to edit, create, or modify any documents containing the author names cswu or csw, or to use those words as an author name. Both experts agree that the username of the laptop is Lee Kwok Gin and requires password access. Lee Kwok Gin is George Lee's Chinese name. Ultimately, both experts agreed that George Lee's laptop had been connected to a different external hard drive than the one examined by MNP.
- [539] Mr. Holmes found that the ASTK file had been on the laptop computer but was either deleted or renamed and cannot be recovered. Mr. Holmes found 13 files on the laptop similar to the ASTK.xls file on the external hard drive. He thought the ASTK.xls file on the hard drive was likely the source document used to create the 13 different files found on the laptop. All of those files were last saved by George Lee.
- [540] Mr. Lee said that he modified the name of the ASTK file downloaded to his computer to "Master", which provides an explanation for the metadata showing him as the last saved author. Mr. Lee also acknowledged that he had adjusted the columns in the ASTK file to print the extracts from the file included in his list of documents. He testified that he did not alter any of the data. Mr. Lee explained that he created the extract from the ASTK file as part of his trial preparation when he was a party to these proceedings. Mr. Lee produced has produced those extracts from his document list. I accept Mr. Lee's testimony on this point as a satisfactory explanation for the presence on his laptop of the 13 files similar to ASTK founded by Mr. Holmes on his forensic examination of that computer.

CONCLUSIONS

- [541] The parties, Paul Wu and George Lee were all less than candid with the Court. In varying degrees, each tailored their evidence to conform to the version of events they supported. This parsimony with the truth and lack of candour complicates and obstructs the Court's task of adjudication.
- [542] Upon an examination of all the surrounding circumstances and after comparing the two competing theories I find that Irene Lee's version more closely accords with the preponderance of probabilities which a practical and informed person would recognize as reasonable. I have reached that conclusion notwithstanding my rejection of much of George Lee's evidence as implausible or untruthful. I set out below factors to which I have given particular weight in my consideration of the totality of the circumstances.
- [543] Mr. Wu provided few particulars of the motels or sporting goods store in the United States which he claims are the source of the wealth he used to acquire Barker Crescent and Beach Avenue. He was unable to provide even the names of either the motel or sporting goods enterprises. Nor was he able to provide any document confirming the existence of his interest in those investments, or demonstrating that any of the funds deposited to or transferred from his Taiwan accounts originated from motels or a sporting goods store in the United States.

- [544] His story that he lost all of the documents relating to his motel and sporting good investments in a flood is improbable when the plaintiffs were able to produce numerous bank books and some wire transfer documents they relied upon to support their case, and which apparently survived the flood unscathed.
- [545] Mr. Wu's claim that he prepared the Chih Memo as a contemporaneous record of transfers of his funds in and out of his Taiwan Citibank account is not consistent with the preponderance of the probabilities. The Chih Memo was prepared in English and is dated according to the Roman, rather than the Taiwan calendar. Mr. Wu lacks the facility with English required for the production of that document. Further, Mr. Wu was unable to provide any convincing explanation of why, if he had kept the Chih Memo since 2005, it was not produced until the eve of trial.
- [546] The dates and amounts of the transactions in the Chi memo almost exactly conform to entries in the ASTK file recording transfers of funds from various brokerage accounts to Mr. Wu's or Paul Wu's Taiwan Citibank accounts. The plaintiffs contend that George and Irene Lee fabricated the ASTK file using Mr. Wu's Citibank statements they had in their possession. However, Corey Wu's uncontested evidence was that the Taiwan Citibank statements were never in Vancouver. George and Irene Lee had no access to Mr. Wu's Citibank account statements and could not have used that information to create the ASTK file.
- [547] Further, the plaintiffs produced many documents, including the Chi memo and copies of various Taiwan Citibank statements, well after George Lee produced his copy of the ASTK file. Information in the ASTK file concerning the dates and amounts of transfers into or out of Mr. Wu's Citibank account matches information in the Citibank documents, even though those documents were not produced or available to George or Irene Lee until after Mr. Lee produced the copy of the ASTK file in his possession.
- [548] As counsel for Irene Lee emphasizes in his written submissions, Corey Wu and Irene Lee held title to Barker Crescent as joint tenants at all material times from the time of its purchase until the implementation of their separation agreement. Similarly, title to Beach Avenue was registered in Irene's name. Those facts are not consistent with the plaintiffs' contention that Corey agreed to hold title to each of those properties on their behalf and to transfer Barker Crescent and Beach Avenue to them when they became Canadian citizens.
- [549] Both Mr. Kenny and Mr. Holmes agreed that the Performance.xls file was last saved by user "Corey" on a CREO Products Inc. computer on January 13, 2005. Although Corey Wu denied creating the Performance.xls file, the metadata is consistent with both his name and place of employment. Further, the data recorded in Performance.xls shows stock trading activity matching the transactions recorded on the ASTK file on the external hard drive examined by MNP. All of this is consistent with Corey Wu initially using the Performance.xls file to record his trading before later adopting the more comprehensive ASTK spreadsheet.

- [550] Corey Wu traded on his own computers, initially at Normandy Drive and later at Barker Crescent. He acknowledged that he removed his computers from Barker Crescent in mid-September 2010. In these circumstances, it is not surprising that Irene Lee has been unable to produce the original ASTK file. Corey Wu has not produced any of his computers for forensic examination.
- [551] Although Mr. Kenny acknowledged that it was possible that the copy of the ASTK file on the external hard drive was modified before August 16, 2004, he found no evidence that the integrity of the file have been compromised, or that the file had been modified after it was copied to the external hard drive. Mr. Holmes also gave evidence that he was unable to find any indication of tampering with the ASTK file on the hard drive, or that the metadata for the ASTK and Performance.xls files were inaccurate.
- [552] Corey Wu held powers of attorney for bank accounts of his father and Paul Wu in the Lower Mainland. He opened speculative, high risk stock trading accounts in the names of his father and Paul Wu, using his own contact information. He had access to and the passwords for those trading accounts.
- [553] The applications for stock trading accounts completed by Corey Wu, the stock trading software on Corey's home computer, the screenshot image of trading activity conducted in British Columbia on June 30, 2005 and Corey's payments for ESignal trading software in 2007 and 2008 are all consistent with his engagement in speculative day trading.
- [554] Corey Wu and Irene Lee used Paul Wu's bank accounts in British Columbia and his credit cards for their own benefit. While Paul Wu was an occasional visitor, he was never a resident of British Columbia. Through the powers of attorney he held, Corey Wu had the ability to control his brother's accounts, and to use them as a conduit for the movement of funds generated through his own trading activities.
- [555] The evidence of Mr. Lepsoe, the most knowledgeable of Irene Lee's collateral witnesses, supports Irene Lee's claim that Corey Wu engaged in a sophisticated form of high-volume speculative stock trading during the marriage.
- [556] Corey Wu executed the separation agreement after seeking and receiving independent legal advice from an experienced family law solicitor. The plaintiffs and Corey Wu contend that immediately upon Corey's disclosure in May 2011 that he had transferred Barker Crescent to Irene, and that Irene held Beach Avenue, Mr. Wu instructed his son to find a lawyer for the plaintiffs and to make things right. Instead, Corey promptly engaged Ms. Perry to commence a divorce action in which he pleaded the separation agreement gave effect to an equal division of family assets. It was not until November 2011 that the plaintiffs, then also represented by Ms. Perry, commenced their action for recovery of the Barker Crescent and Beach Avenue properties against Irene and George Lee. Months later, the plaintiffs amended their pleadings to add Corey Wu as a defendant.

[557] On my consideration of the totality of the surrounding circumstances, I find on the preponderance of the probabilities that Corey Wu, through his stock trading activity earned and controlled all of the funds used to purchase Barker Crescent and Beach Avenue.

REMEDIES

[558] The plaintiffs did not provide the funds for the purchase of Barker Crescent or Beach Avenue. Accordingly, they are not entitled to a declaration that Irene Lee holds Barker Crescent and Beach Avenue in trust for them, or for an order transferring ownership of those properties to the plaintiffs. Nor have the plaintiffs established any entitlement to orders for an accounting and payment of revenues derived from Barker Crescent and Beach Avenue, or to damages for breach of trust and conversion.

[559] On the balance of probabilities, the plaintiffs have not established that George or Irene Lee fabricated the ASTK file. However, I have found Mr. Wu, with the assistance of Corey Wu created the Chih Memo, likely using data from the ASTK file, in order to support their theory that the plaintiffs accumulated the wealth required for the purchase of the Barker Crescent and Beach Avenue properties from the alleged motel and sporting goods store investments. That evidence was calculated to mislead the Court.

[560] For his part, George Lee sent coercive e-mails to the plaintiffs and Corey Wu in an attempt to induce them to accept the division of assets proposed in the divorce notice. His divorce notice also suggested that the plaintiffs and Corey might suffer financial loss, or incur tax penalties, or even criminal prosecution if their financial affairs were made public through the litigation process. However, while Mr. Lee's tactics are deserving of condemnation, neither the plaintiffs nor Corey Wu have shown that Irene Lee either exploited, or benefited from her father's interventions in the negotiation of the separation agreement. Ultimately, Corey Wu with the benefit of independent legal advice, made the separation agreement of August 15, 2010 with Irene Lee, to effect an equal division of family assets.

[561] While portions of the evidence of each of the parties were less than credible, neither the plaintiffs nor Corey Wu have shown that Irene Lee deliberately withheld material evidence in order to gain an advantage in these proceedings.

[562] In light of my findings of fact and credibility, the plaintiffs' action against Irene Lee and Corey Wu is dismissed.

Corey Wu's claim for damages for personal injuries and emotional distress

[563] Corey Wu has submitted an invoice from his treating dental specialist for work totalling \$3,879 performed between May 10, 2010 and February 17, 2011. That invoice does include work performed on an emergency basis on July 26, 2010. However, the largest component of the dental work was a bone implant performed on February 17, 2011 at a total cost of \$2,340. While I am satisfied that Corey Wu incurred the dental costs reflected in the invoice, the claimant has led no evidence from his dental specialist, or any other qualified

expert regarding the diagnosis of his injuries, their cause and treatment. I find that Corey Wu has not met his onus of establishing on the balance of probabilities that tortious conduct for which Irene Lee is responsible caused or contributed to his dental injuries.

- [564] With regard to Corey Wu's claim for damages for emotional or psychological distress, I am satisfied that Corey was emotionally disturbed and distressed on the evening of August 10, 2010, when he apparently overdosed on cocaine. His distress was no doubt related to the breakdown of his marriage. Mr. Lee's bizarre e-mails of August 9, 2010 may have contributed to Mr. Wu's distress. However, Mr. Lee is no longer a party to these proceedings. Corey Wu has not shown that any wrongful act or omission for which Irene Lee is responsible caused or contributed to his emotional distress.
- [565] Corey Wu's claim for damages for personal injuries and emotional distress against Irene Lee is dismissed.
- [566] Corey Wu has not shown that the separation agreement was unconscionable or that he entered into the agreement as a result of undue influence, duress or coercion. He made the separation agreement voluntarily and with the benefit of independent legal advice. Further, when he commenced the divorce action he relied upon the separation agreement as effecting an equal division of family assets. Irene Lee's application to set aside the separation agreement is dismissed.
- [567] In light of Corey Wu's misrepresentation of the value of UBS account at the time of negotiation of the separation agreement, and the subsequent disclosure that account held assets of \$400,000, rather than \$120,000 as initially disclosed, I accept the submission of counsel for Irene Lee that there should be an accounting of the values of the assets that Corey retained at the time of separation, including assets he held in offshore accounts, and that the separation agreement should be varied to reflect the results of that accounting.
- [568] The parties are at liberty to apply for further directions regarding the scope and conduct of that accounting.

Divorce

- [569] The claimant's application for divorce is unopposed. There is no possibility of reconciliation. Subject to s. 12 of the Divorce Act, the claimant and the respondent are divorced, with the order to take effect 31 days after the date of this Judgment.

COSTS

- [570] As a result of my findings regarding credibility, the parties have liberty to make submissions in writing on costs through the Registry.

"PEARLMAN J."

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