

CANADA / JUDGMENT

Xie v. Lai

2022 BCSC 495

COURT

Supreme Court of British Columbia

DECIDED

29 March 2022

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2022 BCSC 495 Xie v. Lai IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Xie v. Lai, 2022 BCSC 495 Date: 20220329 Docket: S169261 Registry: Vancouver Between: Tonggui Xie, Canphoenix Enterprises Ltd., Inspire Group/Trites Project Corporation, and Inspire Group Development Corporation Plaintiffs And Terry Lai a.k.a. Terry Kin Keong Lai, 0999334 B.C. LTD., 1016138 B.C. LTD., Ng Kam Hai, Bh Koh Soong Zarin & Partners, Julie Cheah Yut Sum, Crystal Yang, Sun & S Contracting Ltd., Soo Kin The, and Fraser River Terminal Holdings Inc. Defendants And Alan Chan a.k.a. Hing Lun Chan a.k.a. Alan Hing Lun Chan Third Party

- and - Docket: S164952 Registry: Vancouver Between: Tonggui Xie Plaintiff And Terry Lai Defendant
- and - Docket: H160700 Registry: Vancouver Between: Peoples Trust Company Petitioner And 1016138 B.C. Ltd., Fraser River Terminal Holdings Inc., 1017055 B.C. Ltd., CCH Investment (B.C.) Inc., 0999334 B.C. Ltd., Norman Chun Fai Kwan, Zun Yong Wen, Soo Kin Teh, Bancorp Balanced Mortgage Fund Ii Ltd., Bancorp Growth Mortgage Fund Ii Ltd., Bancorp Financial Services Inc., Tonggui Xie, Can Phoenix Enterprises Ltd., Inspire Group/Trites Project Corporation, Inspire Group Development Corporation and Her Majesty The Queen in Right of The Province Of British Columbia, 0843003 B.C. Ltd. and 1017061 B.C. Ltd. Respondents Before: The Honourable Madam Justice Burke Reasons for Judgment Counsel for Plaintiffs Canphoenix Enterprises Ltd., Inspire Group Development Corporation, Inspire Group/Trites Project Corporation, Tonggui Xie: C. Dennis, Q.C. E. Aitken Counsel for Defendants Crystal Yang, Terry Lai, and Julie Cheah: V. Verma Place and Date of Trial Vancouver, BC October 12-15, 25-29, 2021 Place and Date of Judgment: Vancouver, B.C. March 29, 2022 I. Introduction

- [1] This matter is part of a broader action, but concerned with claims against three particular defendants: Terry Lai, Julie Cheah, and Crystal Yang.

- [2] As I noted in *Xie v. Lai*, 2021 BCSC 2128, a trial involving these parties was originally set to be heard over 40 days, commencing on September 27, 2021. After much procedural wrangling, the trial ultimately commenced on October 12, 2021, for 4 days concerning only the three above-noted defendants. At the commencement of trial, counsel advised that a settlement has been reached with the remaining defendants and the issues had been significantly reduced. The 40-day trial was therefore reduced to 4 days.
- [3] The procedural issues which had impacted this litigation from the outset continued to arise as the trial commenced. The three remaining defendants did not appear at the commencement of trial on October 12, 2021. On the second day of the trial however, the defendants appeared and sought an adjournment. I initially granted a short adjournment of the trial until October 25, 2021. The reasons for that adjournment and much of the background in this matter is set out in *Xie v. Lai*, 2021 BCSC 2038.
- [4] When the trial recommenced on October 25, 2021, the defendants sought a second adjournment. That same day, I delivered an oral ruling with respect to the second adjournment application, along with an application to set aside a default judgment against the defendant, Ms. Cheah.
- [5] In those reasons later indexed as *Xie v. Lai*, 2021 BCSC 2128, I denied the adjournment. Moreover, I concluded it was not in the interests of justice to set aside the default judgment against Ms. Cheah because the application to do so was significantly late, the claim to not understand the proceedings was not substantiated, and the application did not adequately set out material to support a meritorious defence. Moreover, the litigation chronology demonstrated the plaintiffs were diligent in pursuing the litigation and these remaining defendants have not been reliably responding to matters in this lawsuit.
- [6] I concluded the matter should proceed, with the limited participation of the defendants--in particular Ms. Cheah and Mr. Lai--whose participation was limited to the assessment of damages.
- [7] The sole issues at trial were therefore:
- a) quantifying damages against Mr. Lai and Ms. Cheah, as judgment had already been obtained against them; and
 - b) adjudicating the plaintiffs' claims against Ms. Yang for her receipt of \$150,000 belonging to the plaintiff, Inspire Group Development Corporation ("Inspire Group").
- [8] In the claim against Mr. Lai and Ms. Cheah, the plaintiffs say the defendants' liability stem from two acts:
- a) misappropriation of \$1 million from Tonggui Xie's 2012 investment of \$2 million in a property located at 12280 Trites Road in Richmond, British Columbia (the "Trites Road Property"); and

- b) misappropriation of \$1 million from the distribution of Inspire Group's proceeds of sale when the Trites Road Property was sold in 2016.
- [9] The plaintiffs seek judgment against Ms. Yang for \$150,000 on the basis of money had and received, unjust enrichment, or knowing receipt. II. The Claims Against Mr. Lai and Ms. Cheah
- [10] The plaintiffs' suit against Mr. Lai and Ms. Cheah is founded on civil conspiracy, among other causes of action.
- [11] The plaintiffs obtained a default judgment against Ms. Cheah on October 20, 2017. The plaintiffs obtained a judgment against Mr. Lai on December 17, 2020, as Warren J. found Mr. Lai in contempt of court and struck his response to the civil claim.
- [12] Since Mr. Lai's response to civil claim was struck, the material facts of the conspiracy pleaded by the plaintiffs are considered admitted by Mr. Lai and Ms. Cheah. Those material facts are that Mr. Lai misappropriated \$2 million of the plaintiffs' funds--\$1 million from Mr. Xie's initial investment in 2012 and a further \$1 million from Inspire Group in 2016 from the proceeds of sale of the Trites Road Property. The plaintiffs say Mr. Lai's misappropriation of \$2 million was done with the assistance and connivance of Ms. Cheah, with whom he conspired to unlawfully harm the plaintiffs.
- [13] As the plaintiffs have a judgment against Mr. Lai and Ms. Cheah for conspiracy, the issue at trial was the quantification of their damages.
- [14] The plaintiffs also seek to vary a Mareva order granted by Justice Sigurdson in November 2016 against Mr. Lai. The plaintiffs ask to have the order continue post-judgment. The plaintiffs also seek to increase the amount frozen to account for the judgment in this action, as well as a separate judgment for \$1,074,092.28 obtained by Mr. Xie against Mr. Lai in 2018.
- A. Damages Against Mr. Lai and Ms. Cheah for Conspiracy
- [15] The plaintiffs' amended notice of civil claim alleges civil conspiracy against both Mr. Lai and Ms. Cheah with respect to the misappropriated funds. Moreover, as noted above, the plaintiffs have obtained a default judgment against Mr. Lai and Ms. Cheah based on the facts and causes of action set out in the amended notice of civil claim. Accordingly, liability is not at issue. The only issue here is the damages owing under the default judgment.
1. Legal Principles
- [16] As noted by the plaintiffs, a party to a conspiracy is responsible for damages which were the foreseeable consequence of the conspiracy: *Tsui-Wong v. Xiao*, 2018 ONSC 3315 at para. 249. As noted in *XY, LLC. v. Zhu*, 2013 BCCA 352 at para. 46: "the acts of the defendants must be causally related to loss or damage to the plaintiff for purposes of establishing civil conspiracy".

- [17] Mr. Xie seeks damages in the amount of \$1 million against Mr. Lai and Ms. Cheah for the funds invested with Mr. Lai in 2012, while Inspire Group seeks damages against Mr. Lai and Ms. Cheah for the \$1 million misappropriated from the proceeds of the sale of the Trites Road Property in 2016. The plaintiffs submit those are the amounts that were misappropriated by Mr. Lai, with Ms. Cheah as his co-conspirator. The loss of those funds constitutes foreseeable consequences of the conspiracy.
- [18] The elements for a claim for unlawful conduct conspiracy against defendants acting in combination are that: (i) the defendants' conduct was unlawful; (ii) their conduct was directed towards the plaintiffs; and (iii) the defendants should have known that, in the circumstances, injury to the plaintiffs was likely to result: *H.M.B. Holdings Limited v. Replay Resorts Inc.*, 2021 BCCA 142 at para. 59. To establish liability for unlawful conduct conspiracy, each of the defendants must have committed an unlawful act: *Agribrands Purina Canada Inc. v. Kasamekas*, 2011 ONCA 460 at para. 28, 43; *Basin v. Hrynew*, 2014 SCC 71 at para. 106. Unlawful conduct in the context of conspiracy includes a crime, tort (e.g., fraud), breach of contract, breach of statute, or breach of a director's fiduciary obligations: *XY, LLC. v. Zhu*, 2013 BCCA 352 at paras. 49-50.
- [19] I conclude the plaintiffs' amended notice of civil claim pleads the necessary material facts to establish the tort of conspiracy against Mr. Lai and Ms. Cheah. Those facts are now deemed admitted by both Mr. Lai and Ms. Cheah, completing the cause of action.
2. Facts Admitted by Mr. Lai and Ms. Cheah
- [20] In *Xie v. Lai*, 2021 BCSC 923, Master Bilawich stated as follows with respect to Ms. Cheah:
- [72] Ms. Cheah is deemed to have admitted the allegations made in the existing Amended Notice of Civil Claim. This includes, at paragraph 43, that Ms. Cheah had no legal right to the money she received from Inspire Group and, at paragraph 44, that she conspired with Mr. Lai for the receipt of her share (\$200,000) of the Inspire Group net sale proceeds, to the detriment of the plaintiffs. Paragraph 46 states the actions of Mr. Lai were facilitated with the connivance of the co-defendants, which includes Ms. Cheah, that the conspiracy was unlawful, directed towards the plaintiffs and it was known that it would likely injure them. In Part 3, paragraph 12, it is alleged against all defendants that they acted together, conspired and agreed to carry out the acts or omissions referred to in the Notice of Civil Claim with the predominant purpose of causing injury to the plaintiffs. Paragraph 13 makes a similar allegation in relation to alleged breach of fiduciary duty.
- [21] While Mr. Lai and Ms. Cheah disputed the conspiracy allegations at trial, they did not appeal this ruling. Having dismissed the application to set aside the default judgment, this court is left in the position of accepting the admissions as articulated. The question remaining for this court is to assess the damages as a result of these admissions.
- [22] Accordingly, the following facts, as pleaded in the plaintiffs' amended notice of civil claim, are among those deemed admitted by Mr. Lai and Ms. Cheah:

- a) On or about November 16, 2012, Mr. Xie and Mr. Lai entered into a joint venture agreement relating to the Trites Road Property.
- b) On or about November 29, 2012, Mr. Xie and Mr. Lai recorded their joint venture agreement in writing (the "Joint Venture Agreement").
- c) The terms of the Joint Venture Agreement included the following: · Mr. Lai represented that Inspire Group owned 50% of the shares in 0843003 B.C. Ltd., which owned the Trites Road Property; · Mr. Lai represented that 0843003 B.C. Ltd. would have total equity in the Trites Road Property of approximately \$7.4 million; · Mr. Xie would invest \$2 million for a 50% equity interest in Inspire Group Trites Project Corporation, the equivalent of a 25% equity interest in the Trites Road Property; and · Mr. Lai represented and guaranteed that Mr. Xie's investment would have a rate of return of not less than 5% annually.
- d) On or about November 16, 2012, Mr. Xie advanced \$1.2 million of his \$2 million investment under the Joint Venture Agreement.
- e) On or about December 17, 2012, Mr. Xie advanced \$800,000 to satisfy the remaining portion of his \$2 million investment pursuant to the Joint Venture Agreement.
- f) Contrary to Mr. Lai's representations in the Joint Venture Agreement, Inspire Group did not own 50% of the shares of 0843003 B.C. Ltd.
- g) Contrary to Mr. Lai's representations in the Joint Venture Agreement, the total equity in the Trites Road Property held by 0843003 B.C. Ltd. was not \$7.4 million.
- h) On or about December 19, 2012, Inspire Group purchased 28.17 of the Class "A" Common Shares and 28.17 of the Class "B" Common Shares of 0843003 B.C. Ltd., which was 28.17% of the issued and outstanding shares of 0843003 B.C. Ltd., for \$1 million.
- i) Mr. Lai misappropriated the remaining \$1 million invested by Mr. Xie.
- j) At all material times, Mr. Lai was a director of 0843003 B.C. Ltd., Inspire Group Trites Project Corporation, and Inspire Group, and as such owed a fiduciary obligation to those companies, including an obligation not to misappropriate funds belonging to the plaintiffs for himself, or any other person
- k) On January 29, 2016, 0843003 B.C. Ltd. sold the Trites Road Property to a third party for \$14 million, the proceeds of which were distributed as follows: · Registered mortgage and property tax: \$5,456,970.95 · Canada Revenue Agency holdback: \$447,491.23 · Estimated legal fees: \$45,000 · Holdback pending shareholder dispute: \$880,000 · Inspire Group Development Corporation: \$1,705,918.76 · Trites Road Holdings Ltd. \$5,464,619.06
- l) Inspire Group was entitled to receive \$1,705,918.76 (the "Inspire Sale Proceeds").

- m) Unbeknownst to the plaintiffs, Mr. Lai misappropriated \$1 million from the Inspire Sale Proceeds through his distribution of those funds. The plaintiffs say this is the second misappropriation.
 - n) Mr. Lai, as director of Inspire Group, directed the Inspire Sale Proceeds to be distributed as follows: · Ng Kam Hai: \$100,000 · BH Koh Soong Zarin & Partners: \$50,000 · Julie Cheah Yut Sum: \$200,000 · Crystal Yang: \$150,000 · 0999334 B.C. Ltd.: \$400,000 · Sun & S Contracting Ltd.: \$100,000 · Tonggui Xie: \$700,000 · Held back by law firm in trust: \$5,918.76
 - o) Each of the above-listed parties received the money indicated and has no legal right to the money received from Inspire Group.
 - p) Ms. Cheah conspired with Mr. Lai for the receipt of her portion of the Inspire Sale Proceeds to the detriment of the plaintiffs.
 - q) Mr. Lai and Ms. Cheah's conduct in furtherance of the conspiracy was unlawful and was directed toward the plaintiffs, and the likelihood of injury to the plaintiffs was known to Mr. Lai and Ms. Cheah at all material times.
 - r) As a result of the acts carried out by Mr. Lai and Ms. Cheah, the plaintiffs have suffered loss and damage.
- [23] In addition to these admitted facts, the plaintiffs called Mr. Xie as their sole witness. Mr. Xie gave further evidence supplementing the admitted facts to establish this claim.
- [24] Mr. Xie lives in Vancouver and is a director of each of the three plaintiff companies and a shareholder of Canphoenix Enterprises Ltd. He testified he entered into the Joint Venture Agreement with Mr. Lai and said he paid \$2 million pursuant to that Agreement.
- [25] Mr. Xie testified that a key purpose of the joint venture was to redevelop the Trites Road Property. However, the Trites Road Property was not redeveloped before it was sold in 2016.
- [26] Mr. Xie said Mr. Lai failed to acquire a 50% interest in the Trites Road Property for the joint venture as he had indicated, and instead obtained a smaller interest. Mr. Xie learned this in early 2013 when Mr. Lai gave him some corporate documents to review. This concerned Mr. Xie, as it was his understanding that it would be harder to redevelop the Trites Road Property with only a 28% minority interest.
- [27] While Mr. Lai told Mr. Xie he would increase the joint venture company's interest to a 50% stake, that never happened.
- [28] In January 2016, Mr. Lai told Mr. Xie that the Trites Road Property was going to be sold and that Mr. Xie would be repaid his investment from the sale proceeds. By this time, Mr. Xie had not been paid anything on account of his investment.

- [29] After the sale, Mr. Lai personally delivered a \$700,000 cheque to Mr. Xie payable by Pryke Lambert Leathley & Russell LLP ("Pryke Lambert"). However, Mr. Lai did not explain why the balance of Mr. Xie's \$2 million investment was not being paid.
- [30] Mr. Xie then retained counsel and sought records from Mr. Lai, which were not produced. Through counsel, Mr. Xie also sought information from Brian Purcell, a lawyer at Pryke Lambert who acted on the sale of the Trites Road Property. Mr. Purcell advised that the \$700,000 was paid to Mr. Xie in accordance with a direction to pay signed by Mr. Lai.
- [31] Mr. Xie said he did not know any reason why the other individuals and companies listed on the direction to pay received a portion of Inspire Group's sale proceeds. Mr. Xie did not receive any payments from Mr. Lai with respect to his \$2 million investment, other than the \$700,000 cheque.
- [32] Since then, Mr. Xie has obtained a judgment against Mr. Lai concerning a separate investment for a different property on Gibbons Drive in Richmond. On July 6, 2018, Justice Fleming granted judgment against Mr. Lai in the amount of \$1,022,000, together with pre-judgment interest in the amount of \$36,240.40 and costs subsequently assessed for \$15,851.88. This decision is indexed as *Xie v. Lai*, 2018 BCSC 1588 (the "Gibbons Judgment"). However, Mr. Lai has not paid Mr. Xie any amounts owing under the Gibbons Judgment.

3. Remedies Against Mr. Lai and Ms. Cheah

- [33] In conjunction with the facts deemed admitted in the amended notice of civil claim, I conclude this evidence establishes the damages claimed against Mr. Lai and Ms. Cheah in this matter. In particular, I find that Mr. Lai conspired to unlawfully misappropriate \$2 million from the plaintiffs (\$1 million from Mr. Xie in December 2012, and \$1 million from Inspire Group in 2016) with the aid and connivance of Ms. Cheah. Save the \$700,000 paid to Mr. Xie from the proceeds of sale from the Trites Road Property, the misappropriated monies have not been returned to Mr. Xie or Inspire Group and the plaintiffs are entitled to damages in the amount of claim.
- [34] While Ms. Cheah is only alleged to have received \$200,000 personally as a result of the conspiracy with Mr. Lai, each defendant must be held jointly and severally liable. In the context of civil conspiracy, the court in *Cruise Connections Canada v. Szeto*, 2015 BCCA 653, held that "[t]ortfeasors who act in 'concert' to further a wrong act are joint tortfeasors, and deceitful conduct engaged by one can be ascribed to another": para. 45. In the result, the court held that the respondent, who had conspired with his co-defendants, was jointly liable for the deceitful conduct of the other conspirators: *Cruise Connections Canada* at para. 51. Based on the facts deemed to be admitted in the amended notice of civil claim, the same circumstances arise in the present case.
- [35] With respect to assessing the damages for which Mr. Lai and Ms. Cheah are jointly and severally liable, a party to a conspiracy is responsible for the damages which were the foreseeable consequence of their acts or omissions.

- [36] In *HSBC Bank Canada v. 1100336 Alberta Ltd. (Incredible Electronics Wholesale)*, 2011 ABQB 748, aff'd 2013 ABCA 235, Marshall J. found the defendants liable for civil conspiracy for conspiring together to prevent the plaintiff bank from realizing a debt owing by a corporation. The defendants' conduct involved moving the debtor company's assets to a new corporate shelter, which Marshall J. found was the result of an active conspiracy to defeat HSBC's ability to recover against the debtor company's assets and funds.
- [37] Marshall J. awarded the plaintiff damages in the amount of principal outstanding by the debtor company that it was deprived from collecting, as well as unpaid interest and other amounts the plaintiff was entitled to under its contract with the debtor company.
- [38] I agree that the damages claimed by the plaintiffs against Mr. Lai and Ms. Cheah in the case at bar are similar. The amounts the plaintiffs were deprived of arise from Mr. Lai's misappropriation of the plaintiffs' funds. This was done with the connivance of Ms. Cheah, who simply accepted funds that she was not entitled to.
- [39] Accordingly, I award joint and several judgments against Mr. Lai and Ms. Cheah as follows:
- a) Mr. Xie: \$1,000,000, plus pre-judgment interest in the amount of \$91,861.28 calculated in accordance with the Court Order Interest Act, R.S.B.C. 1996, c. 79, from December 19, 2012 (i.e., the day Mr. Lai applied only \$1 million of Mr. Xie's money to purchase a lesser interest than agreed in the Trites Road Property).
 - b) Inspire Group: \$1,000,000, plus pre-judgment interest in the amount of \$60,713.07 calculated in accordance with the Court Order Interest Act from March 22, 2016 (i.e., the day Mr. Lai misappropriated \$1 million from Inspire Group's portion of the Trites Road Property sale proceeds through his distribution of the funds).
- [40] The plaintiffs seek to vary the Mareva order granted by Justice Sigurdson on November 18, 2016. The plaintiffs request that the Mareva order be extended so that it remains in force post-judgment. The plaintiffs also seek to substitute the amount of \$3,226,666.63 in place of the \$2,081,026.29 limit provided for in paras. 3 and 8 of the Mareva order. This sum derives from the judgments awarded against Mr. Lai and Ms. Cheah in this proceeding (\$2,152,574.35) and the Gibbons Judgment (\$1,074,092.28).
- [41] Dealing first with the terms of the Mareva order, para. 7 provides that the order shall remain in force until 30 days after the pronouncement of final judgment in this matter, unless varied or extended by order of this Court.
- [42] Both the basis for granting a Mareva injunction and the basis for varying it must be considered when determining whether to vary such an order: *First Majestic Silver Corp. v. Santos*, 2014 BCSC 1564 at para. 18. When seeking to obtain a post-judgment Mareva injunction, the key issue is where the balance of convenience lies--in particular, whether either party will suffer irreparable harm: *First Majestic Silver Corp.* at para. 20. On an application to vary a Mareva order, the applicant must establish that a "significant change in circumstances has occurred since the injunction was granted": *First Majestic Silver Corp.* at

para. 18.

- [43] With respect to which party is more likely to suffer irreparable harm, I find the plaintiffs are clearly at a greater risk than the defendants. The underlying cause of action arose from Mr. Lai's misappropriation of Mr. Xie's funds. Mr. Xie has held a judgment against Mr. Lai since 2018 and has not received any compensation under it. Failure to extend and vary the order would risk enabling Mr. Lai to dissipate his assets and prevent Mr. Xie from ever satisfying his judgments.
- [44] I also find the circumstances have changed sufficiently as to warrant a variation of the order. Specifically, the amounts awarded against Mr. Lai in this judgment have more than double his liability to Mr. Xie. The recognition of Mr. Xie's additional legal entitlement to damages against Mr. Lai significantly alters the circumstances under which the order was originally granted.
- [45] I agree the balance of convenience favours the variation of the Mareva order such that the value of the assets frozen ought to be increased to \$3,226,666.63 to account for the judgments of this action and the Gibbons Judgment. This is necessary so that the Mareva order will have the effect intended when granted initially. III. CLAIMS AGAINST MS. YANG
- A. Overview of the Claims Against Ms. Yang
- [46] The plaintiffs claim against Ms. Yang for money had and received, unjust enrichment, and knowing receipt for the \$150,000 that Ms. Yang received from the proceeds of sale from the Trites Road Property. I find that the plaintiffs can recover against Ms. Yang on the basis of unjust enrichment alone, and thus need not consider the other causes of action.
- [47] Many of the material facts in the case against Ms. Yang are deemed to be admitted.
- [48] The plaintiffs served a notice to admit on Ms. Yang's then-counsel of record on August 28, 2017. Ms. Yang did not respond. In accordance with R. 7-7(2) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], the facts in the notice to admit are deemed admitted by Ms. Yang for the purposes of this action.
- [49] However, Ms. Yang testified in these proceedings, and I will consider her testimony as part of my determination in this matter.
- [50] Ms. Yang is a licensed realtor working for Royal Pacific Riverside Realty and carries on business through a personal real estate corporation called Crystal Yang Real Estate Corporation, of which she is the sole director. Ms. Yang acted as a dual agent on the sale of the Trites Road Property in 2016. Ms. Yang's agency was paid \$180,000 in commission on that sale. In addition to her commission, Ms. Yang received a cheque for \$150,000 from Pryke Lambert, dated March 22, 2016.

- [51] The plaintiffs say, based on the admissions in the notice to admit and the evidence, it is established that Ms. Yang received \$150,000 from Inspire Group's proceeds of sale of the Trites Road Property. The plaintiffs note it is also admitted that the payment was made without authorization. The plaintiffs say these facts establish liability for the three alleged causes of actions--unjust enrichment, monies had and received, and knowing receipt.
- [52] The plaintiffs point out that the only thing added by Ms. Yang's testimony is her evidence that her receipt of the \$150,000 was a repayment of a loan she made to Inspire Group. If the Court accepts her evidence that the \$150,000 received was repayment of a loan made to Inspire Group, that could negate a finding of liability. Anything short of that, however, the plaintiffs say would not.
- [53] The plaintiffs argue Ms. Yang's evidence that the \$150,000 was repayment of a loan to Inspire Group is not corroborated by any documentation or other witness testimony. There is no reliable evidence supporting the existence of a valid and enforceable loan agreement between Ms. Yang and Inspire Group, or that the \$150,000 payment was in fact repayment of a loan. The plaintiffs say Ms. Yang's evidence of a loan to Inspire Group should be rejected.
- B. Facts Admitted by Ms. Yang in the Notice to Admit
- [54] The plaintiff set out the following as among the facts it relies upon and which are admitted by Ms. Yang in the plaintiffs' notice to admit:
- a) On January 29, 2016, 0843003 B.C. Ltd. sold the Trites Road Property to a third party for \$14 million.
 - b) On March 20, 2016, 0843003 B.C. Ltd. distributed \$1,705,018.76 to Inspire Group from the proceeds of sale of the Trites Road Property.
 - c) On March 22, 2016, Mr. Lai, without authorization, instructed Pryke Lambert to distribute the proceeds of sale to each of: · Ng Kam Hai, in the amount of \$100,000; · BH Koh Soong Zarin & Partners, in the amount of \$50,000; · Ms. Cheah, in the amount of \$200,000; · Ms. Yang, in the amount of \$150,000; · 0999334 B.C. Ltd., in the amount of \$400,000; and · Sun & S Contracting Ltd., in the amount of \$100,000.
 - d) On March 22, 2016, Pryke Lambert issued cheques to the above-listed parties in the amounts instructed by Mr. Lai.
 - e) Ms. Yang received and deposited the cheque for the \$150,000 she received from Pryke Lambert.
- [55] Ms. Yang also admitted at her examination for discovery that she never provided services to the plaintiffs, including Inspire Group. Ms. Yang admitted that the \$150,000 she received was not on account of commission for the sale of the Trites Road Property. Ms. Yang further admitted that she had no idea where Mr. Lai obtained the \$150,000 paid to her.

- [56] While Ms. Yang testified that the \$150,000 at issue was a repayment of a loan to Inspire Group, I find that the evidence does not support this assertion. The purported evidence to this effect was new at trial and is not corroborated by any documentation or other witness testimony.
- [57] At trial, Ms. Yang gave evidence that the \$150,000 she received from Mr. Lai was repayment of a loan made to Inspire Group. On cross-examination however, Ms. Yang stated that she was unclear as to whether this was money loaned to Inspire Group or Inspire Group Trites Project Corporation. Ms. Yang described the loan as a series of transactions at the request and instruction of Mr. Lai, ultimately in the amount of \$170,000. She also testified the loan was without interest. Ms. Yang said that Inspire Group had only repaid \$150,000 of the loan, and in fact still owed her \$20,000.
- [58] Ms. Yang provided and relied upon five drafts or receipts that she indicated were payments made as loans to Inspire Group. These receipts included:
- a) a \$30,000 payment to Pryke Lambert in trust on February 17, 2016;
 - b) a \$22,050 payment to Just Reno Electric on February 29, 2016;
 - c) a \$53,000 payment to Pryke Lambert in trust on March 9, 2016;
 - d) a \$35,000 payment on March 9, 2016 to an unspecified recipient; and
 - e) a \$30,000 payment to "Richard Liu in trust".
- [59] For their part, the plaintiffs argue these drafts or receipts do not identify the source of the funds. Furthermore, they say Ms. Yang has no personal knowledge of the use of any of the funds and provided no evidence tying any of the payments to Inspire Group.
- [60] None of Ms. Yang's evidence of making loans to Inspire Group is corroborated by any document or any other witness. Furthermore, there is no loan agreement or a promissory note or any document to reflect the fact that the \$150,000 was a loan and/or a repayment of a loan. No emails or letters to this effect were produced.
- [61] It is striking that four of the documents Ms. Yang relies upon, reflect payments to third parties--not Inspire Group. There is simply no recipient information on the fifth document.
- [62] Ms. Yang is not an unsophisticated individual. She is a licensed realtor and is familiar with business basics, such as the need to have documents to establish obligations through a contract.
- [63] As pointed out by the plaintiff, Ms. Yang took and passed a course at UBC to obtain her real estate license. Ms. Yang admitted that the course included the study of the fundamentals of law, professionalism and ethics, contracts for real estate transactions, and the importance of putting contracts in writing. Furthermore, Ms. Yang agreed that, as a realtor, she assists clients in preparing contracts.

- [64] Furthermore, Ms. Yang's evidence that the \$150,000 was a loan to Inspire Group is completely inconsistent with her evidence at examination for discovery, in which she stated she had no business dealings with Inspire Group. Moreover, she stated she had no loan relationships with any companies owned by Mr. Lai. When her testimony from her examination for discovery was raised with her on cross-examination, Ms. Yang indicated that if she was loaning money to Inspire Group, there would be a business relationship.
- [65] This evidence directly contradicts Ms. Yang's testimony that she provided the money as a loan to Inspire Group and simply cannot be accepted at this late stage in the proceedings. It is contradictory and not corroborated by any documentation whatsoever or any other witness.
- [66] I conclude therefore that Ms. Yang did not make a loan to Inspire Group of either \$150,000 or \$170,000. Accordingly, I reject her assertion that the \$150,000 payment to her by Inspire Group was a repayment of a loan. C. Liability for Unjust Enrichment
- [67] In a claim for unjust enrichment the plaintiff must demonstrate (Kerr v. Baranow, 2011 SCC 10 at paras. 36-40):
1. enrichment of the defendant;
 2. a corresponding deprivation of the plaintiff; and
 3. the absence of a juristic reason for the enrichment.
- [68] There is no question Ms. Yang was enriched and the plaintiffs suffered a corresponding deprivation. The essential issue is whether there was a juristic reason for Ms. Yang's enrichment.
- [69] The plaintiffs must demonstrate the absence of an established category of juristic reason for the monies in question, such as a contract, donative intent, or a disposition of law: Kerr at para. 41. If the court concludes there is no juristic reason from an established category, a defendant may rebut this prima facie case by demonstrating a good reason why recovery should be denied in the particular circumstances of the case. This takes into consideration the reasonable expectations of the parties and public policy considerations.
- [70] I conclude there is no juristic reason for the enrichment. Ms. Yang admits that the \$150,000 she received was Inspire Group's money. Ms. Yang further admits that she never provided services to Inspire Group or otherwise had any business relationship with Inspire Group. While Ms. Yang claimed at trial the \$150,000 was a loan, I have concluded this has not been established on the evidence. Mr. Xie--Inspire Group's sole director--confirmed in his testimony that he knew of no reason why Ms. Yang received any portion of Inspire Group's sale proceeds. The plaintiffs have thus established a prima facie case of unjust enrichment. Ms. Yang was not able to offer any reliable evidence to rebut the prima facie case of unjust enrichment.

- [71] As noted in *Harraway v. Harraway*, 2009 BCCA 561 at para. 46, even if the parties intended to treat various transfers or payments to third parties as loans, the evidence is insufficient to avoid a finding of unjust enrichment because there is no valid and enforceable contract. There is therefore no juristic reason to justify the enrichment in any event.
- [72] I conclude Ms. Yang has been enriched by her receipt of \$150,000 of monies belonging to Inspire Group for which she had no legal entitlement. Ms. Yang is liable for unjust enrichment. D. Remedy Against Ms. Yang
- [73] Based on my finding of Ms. Yang's unjust enrichment, I do not need to deal with the claim of monies had and received and knowing receipt. I note there is some question as to whether monies "had and received" constitutes a standalone cause of action any longer or has been subsumed by the doctrine of unjust enrichment: *Boale, Wood & Company Ltd. v. Whitmore*, 2017 BCSC 1917 at para. 113; *BNSF Railway v. Teck Metals Ltd.*, 2016 BCCA 350 at para. 10; *International Longshore & Warehouse Union Local 502 v. Ford*, 2016 BCCA 226 at paras. 24-25.
- [74] I therefore grant an order for judgment against Ms. Yang in the amount of \$150,000. The plaintiffs further seek pre-judgment interest calculated in accordance with the Court Order Interest Act, from the day the obligation to make restitution arose on March 22, 2016. I conclude this is appropriate in the amount argued by the plaintiffs of \$9,106.96. IV.

CONCLUSION

- [75] In conclusion, I grant the following orders :
- a) Damages against Mr. Lai and Ms. Cheah in the total amount of \$2,152,574.35, made up of the following: · \$1,000,000, plus \$91,861.28 in pre-judgment interest, for a total amount of \$1,091,861.28, payable to Mr. Xie; and · \$1,000,000, plus \$60,713.07 in pre-judgment interest, for a total of \$1,060,713.07, payable to Inspire Group.
 - b) The Mareva order against Mr. Lai be varied to: · substitute the amount of \$3,226,666.63 in place of the \$2,081,026.29 limit provided for in paras. 3 and 8 of the order; and · extend the duration of the order so that it remains in force, notwithstanding the pronouncement of final judgment, until further order of the court or the agreement of the parties.
 - c) Restitutionary damages against Ms. Yang for \$150,000, plus pre-judgment interest in the amount of \$9,106.96, for a total amount of \$159,106.96, payable to Inspire Group. "Burke J."

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