

CANADA / JUDGMENT

Zhang Estate v. Yin

2025 BCSC 2508

COURT

Supreme Court of British Columbia

DECIDED

17 December 2025

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2025 BCSC 2508 Zhang Estate v. Yin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang Estate v. Yin,

2025 BCSC 2508

Date: 20251217

Docket: S2010412

Registry: Vancouver

Between:

Junjie Tao, Executor of the Estate of Tong Zhang

aka Tony Zhang, Deceased

Plaintiff

And:

Hang Yin, Yan Chun Liu, Yu Yin, 1011066 B.C. Ltd.,

1079770 B.C. Ltd., 1032734 BC Ltd., 1085842 B.C. Ltd.,

1079775 B.C. Ltd, and 1084960 B.C. Ltd.

Defendants

And:

Chunli Zhang and Junjie Tao, Executor of the Estate of

Tong Zhang aka Tony Zhang, Deceased

Defendants by way of Counterclaim

Before: The Honourable Justice Funt

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

March 31-April 4, 14-17, 22-25,

28-30, May 1-2, 5-9, 12-16, 20,

26-30, June 2-6, 9-13, 16-17,

19, 23-26, July 2-4, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 17, 2025

Table of Contents

1. INTRODUCTION.. 4
2. BALANCE OF PROBABILITIES. 9
3. The plea of fraud.. 9
4. CREDIBILITY. 12
5. REAL ESTATE PROJECTS AND PROPERTIES. 13
 - a) The West 41st Project 14

- i) The Acquisition. 14
- ii) Three mortgages currently on the West 41st Project 17
- b) The Surrey Coffee Shop Property. 20
- c) The No. 3 Road Project 23
- d) The Buxton Property. 25
- e) The Royal Oak Project 27
- 6. the defence. 28
- 7. The buxton property. 39
- 8. Promissory note - \$5,630,000. 42
- 9. THE PwC TRANSACTION.. 44
 - a) Background. 44
 - b) Implementation of the PwC Transaction. 49
- 10. Mr. Zhang Jr.'s Wealth.. 57
- 11. immigration to canada.. 62
- 12. Ms. Liu's credibility. 67
- 13. Ms. Yin's Credibility. 79
- 14. Mr. Yin's credibility. 87
- 15. Asset Division agreement. 95
- 16. disentangling the web.. 100
- 17. Liability. 101
 - a) Civil Fraud. 103
 - b) Knowing Assistance (and Knowing Receipt) 103
 - c) Fraudulent Conveyance. 107
 - d) Oppression. 107
 - e) Conspiracy. 109
- 18. Liability Findings. 110
 - a) Generally. 110
 - b) Civil Fraud. 111

c) Knowing assistance - Ms. Liu, Ms. Yin. 111

d) Fraudulent Conveyance. 112

e) Oppression. 113

f) Conspiracy. 114

19. Remedies. 114

a) Draft Order 114

b) Buxton Property. 115

c) Surrey Coffee Shop Property. 116

d) West 41st Project 116

e) Royal Oak Company. 118

f) Promissory Note. 118

g) Interest 119

h) The General Terms - Declarations. 119

20. punitive damages. 120

21. conclusion.. 121

22. costs. 121

Schedule "A" - Draft Order.. 123

Schedule "B" - Numbered Corporations. 129

1. INTRODUCTION

[1] The action involves large sums of money, financial complexity, and, often, only oral investment arrangements or agreements.

[2] In these reasons, for the purpose of clarity, I will refer to the original plaintiff, now deceased, Tong Zhang, also known as Tony Zhang, as "Mr. Zhang Jr." and his father, Chunli Zhang, as "Mr. Zhang Sr."

[3] At the time of his death in July 2022, Mr. Zhang Jr. was married to Ms. Danyang Yang. They had three young children. Mr. Zhang Jr. was 35 years old.

[4] In his opening, Mr. Hewitt, counsel for the now plaintiff, Ms. Junjie Tao (mother of Mr. Zhang Jr.), executor of the estate of Mr. Zhang Jr., set forth the key matters. For introductory purposes, I have quoted several portions (I have made some small stylistic changes for consistency):

Zhang-Yin Investments

1. Mr. Zhang Jr., known as "Tony", was a successful businessperson in China before relocating to Vancouver in 2018. He held many investments in real estate in Beijing and elsewhere in China before and after his immigration.
2. Starting in 2015, before his permanent relocation to Canada, Mr. Zhang Jr. became involved with Mr. Hang Yin, who he and his family knew from China.
3. Mr. Yin invited Mr. Zhang Jr. into several real estate investment projects which Mr. Zhang Jr. agreed to fund in exchange for ownership interests. Over the next few years, he entrusted Mr. Yin with millions of dollars brought into Canada from China by Mr. Yin.
4. On the surface, the properties comprising the four projects were acquired essentially as intended and agreed from the outset. Mr. Yin established companies and acquired the intended real estate within those companies.
5. What Mr. Zhang Jr. did not know was how Mr. Yin had used his money like it was his own. There is no record that he made any effort to track Mr. Zhang Jr.'s investments or account to Mr. Zhang Jr. for his investments.
6. This action is the continuation of a longstanding effort by Mr. Zhang Jr., and now his estate, to recoup those investments.

Mr. Yin's Misappropriations

7. Over time, a considerable amount of the comingled funds made their way into bank accounts personally controlled by Mr. Yin in his own name, or accounts in the names of his wife and daughter, or companies whose directors were his wife and daughter.
8. Despite the names used on the companies and on the personal accounts, it is not disputed that Mr. Yin was in control of all of them.
9. Mr. Yin misappropriated Mr. Zhang Jr.'s investments by putting them out of his reach and in companies controlled by him through his family members.
10. What Mr. Yin did with the three (or four) projects that give rise to this claim for damages is not complicated or disputed. The issue for trial is what he agreed to or was obligated to do with respect to the three projects at issue.
11. After permanently relocating to Canada in August 2018, Mr. Zhang Jr. immediately sought advice from accounting professionals in order to transfer his investments with Mr. Yin into his own name. Mr. Zhang Jr. very quickly became concerned that things had gone wrong. At first, he was concerned with monies that were paid to a developer, Mr. Peter Luan. These concerns turned out to be valid. But Mr. Zhang Jr.'s review of matters evolved into concerns over Mr. Yin's handling of his investments as the facts became known.

- [5] In or around 2004, Mr. Zhang Jr. moved from Shuangyashan to Beijing and in 2005, he started to work at the Beijing Opera House Theatre. He also started to invest and speculate in real estate, including "flipping" properties.
- [6] From 2008 to 2018, Ms. Yang was an opera singer with the Beijing Opera House Theatre.
- [7] Although Ms. Yang and Mr. Zhang Jr. had met briefly in 2007, their relationship started in the second half of 2011. They had come to know one another through opera rehearsals. Mr. Zhang Jr. was responsible for the stage layout, stage pop-ups, and design. They started to live together at Mr. Zhang Jr.'s home in early 2012.
- [8] On October 20, 2012, Mr. Zhang Jr. and Ms. Yang were married.
- [9] In August 2018, they immigrated to Canada (Vancouver) with their three young children, ages four, three, and one.
- [10] On July 25, 2022, Mr. Zhang Jr. succumbed to leukemia. He was diagnosed with leukemia in 2021.
- [11] As noted, the executor of Mr. Zhang Jr.'s estate is his mother, Ms. Tao.
- [12] Also as noted, Mr. Zhang Sr. is Mr. Zhang Jr.'s father. On the style of cause, Mr. Zhang Sr. is shown as a defendant by way of counterclaim.
- [13] Before the start of trial, I ruled that the hearing of the counterclaim should be severed: Zhang Estate v. Yin, 2025 BCSC 547.
- [14] The defendant, Ms. Yan Chun Liu, is Mr. Yin's spouse and the defendant, Ms. Yu Yin, is their daughter. In 2011, they immigrated to Canada (Vancouver).
- [15] The defendants say that it was Mr. Zhang Sr. who invested with Mr. Yin and that it was Mr. Zhang Sr.'s funds that were invested with Mr. Yin. In this regard, the defendants in their Amended Amended Response plead (I have made some small stylistic changes for consistency):

4a. From 2015 to 2018, Mr. Yin and Mr. Zhang Sr., father of the deceased Mr. Zhang Jr, invested in the projects named in the Second Amended Notice of Civil Claim (i.e., the "West 41st Project", the "Surrey Project" [or the "Surrey Coffee Shop Property"], the "No.3 Road Project", and the "Buxton Property", collectively the "Projects") together through separate shareholdings in corporate vehicles, and not as partners pursuant to the Partnership Act, RSBC 1996, c 348.

4b. At no time was Mr. Yin or any other defendant in a contractual relationship or partnership with Mr. Zhang Jr. with regard to investing in the Projects. All relevant transactions were between Mr. Yin and Mr. Zhang Sr. and all monies in furtherance of the Projects were provided by Mr. Zhang Sr.

[My emphasis.]

- [16] Further, the defendants say that in 2019 Mr. Zhang Sr. and Mr. Yin resolved and settled their financial dealings, which Mr. Yin refers to as the "Asset Division Agreement".
- [17] In their closing submissions, the defendants submit (again I have made some small stylistic changes for consistency):
5. In the instant case, a significant amount of ink has been spilled and a considerable amount of Court time has been taken to debate and adjudicate a wide variety of issues. However, at its core, this case really boils down to three simple questions:
- (a) Did Mr. Zhang Jr. enter into the agreements with the Defendant, Hang Yin ("Mr. Yin"), to invest in the properties at issue in this case?
- (b) Did Mr. Zhang Jr. invest the funds at issue in this case with Mr. Yin?
- (c) If Mr. Zhang Jr. did enter the agreements at issue and did invest the funds at issue, did Mr. Yin and the other Defendants misappropriate any of those funds?
6. As will be set out in greater detail throughout this Closing Submission, it is respectfully submitted that the Plaintiff has not met [her] burden of proving [her] case on any of the above three questions.

[My emphasis.]

- [18] Of striking importance are promissory notes totalling \$37,716,001 that were issued by two of the defendant corporations to Mr. Zhang Jr.
- [19] The promissory notes were used as consideration as part of an October 15, 2019 transaction involving most of the key defendants and Mr. Zhang Jr. The transaction is referred to as the "PwC Transaction".
- [20] As shareholders, directors, or officers, Ms. Liu and Ms. Yin were engaged in the PwC Transaction representing the financial interests of the "Yin Family" (Mr. Yin, Ms. Liu, and Ms. Yin).
- [21] With respect to the PwC Transaction, Mr. Yin was not a shareholder, director, or officer, of any of the corporations holding shares, properties, or other assets, serving the interests of the Yin Family.
- [22] Mr. Yin testified that Ms. Liu (his wife) and Ms. Yin (his daughter) were operating at his direction. He further testified that the promissory notes that were issued as part of the October 15, 2019 PwC Transaction were "fake".
- [23] As part of the PwC Transaction, there was also a remnant \$4,562,135 promissory note which I will also address further below.
- [24] As will be seen, I largely reject Mr. Yin's testimony and, in particular, that the promissory notes related to the PwC Transaction that were issued in favour of Mr. Zhang Jr. were fake.

- [25] Separately, there is also a March 4, 2019, \$5,630,000 promissory note (unrelated to the PwC Transaction) issued in favour of Mr. Zhang Jr. with Mr. Yin as the payor. Although Mr. Yin challenges it on other grounds, he does not assert that this promissory note was fake.
- [26] Other than Mr. Yin's assertions that his financial dealings were with Mr. Zhang Sr., there is no evidence such as shares, properties, or promissory notes in Mr. Zhang Sr.'s name.
- [27] Mr. Yin was also the trustee under a Declaration of Bare Trust and Agency Agreement (the "Buxton Trust") under which a single-family residential property (the "Buxton Property") was held for Mr. Zhang Jr. as its sole beneficiary.
- [28] For the reasons that follow, the plaintiff is entitled, in the main, to the relief she seeks, as executor of the estate of Mr. Zhang Jr.
- [29] At trial, the plaintiff submitted a draft order for the relief the plaintiff seeks. The plaintiff's draft order is attached as Schedule "A". Later, in these reasons, I review in detail the draft order.

2. BALANCE OF PROBABILITIES

- [30] In *F.H. v. McDougall*, 2008 SCC 53, Justice Rothstein, writing for the Supreme Court of Canada, stated:
- [49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[My emphasis.]

- [31] There is not an exception for a civil plea of fraud.
- [32] There is also not a lesser or different standard of proof where a plaintiff has died and the deceased's executor becomes the plaintiff as the executor of the deceased's estate.
- [33] In *F.H.*, Justice Rothstein also stated that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test": para. 46.

3. The plea of fraud

- [34] Ms. Tao, as executor, with respect to fraud, pleads as facts (in part):
9. Commencing in 2015, and between 2015 and 2018, Mr. Yin developed a scheme to convert the plaintiff's [Mr. Zhang Jr.'s] funds in whole or in part to his own use, and to closely-related parties and controlled entities (the "Scheme"). The full particulars of the Scheme are best known to Mr. Yin, but included the following elements:
- (a) while resident in China, the plaintiff [Mr. Zhang Jr.] was invited by Mr. Yin to invest with him in real estate projects in British Columbia;

- (b) to induce the plaintiff [Mr. Zhang Jr.] to make those investments, the following representations were made to the plaintiff by Mr. Yin:
 - (i) the invested funds would be used in profitable real estate investments in British Columbia;
 - (ii) the investments would be secured and protected; and
 - (iii) profits on the investments would be divided as agreed (the "Representations");
 - (c) the Representations were false and were made by Mr. Yin knowing that they were false, without belief in their truth, or reckless as to whether they were true or false;
 - (d) in reliance on the Representations, the plaintiff [Mr. Zhang Jr.] entrusted to Mr. Yin funds for the purpose of investment in real estate in Canada;
 - (e) contrary to the Representations, and at times that are best known to them, Mr. Yin did not segregate and did maintain the plaintiff's [Mr. Zhang Jr.'s] investments for the purpose of protecting his investments or producing a return. Rather, he comingled the plaintiff's [Mr. Zhang Jr.'s] investment funds with other assets and funds in order to convert the plaintiff's [Mr. Zhang Jr.'s] funds, investment and profit, to his own use as he saw fit, the particulars of which are best known to him; and
 - (f) further and contrary to the Representations, Mr. Yin and others under his control subsequently mortgaged the properties purchased with the plaintiff's [Mr. Zhang Jr.'s] funds and converted the proceeds of those mortgages to their own use as then saw fit, some particulars of which are set out below and the full particulars of which are best known to him.
10. In furtherance of the Scheme, Mr. Yin involved his wife, Yan Chun Liu, and his daughter, Yu Yin, in the Scheme through their active participation in the establishment of and control over British Columbia companies created for the purpose of owning real estate assets acquired with, inter alia, the funds entrusted to him by the plaintiff.
11. Mrs. Liu and Ms. Yin agreed to and did actively participate in the Scheme with knowledge of its purpose or reckless and wilfully blind to that fact. Alternatively, they were negligent in failing to make any or sufficient inquiries into the nature and purpose of the transactions in which they were involved, including as aforesaid.
- [35] Under the Legal Basis (Part III), Ms. Tao states (in part):
1. The plaintiff claims against the Mr. Yin on the basis of fraud, breach of fiduciary duty, breach of trust, misrepresentation, non-disclosure, breach of contract, unjust enrichment, fraudulent conveyance and conversion, and relies on the common law principles and applicable statutes related thereto.

2. The plaintiff claims against Mrs. Liu on the basis of breach of contract, unjust enrichment, knowing receipt, fraudulent conveyance and knowing assistance and relies on the common law and applicable statutes related hereto.
3. The plaintiff claims against Ms. Yin on the basis of unjust enrichment, knowing receipt, fraudulent conveyance and knowing assistance and relies on the common law and applicable statutes related thereto.
4. The plaintiff claims against the corporate defendants, and each of them, on the basis of their vicarious liability for the acts and omissions of the personal defendants, and relies on the common law related thereto, including the law of agency.

And further,

7. The Representations made to [Mr. Zhang Jr.] by Mr. Yin were false and were made knowing that they were false without belief in their truth, or reckless as to whether they were true or false. The Representations were relied on by [Mr. Zhang Jr.] and induced [him] to invest with the defendants in their fraudulent investment scheme thereby causing loss or damages.
- [36] In the Amended Amended Response to Civil Claim, the defendants deny the plaintiff's pleaded facts regarding fraud. Under Legal Basis, the defendants plead (in part):
55. In response to the whole of the NOCC and to paragraph 7 of Part III in particular, the Defendant Mr. Yin is not liable to the plaintiff for fraudulent misrepresentation.

And further,

60. Mr. Yin denies that he made unlawful, undisclosed or unauthorized use of the plaintiff's [Mr. Zhang Jr.'s] funds. At no time did the plaintiff [Mr. Zhang Jr.'s] provide Mr. Yin with any funds; further, at all material times, Mr. Yin used the funds advanced by Mr. Zhang Sr. in accordance with his discussions and with the agreement of Zhang Sr.

[My emphasis.]

4. CREDIBILITY

- [37] In *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392, Justice Dillon described the assessment of credibility:
- [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.); [Faryna] v. Chorny, [1952] 2 D.L.R. [354] (B.C.C.A.) [Faryna]; 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 ([Faryna] at para. 356).

[38] In Faryna v. Chorny, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.), Justice O'Halloran stated (at p. 357):

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be 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.

[39] In Ford v. Lin, 2022 BCCA 179, Justice Frankel, writing for our Court of Appeal, stated:

[104] Credibility and reliability are not the same thing. Credibility is concerned with a witness's veracity. Reliability is concerned with the accuracy of a witness's testimony; it involves consideration of a witness's ability to accurately observe, recall, and recount the events in issue: R. v. Khan, 2015 BCCA 320 at para. 44, 374 B.C.A.C. 262, leave to appeal ref'd [2016] 1 S.C.R. xii; R. v. H.C., 2009 ONCA 56 at para. 41, 241 C.C.C. (3d) 45. []

[40] In Le (Guardian ad litem of) v. Milburn, [1987] B.C.J. No 2690, 1987 CarswellBC 1589 (S.C.), Justice Southin, as she then was, stated at p. 2:

When a litigant practices 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.

5. REAL ESTATE PROJECTS AND PROPERTIES

[41] In summary terms, the plaintiff pleads that there were four real estate projects or properties that involved primarily Mr. Zhang Jr. and Mr. Yin. Mr. Yin used various corporations and trusts to undertake the projects. Mr. Yin engaged Ms. Liu and Ms. Yin as corporate directors and shareholders to serve the Yin Family's interests.

[42] I will refer to the four projects or properties as:

- a) the "West 41st Project";
- b) the "Surrey Coffee Shop Property" (also referred to as the "Surrey Project");
- c) the "No. 3 Road Project"; and

d) the "Buxton Property".

[43] With respect to the No. 3 Road Project, there is no outstanding claim. Its relevance is to the overall context of the parties' dealings and, in particular, to the representations made in the documents in the October 15, 2019 PwC Transaction (closed October 24, 2019).

[44] There are also some other real estate properties (some of which are the personal residences of one or more of the defendants) that are relevant to the plaintiff's sought remedies, such as those of a remedial constructive trust, an equitable lien, and the tracing of funds or proceeds. Among these other properties is the Royal Oak Project, which consists of four single-family homes or vacant lots located on Royal Oak Avenue in Burnaby, BC.

[45] As the style of cause shows, there are a number of "numbered corporations" involved in the litigation. For ease of reference, at Schedule "B", I have listed the relevant numbered corporations with the Project or Property to which they relate.

a) The West 41st Project

i) The Acquisition

[46] From June 10, 2015 to September 1, 2015, 1011066 B.C. Ltd. ("101 Ltd.") purchased five residential properties on or neighbouring West 41st Avenue, Vancouver, B.C., with an aggregate cost of \$19,181,479 (the "West 41st Project").

[47] The aggregate cost of the West 41st Project of \$19,181,479 was confirmed by Mr. Paul D. McEwen, CPA, CA, CBV, who was qualified to provide expert testimony as an expert in forensic accounting.

[48] At the time of the acquisitions, 1032734 B.C. Ltd. ("103 Ltd.") and iFortune Development Inc. held 80 percent and 20 percent respectively of 101 Ltd.'s outstanding shares.

[49] Ms. Liu was the sole registered shareholder and director of 103 Ltd. Mr. Feng Yuan (also known as Mr. Peter Luan) controlled iFortune Development Inc.

[50] Mr. Yin had had previous dealings with Mr. Luan in real estate development and construction.

[51] Ms. Liu's shareholding is typical of Ms. Liu, or Ms. Liu and Ms. Yin holding shares for the Yin Family. As noted, in none of the corporations involved in this action representing the Yin Family's interests is Mr. Yin registered as a shareholder or otherwise shown as a shareholder (as described further below, Mr. Yin is, however, the trustee with respect to the Buxton Property).

[52] Similarly, Mr. Yin is not recorded as a director or officer. Ms. Liu or both Ms. Liu and Ms. Yin, served as directors and officers of the Yin Family corporations.

[53] Ms. Liu and Ms. Yin generally followed Mr. Yin's directions.

- [54] The plaintiff says that, in 2015, Mr. Zhang Jr. provided Mr. Yin with 60 million RMB (approximately \$11 million CAD) as his 40 percent investment with respect to the West 41st Project.
- [55] Mr. Zhang Jr.'s 40 percent investment with respect to the West 41st Project would represent one half of 103 Ltd.'s 80 percent interest in 101 Ltd.
- [56] In their pleadings, the defendants agree that there was a contribution of approximately \$11 million CAD (based on 55 million RMB). However, Mr. Yin says that the investor was Mr. Zhang Sr.: Amended Amended Response to Civil Claim, paras. 25 and 26.
- [57] Mr. Zhang Sr. testified that he did not make the investment and understood his son had done so.
- [58] An investment by Mr. Zhang Jr. is consistent with the October 15, 2019 PwC Transaction, where Mr. Zhang Jr. is acknowledged by way of the issuance of promissory notes to Mr. Zhang Jr. as providing funds in relation to the No. 3 Road Project and the West 41st Project (both of which were part of the October 15, 2019 PwC Transaction).
- [59] As discussed in greater detail further below, I have found that Mr. Zhang Jr. was the investor.
- [60] On June 30, 2017, three of the five West 41st Avenue properties were sold together for \$25,225,000 with a significant profit of \$11,186,625 realized. Mr. Zhang Jr. did not receive directly or indirectly any credit or benefit in relation to the profit. The plaintiff's claim includes compensation for that which the plaintiff submits was Mr. Zhang Jr.'s share.
- [61] The parties agree that iFortune Development Inc. (Mr. Luan) was paid 20 percent of the profits from the sale of the three West 41st properties.
- [62] On August 10, 2017, 103 Ltd. acquired for \$1,000,000 iFortune Development Inc.'s 20 percent interest in 101 Ltd. Since this time, 103 Ltd has been the sole shareholder of 101 Ltd. iFortune Development Inc.'s loans to 101 Ltd. of \$2,260,000 were excluded from the share acquisition purchase.
- [63] Ms. Liu continues to be 103 Ltd.'s sole registered shareholder and director.
- [64] The financial dealings and details involving iFortune Development Inc., 101 Ltd., 103 Ltd., and Mr. Yin are not particularly clear.
- [65] The defendants agreed with the plaintiff's summary of the following testimony and facts:
- a) Mr. Yin testified that when the three 41st Properties were sold, Mr. Luan took his profits, and Mr. Yin paid him his 20% share from the sale price. Mr. Yin initially did not recall how he paid Mr. Luan his 20% share. After reviewing the share purchase agreement between iFortune Development Inc. and 103 B.C. Ltd., Mr. Yin recalled that this was an agreement for the profit on the remaining two properties owned by 101 Ltd. Mr. Yin agreed to return the shares for \$1 million CAD. Mr. Yin never gave evidence on the total amount he paid to Mr. Luan for the profit in 101 Ltd. or the source of the money he used to pay him.

- b) A written share purchase agreement was prepared made dated August [10], 2017 [the agreement to which reference is made in para a]. Under the terms of that agreement, 103 Ltd. purchased the 20% of 101 Ltd. held by iFortune Development Inc. for \$1 million CAD. The agreement specifies that the loans made by iFortune to 101 Ltd. in the amount of \$2.3 million CAD were not being purchased.
 - c) Mr. Luan testified that following payments by 101 Ltd. were, as had been indicated by his lawyer's response to request which had been prepared by his accountant, Mr. Yin paying him to acquire his shares of 101 Ltd.
 - i. August 14, 2017 - Transfer from 101 Ltd. to iFortune Home Development Inc. in the amount of \$500,000 CAD.
 - ii. August 18, 2017 - Transfer from 101 Ltd. to iFortune Home Development Inc. in the amount of \$1,000,000 CAD.
 - iii. July 10, 2019 - Cheque from 101 Ltd. to iFortune Home inc. in the amount of \$500,000.
 - iv. July 19, 2019, Cheque from 101 Ltd. to iFortune Home inc. in the amount of \$100,000 CAD signed in Chinese.
 - v. August 8, 2019, Cheque from 101 Ltd. to iFortune Home inc. in the amount of \$200,000 CAD signed in Chinese.
 - d) In discovery, Mr. Yin was asked to identify the purpose of the \$500,000 CAD and \$1,000,000 CAD paid by 101 Ltd. to iFortune but he was unable to do so.
 - e) At trial, Mr. Yin testified that \$1 million CAD was paid to iFortune as profits from the sale of the three properties, and that \$500,000 CAD was paid to iFortune as a management fee. He denied that this \$1.5 million CAD amount paid to iFortune in August 2017 was used to purchase shares of 101 Ltd. from iFortune.
 - f) Mr. Luan testified that he did not charge management fees for the West 41st Project.
- [66] Separately, on May 12, 2023, iFortune Homes Inc. sued 101 Ltd. for the return of a \$1,500,000 first deposit it had made in or around September 1, 2020 for the purchase of the two remaining West 41st properties 101 Ltd. owned. The purchase price was \$16,000,000.
- [67] iFortune Homes Inc. pleaded that 101 Ltd. was in breach of contract and that 101 Ltd. had refused to return the \$1,500,000 deposit.
- [68] iFortune Homes Inc. was successful at trial. iFortune Homes Inc. was awarded \$1,500,000 and costs: iFortune Homes Inc. v. 1011066 B.C. Ltd., 2024 BCSC 1974.

- [69] Also separately, on January 31, 2025, 1196451 B.C. :Ltd. ("1196 Ltd.") and 1004732 B.C. Ltd. ("1004 Ltd.") were awarded the sum of \$528,150.47 plus pre-judgment interest as against iFortune Centre Limited Partnership ("iFortune LP") by its general partner, 100511 B.C. Ltd., with costs on a "solicitor-client" basis. Since its incorporation, 1196 Ltd. has been 100 percent owned by Mr. Zhang Jr. or his Estate, and since the PwC Transaction, 1004 Ltd. has been wholly owned by 1196 Ltd.
- [70] The claim related to the preload process for the No. 3 Road Project.
- ii) Three mortgages currently on the West 41st Project
- [71] In May 2018, 101 Ltd. obtained two mortgages from Bank of Montreal of \$2 million each (total \$4 million) with the two remaining West 41st properties serving as the security. The net proceeds were \$3,997,039.
- [72] Shortly after the receipt of the net proceeds, 101 Ltd. disbursed \$3,565,186 to 108542 B.C. Ltd. ("108 Ltd."). At the time, 108 Ltd. was the beneficial owner of the No. 3 Road Property. Ms. Liu and Ms. Yin were shareholders of 108 Ltd. with each holding 50 percent of 108 Ltd.'s outstanding shares.
- [73] Of the \$3,565,186, on May 29, 2018, 108 Ltd. used \$3,205,186 to repay a loan it owed to First Commercial Bank.
- [74] 101 Ltd. used a further \$360,000 to purchase an investment (which at trial Mr. Yin could not recall the purpose). The investment consisted of two guaranteed investment certificates owned by 101 Ltd. and held in a Bank of Montreal account opened by Ms. Liu.
- [75] The parties agree that during an August 13, 2019 meeting leading to the October 15, 2019 PwC Transaction, Mr. Yin told Ms. P. Gao of PwC LLP that these two Bank of Montreal mortgages were not related to development and he was responsible for the repayment.
- [76] At trial, Mr. Yin testified that he does not know Ms. Gao and does not recall ever telling her that he would repay the Bank of Montreal debt.
- [77] At trial, Mr. Yin did not have a clear recollection whether the amount borrowed was \$2,000,000 or \$4,000,000.
- [78] At trial, Mr. Yin testified that he put the mortgage proceeds, regardless of the amount borrowed, into the No. 3 Road Project. He admits that the mortgages went into default.
- [79] With respect to the third of the three mortgages, in August 2020, Ms. Liu, to secure loans of up to \$5,000,000, agreed to a further mortgage (the "Jin Ocean Mortgage") being placed on the two remaining West 41st Avenue properties. Ms. Liu used the mortgage proceeds for her own personal or investment purposes.
- [80] The interest rate on the Jin Ocean Mortgage was 15 percent compounded monthly.

- [81] The Jin Ocean Mortgage is described in greater detail further below under the heading "Ms. Liu's Credibility".
- [82] At this time, 101 Ltd. still owns the remaining two West 41st properties which were, however, subject to foreclosure proceedings at the time of trial. (The Court does not know the current status).
- [83] In April 2023, the estimated market value of the two remaining West 41st properties as a mixed-use development site was estimated to be between \$11,500,000 and \$15,400,000.
- [84] The plaintiff's claimed share of the profit associated with the sale of the first three West 41st properties is \$4,474,650.
- [85] The plaintiff's claimed share of the unrealized profit with respect to the remaining two West 41st properties is \$2,980,000. The \$2,980,000 (rounded) is based on two-thirds of the plaintiff's claimed share of profit associated with the sale of the first three West 41st properties.
- [86] The plaintiff's calculation of the \$4,474,650 profit with respect to the first three West 41st properties, and which I adopt is:

Item

Amount

Source

Proceeds of Disposition

\$25,225,000

101 Ltd. Tax Returns

Cost Base - 5733 Alberta Street

-\$3,777,688

McEwan Report

Cost Base - 392 West 41st Avenue

-\$3,898,629

McEwan Report

Cost Base - 376 West 41st Avenue

-\$4,009,651

McEwan Report

Expenses from Disposition

-\$214,286

101 Ltd. Tax Returns

Reported Expenses

-\$1,000

101 Ltd. Tax Returns

Taxes Payable

-\$2,137,121

101 Ltd. Tax Returns

TOTAL PROFIT

\$11,186,625

Plaintiff's 40 percent

\$4,474,650

b) The Surrey Coffee Shop Property

[87] On June 17, 2016, 1079770 B.C. Ltd. ("107 Holdco Ltd."), and 1079775 B.C. Ltd. ("107 Opco Ltd.") were incorporated. For each of these corporations, Ms. Liu and Ms. Yin have each held since incorporation 50 percent of the outstanding shares of each corporation. Similarly, each has been a director of each corporation.

[88] On June 27, 2016, 107 Holdco Ltd. purchased for \$5,600,000 (\$5,762,938 with taxes and fees) a commercial property in Surrey, B.C. with its operating coffee shop business. The property is referred to as the "Surrey Coffee Shop Property". 107 Opco Ltd. was used to conduct the coffee shop business.

[89] The plaintiff pleaded that in reliance on Mr. Yin's representations, Mr. Zhang Jr., in or around 2016, provided Mr. Yin with 15 million RMB (approximately \$3 million CAD) for a 50 percent interest in the Surrey Coffee Shop Property. By trial, Mr. Zhang Jr.'s pleaded 50 percent interest was refined to be 52 percent (\$3,000,000 divided by \$5,762,938).

[90] The defendants agree that 15 million RMB was provided for a 50 percent interest in the Surrey Coffee Shop Property but say that the investor for the interest was Mr. Zhang Sr., not Mr. Zhang Jr.

[91] Mr. Zhang Sr. denies that he invested in the Surrey Coffee Shop Property.

[92] In closing submissions, the defendants submitted that Ms. Tao (as executor for Mr. Zhang Jr.) had not met her "burden to prove that [Mr. Zhang Jr.] had the means to invest the funds at issue in this case, further reinforcing that it was not him who made these investments".

- [93] As of 2016, Mr. Zhang Jr. was already a wealthy man. In the October 15, 2019 PwC Transaction, discussed further below, Mr. Zhang Jr. is shown to have significant funds as evidenced by several promissory notes totalling over \$34,000,000. Of the \$34,000,000, over \$6,000,000 is supported by advances made in 2015. Mr. Yin recognized the promissory notes for the October 15, 2019 PwC Transaction, but at trial described the promissory notes as "fake".
- [94] Just over a year after the acquisition of the Surrey Coffee Shop Property, 107 Holdco Ltd. obtained a \$1,925,000 mortgage from BlueShore Financial Credit Union (net proceeds \$1,878,328) (the "BlueShore Mortgage"). Of particular note, Ms. Liu and Ms. Yin each signed a July 14, 2017 commitment letter on behalf of 107 Holdco Ltd. and each agreed to be guarantors.
- [95] In signing the BlueShore Mortgage commitment letter, Ms. Liu and Ms. Yin each confirmed that the "Loan Purpose" was "to assist the Borrower with the purchase of a commercial site".
- [96] The borrowed funds were not used for the foregoing purpose.
- [97] \$900,000 of the \$1,925,000 mortgage was used by Ms. Lui to help fund 108490 B.C. Ltd. ("1084 Ltd.")'s acquisition of the fourth property making up the Royal Oak Project described in greater detail further below.
- [98] Ms. Liu and her friend, Ms. Hua, are the shareholders of the 1084 Ltd. To avoid confusion I note that, at that time, 108 Ltd. was the beneficial owner of the No. 3 Road Project. (108 Ltd. and 1084 Ltd. are separate corporations).
- [99] The timing of the \$900,000 from the BlueShore Mortgage accords with 1084 Ltd.'s purchase of the fourth Royal Oak property in September 2017.
- [100] I find that Ms. Liu used the \$900,000 to fund 1084 Ltd.'s commitment with respect to the purchase of the fourth Royal Oak property. Mr. McEwen's report further supports my finding that the \$900,000 from the BlueShore Mortgage was used to help 1084 Ltd. fund the purchase of the fourth Royal Oak property.
- [101] Separately, in October 2017, \$700,000 from the BlueShore Mortgage was used to pay iFortune Development Inc. Mr. Yin's testimony with respect to the \$700,000 reflects his lack of reliability. In his cross-examination he testified:

Q This is going to be the October bank statement for your holding company, and there's a Canadian bank draft for \$700,000 going out of there. I'm going to suggest that went to iFortune, Peter Luan's company.

A Yes.

Q And why would it go to iFortune?

A Well, as I recall, that's the money that was given to Peter's company? That's a profit, profit money.

Q From what?

A Maybe earlier I made a mistake. This money was given to him after the three properties were sold for the 41st Ave. project.

Q So you mortgaged the Surrey property to pay West 41st profits to Peter Luan? Is that what you're saying?

A No. I recall that money was a payment I remitted from China to this coffee shop project.

Q I don't know what you're talking about, sir. I'm looking at money coming out of the account where the mortgage balance went into for 107 hold co. And we've established that it went to Peter Luan's iFortune company?

A Right.

Q Why would this Surrey holding company be paying money to Peter Luan for profits on 101?

A At the time, the remittances were made quite - - in a quite messy way. It was pretty chaotic, you know, back and forth, back and forth. And then as long as - - you know, whichever company had funds available, those funds would be used, so as long as, eventually, the accounts can be balanced.

[102] Further, for completeness, in December 2017, \$100,000 from the BlueShore Mortgage was transferred to 108 Ltd.

[103] In examination-in-chief, Mr. Yin testified that he had told Mr. Zhang Sr. in advance of the BlueShore Mortgage and received Mr. Zhang Sr.'s approval upon the understanding that Mr. Yin would pay the interest on the mortgage.

[104] Mr. Zhang Sr. testified that he first learned from his son of the BlueShore Mortgage after coming to Canada in late 2018 or early 2019. Such accords with my finding that Mr. Zhang Jr. was the investor, and not his father, in the Surrey Coffee Shop Property.

[105] On September 1, 2023, the then defendants were ordered to disclose forthwith the balance of the BlueShore Mortgage on the Surrey Coffee Shop Property (1084 Ltd. had not yet been added as a defendant). The then defendants failed to do so. On November 8, 2024, Justice Lyster found the then defendants to be in contempt of Court: Tao v. Yin, 2024 BCSC 2045, paras. 54-55.

c) The No. 3 Road Project

[106] The No. 3 Road Project involves a potential mixed-use real estate development.

[107] On August 12, 2016, 108 Ltd. was incorporated. Ms. Liu was its sole shareholder.

- [108] On August 19, 2016, 108 Ltd. agreed to purchase from iFortune LP three properties located at 6840 and 6860 No. 3 Road and 8051 Anderson Road in Richmond, B.C., collectively referred to as the "No. 3 Road Project". At the time of purchase, the property was under development by iFortune LP and managed by Mr. Luan.
- [109] At the time, 1004 Ltd. was wholly-owned by 108 Ltd. 108 Ltd. used 1004 Ltd. to hold the No. 3 Rd. Project, as trustee, for it.
- [110] The purchase price was approximately \$31,500,000 consisting of \$24,000,000 and the assumption of a \$7,500,000 mortgage iFortune LP held with First Commercial Bank.
- [111] On July 7, 2017, the transaction for 108 Ltd.'s acquisition of the No. 3 Road Project closed. The total consideration was \$31,515,000.
- [112] On July 6, 2017, 101 Ltd. had received the net proceeds of \$15,475,318 from the sale of the three West 41st properties, of which \$12,734,959 was used to help fund the purchase.
- [113] On July 6, 2017, Ms. Yin had also become an equal shareholder with her mother in the capital of 108 Ltd., with each then having a 50 percent shareholding.
- [114] After July 7, 2017, Mr. Luan continued to manage the No. 3 Road Project.
- [115] Mr. McEwen estimated that a further \$4,503,322 was incurred in relation to development costs.
- [116] The plaintiff pleads that in reliance on Mr. Yin's representations, Mr. Zhang Jr., in or around 2016, entered into an oral agreement with Mr. Yin relating to the acquisition of the properties making up the No. 3. Road Project. The ownership and profits would be divided equally.
- [117] The plaintiff pleads that in late 2016 and early 2017, Mr. Zhang Jr. provided Mr. Yin with 145 million RMB (approximately \$29 million CAD) for his 50 percent interest in the No. 3 Road Project.
- [118] The defendants plead that Mr. Zhang Sr., (not Mr. Zhang Jr.) was to have a 50 percent interest in the capital of 108 Ltd. for an approximately \$26 million capital contribution. Each of Mr. Zhang Sr., and Mr. Yin, would "receive 50% of the shares in 108 Ltd."
- [119] The defendants plead that Mr. Zhang Sr.'s \$26 million contribution was to consist of a \$15 million contribution of new funds with a further \$11 million coming from his share of the sale of the three of the West 41st properties in the West 41st Project.
- [120] Shortly after immigrating to Canada in August 2018, Mr. Zhang Jr. became concerned as to the finances, including expenses, related to the No. 3 Road Project.
- [121] In September 2018, Mr. Zhang Jr. hired Manning Elliott LLP, Certified Professional Accountants, to review matters relating to the No. 3 Road Project.

[122] As will be seen further below, Mr. Zhang Jr.'s engagement of Manning Elliott LLP led to further review and analysis and led in turn to the October 15, 2019 PwC Transaction.

[123] On February 4, 2019, Mr. Zhang Jr. caused 1196 Ltd. to be incorporated. Mr. Zhang Jr. was 1196 Ltd.'s sole shareholder, director, and officer.

[124] As a result of the October 15, 2019 PwC Transaction, described in detail further below, 1196 Ltd. acquired the beneficial interest in the No. 3 Road Project from 108 Ltd. and all of the shares in the capital of 1004 Ltd., which held, as a bare trustee, legal title for the No. 3 Road Project.

d) The Buxton Property

[125] The "Buxton Property" is an older single-family residential property located on Buxton Street, Burnaby, B.C.

[126] On September 1, 2016, Mr. Yin entered into an agreement for the purchase and sale of the Buxton Property.

[127] On October 11, 2016, the purchase and sale closed with title registered in Mr. Yin's name. Mr. Yin funded the purchase with a \$1,177,500 mortgage.

[128] The plaintiff says that the Buxton Property was to be held in trust for Mr. Zhang Jr. by Mr. Yin.

[129] Mr. Yin says that Mr. Zhang Sr. (not Mr. Zhang Jr.) provided him with 10,000,000 RMB (approximately \$2 million CAD) after he had purchased the Buxton Property.

[130] At his examination for discovery (read-in at trial), Mr. Yin testified:

Q And did you end up arranging to purchase property?

A Yes. I made the arrangement.

Q Well, you purchased it in your name; right?

A Yes.

Q For what price?

A It seems that the price was about 1.9 million.

Q And then did Mr. Zhang give you any money to purchase that property?

A Yes.

Q About how much?

A 10 million RMB.

Q Do you remember what that was worth, approximately, in Canadian dollars at the time?

A It was - - seems that it was around 5.34 - -

THE INTERPRETER: Or sorry.

A 5.4 or 5.34

CNSL M. HEWITT:

Q Sorry. \$5.4 million Canadian?

A Less than \$2 million Canadian.

Q Right. Close to 2 million?

A Yes.

Q Okay. So the house cost about 1.9 million, and Mr. Zhang gave you about that much to buy it; right?

A Yes.

Q But did you use Mr. Zhang's money to purchase the house?

A No.

Q Why not?

A I told Mr. Zhang that I have some shortage of funds myself, and my - - I would like to borrow some money, but I will pay the normal interest on the loan. And so when I get my funds back, then I will repay to the loan, and he said it's okay.

Q Which Mr. Zhang is that?

A Chun Li Zhang.

Q Okay. So you took out a mortgage when you purchased the Buxton property; right?

A Yes.

Q And how much was the mortgage?

A 1 million.

Q So the property - - you sure about that, sir? That it was only 1 million?

A Approximately. Close to 1 million. Not - - less than 1 million.

[131] Ms. Tao says that the transaction was with Mr. Zhang Jr. and not Mr. Zhang Sr.

[132] Mr. Zhang Sr. denies that he funded the purchase of the Buxton Property. He also denies the existence of any loan arrangement Mr. Yin describes with respect to the Buxton Property.

[133] After Mr. Zhang Jr. had immigrated to Canada, Mr. Yin acknowledged he held the Buxton Property in trust for Mr. Zhang Jr.

- [134] On March 4, 2019, Mr. Yin executed a Declaration of Bare Trust and Agency Agreement confirming that "the Nominee has held and will continue to hold legal title to the [Buxton Property], as nominee, agent and bare trustee for the sole benefit and account of the Owner as principal and beneficial owner, in accordance with this Agreement, effective since the date of the acquisition of the [Buxton Property]". [My emphasis]
- [135] Mr. Yin is defined as the "Nominee" and Mr. Zhang Jr. as the "Owner".
- [136] At the time of the execution of the Bare Trust and Agency Agreement, as I discuss further below, Mr. Yin did not disclose that on October 7, 2016 he had mortgaged the Buxton Property (principal amount \$1,980,000, funds advanced \$1,177,500).
- [137] The Buxton Property was used to earn rental income.
- [138] The Buxton Property is discussed in greater detailed further below.
- e) The Royal Oak Project
- [139] As noted, the Royal Oak Project refers to four single-family houses or vacant lots located on Royal Oak Avenue in Burnaby, B.C.
- [140] The Royal Oak Project does not represent an investment made by Mr. Zhang Jr. (or Mr. Zhang Sr.) and Mr. Yin.
- [141] Also, as noted, the Royal Oak Project is owned by 1084 Ltd. The shareholders of 1084 Ltd. are Ms. Liu and Ms. Rong Hua. Ms. Liu and Ms. Hua are friends who undertook the Royal Oak Project, with 1084 Ltd. acquiring three properties initially, in August 2016, and then a fourth property in September 2017.
- [142] As described above, Ms. Liu funded her Royal Oak Project investment in part by the \$900,000 drawn under the BlueShore Mortgage, secured by the Surrey Coffee Shop Property.
- [143] On December 5, 2024, 1084 Ltd. was added as a defendant in this action based on the plaintiff's claim related to, inter alia, unjust enrichment, knowing assistance, and fraudulent conveyance, with respect to the Royal Oak Project.
6. the defence
- [144] The defendants' plead that all contractual dealings were with Mr. Zhang Sr. and not Mr. Zhang Jr. The defendants say that Mr. Zhang Sr. "invested in the projects" through "separate shareholdings" in corporate vehicles and not as "partners".
- [145] The defendants in their written submissions state:
653. At trial, Mr. Zhang Sr. provided extensive testimony on his professional background and history in China. These positions provided him with access to vast quantities of money which he could, in turn, invest in the Projects at issue in this case.

654. To begin, Mr. Zhang Sr. testified that he was a senior and influential member of the Chinese Communist Party (the "CCP"). As a member of the CCP, he held various influential roles. For instance, Mr. Zhang Sr. was the Director of the Land Bureau from 1996-2002, he was the Deputy Governor of Jixian County from 2002-2006, he was the Deputy District Governor of the Jianshan District from 2006-2009, and he was the Deputy Secretary of the Jixian District Committee in 2009. In these roles, Mr. Zhang Sr. testified that he had a lot of influence, and particularly over economic development and infrastructure project approvals.
655. Perhaps most importantly, Mr. Zhang Sr. was appointed the Chairman of the Dadi Urban Construction and Development Investment Company (the "Dadi Company") from 2010-2017. The Dadi Company was a state-owned investment and development company in Shuangyashan City. Contrary to what its name might suggest, the Dadi Company did not perform construction itself, but awarded and managed contracts for infrastructure projects in the region such as high-rise buildings, schools, billboards, and artificial lakes.
656. As Chairman of the Dadi Company, Mr. Zhang Sr. was the most senior person in the organization. He frequently traveled for business with the Dadi Company, including to Beijing, and estimated spending one to two months per year in Beijing during this period.
657. In all of the foregoing roles--and in his role at the Dadi Company, in particular--Mr. Zhang Sr. was well-placed to have access to vast sums of money and was in a position to award--or, at the very least, to exert influence over the award of--lucrative contracts to developers for the constructions of large infrastructure projects, including high-rise buildings, schools, artificial lakes, and so on.
- [146] Ms. Tao does not dispute the foregoing description. Mr. Zhang Sr.'s testimony also reflected the foregoing description.
- [147] Where the parties differ is that the defendants say that Mr. Zhang Sr. is a corrupt official who accepted bribes and engaged in other corrupt activities that generated the millions of dollars which enabled him to invest in the subject properties.
- [148] Ms. Tao says that Mr. Zhang Jr. was wealthy in his own right, having made millions in investing (and speculating) in Chinese real estate.
- [149] In sum, the defendants say that any investment with any of them was with Mr. Zhang Sr. and not Mr. Zhang Jr. Therefore, Mr. Zhang Jr. had, and now his estate has, no claim to make.
- [150] The defendants in their written submissions further state:
659. To begin, both of the parties' witnesses have confirmed that Mr. Zhang Sr. was under investigation in China for embezzling funds, taking bribes, misappropriating public funds, and other corrupt practices. That is not in dispute.

660. Further, during the course of trial, a number of witnesses were shown a document issued by the Disciplinary Committee of Beijing Tiandi Huatai Mining Management Co. Ltd. stating that Mr. Zhang Sr. was expelled as a member of the CCP on October 15, 2019 for embezzling public funds.
661. Moreover, during the course of trial, a number of witnesses were shown a document issued on November 25, 2021 by the Seventh Review and Investigation Office of the Jixi City Discipline Inspection Commission and Supervision Committee (the "Jixi Discipline Committee"), in which it stated that "[o]ur office finds that Chunli Zhang, as a government employee, while serving as Chairman of the Board and Deputy Party Secretary of Dadi [Company] in Shuangyashan City, abused his position" by doing all of the following:
- (a) embezzling public funds in the amount of 229,674,033 RMB (equivalent to approximately CAD \$44 million);
 - (b) illegally accepting bribes in the amount of 298,166,152 RMB (equivalent to approximately CAD \$57 million);
 - (c) misappropriating public funds for personal use or profit-making activities in the amount of 59,637,955 RMB (equivalent to approximately CAD \$11 million); and
 - (d) giving money and goods to government employees to seek improper benefits in the amount of 22,250,000 (equivalent to approximately CAD \$4 million).
662. As a result of these findings, the Jixi Discipline Committee stated that it had seized cash belonging to Mr. Zhang Sr. in the amount of 117,396,922 RMB (equivalent to approximately CAD \$22 million), seized thirty properties, and seized five vehicles.
663. While there is no evidence on the record that Mr. Zhang Sr. has been convicted by a Chinese court of the foregoing crimes--whether in person or in absentia--it is self-evident that the Jixi Discipline Committee in China uncovered significant evidence that Mr. Zhang Sr. had committed these crimes. Moreover, the decision made by the Jixi Discipline Committee notes that Mr. Zhang Sr. had "fled abroad" and was on the "wanted list without being apprehended".
664. Additionally the Jixi Discipline Committee's findings have, at least in some respects, been confirmed by the Plaintiff's witnesses. For example, a number of the Plaintiff's witnesses testified that more than 20 properties allegedly belonging to Mr. Zhang Jr. and his brother were seized by the Chinese government as a result of the investigation into Mr. Zhang Sr.
665. Further, even if the findings of the Jixi Discipline Committee have not yet been tried in a court of law, the fact that the Jixi Discipline Committee seized some 117 million RMB (equivalent to CAD \$22 million) corroborates to some extent its findings, and speaks to Mr. Zhang Sr.'s means to invest in the Projects at issue in this case. Mr. Zhang Sr. testified that his annual salary, at its highest, was just 600,000 RMB. It goes without saying that one cannot genuinely generate some 117 million RMB in cash on a salary of just 600,000 RMB,

particularly when one considers that Mr. Zhang Sr. testified that he was not permitted to have any business interests outside of his employment.

666. Likewise, the fact that the Jixi Discipline Committee seized some 30 properties belonging to Mr. Zhang Sr. corroborates to some extent their finding that he was engaged in illegal activity, illegally obtained considerable sums of money, and had access to funds to invest on the Projects at issue in this case. Indeed, Mr. Zhang Sr. testified that he was not permitted to have any real estate investments, so the fact that the Jixi Discipline Committee seized 30 properties belonging to him speaks volumes.
667. Finally, the Jixi Discipline Committee's findings have, at least in some respects, been confirmed by the International Criminal Police Organization ("INTERPOL"). During trial, a number of witnesses were shown a photograph of a "Red Notice" issued by INTERPOL for the arrest of Mr. Zhang Sr. That "Red Notice" shows that Mr. Zhang Sr. is wanted by INTERPOL for charges of (1) crime of corruption; and (2) crime of acceptance of bribes.
668. During his cross-examination, Mr. Zhang Sr. was asked about the existence of the Red Notice, and his testimony was evasive. He claimed that a criminal clearance certificate was issued for him in 2021 by the Chinese government (which was not produced), which supposedly proves that he is not on any INTERPOL list. However, Mr. Zhang Sr. could not remember what part of the year in 2021 he obtained the alleged clearance certificate, and this does not preclude the possibility that he was added to the INTERPOL list after 2021.
669. Zhang Sr. also cited his alleged May 2024 travel to Mexico as evidence that he is not on the INTERPOL list. However, this does not definitively prove that he is not on an INTERPOL list, as enforcement of Red Notices can vary by country and may not always result in detention or denial of entry. Moreover, the only evidence we have that Mr. Zhang Sr. travelled to Mexico is his testimony and the testimony of Ms. Yang. Ms. Yang also testified that Mr. Zhang Sr. did not accompany her on her trip to the United States, Japan, or any other trips.
670. In sum, therefore, there is a considerable amount of evidence on the record that--at the very least--Mr. Zhang Sr. has been credibly accused of illegally obtaining hundreds of millions of RMB during his service as a member of the CCP and Chairman of the Dadi Company, and that more than 117 million RMB--equivalent to CAD \$22 million--and 30 of his properties have already been seized. That he possessed all of these funds and properties speaks to his wealth and the access he had to vast quantities of money for investment in the Projects at issue in this case.
- (iii) A Chinese Court Found that Mr. Zhang Sr. Put Illegally Obtained Properties in the Names of his Relatives to Conceal the Fact that They Were His
671. As further evidence of Mr. Zhang Sr.'s wealth, and of the corrupt activity that enabled him to generate his wealth to invest on the Projects at issue in this case, at least one Chinese court--the People's Court of Mishan City, Heilongjiang Province (the "Mishan Court")--found that he was given three properties in the resort town of Sanya City in the Hainan Province of China

that he sought to conceal by putting them in the names of his relatives: Mr. Zhang Jr., Mr. Zhang Jr.'s brother (Tian Zhang), and Mr. Zhang Jr.'s spouse, Ms. Yang (the "Mishan Court Judgment").

672. In particular, according to the Mishan Court Judgment, the People's Procuratorate of Mishan City, Heilongjiang Province (the "Mishan Procuratorate") claimed that in 2017, an individual named Yingshan Gao bribed Mr. Zhang Sr. by giving him three properties in Sanya City. The Mishan Procuratorate asserted that in order to conceal these bribes and the fact that he owned these properties, Mr. Zhang Sr. put them into the name of Mr. Zhang Jr., Mr. Zhang Jr.'s brother, and Mr. Zhang Jr.'s spouse. In 2020 and 2021, the Mishan Procuratorate prosecuted Mr. Zhang Jr.'s brother for the crime of concealing and disguising criminal proceeds.
673. According to the Mishan Court Judgment, in 2021, Mr. Zhang Jr.'s brother--Tian Zhang--was tried before the Mishan Court for the crime of concealing and disguising criminal proceeds belonging to Mr. Zhang Sr. by putting them in his name. According to the Mishan Court Judgment, Tian Zhang was represented by counsel in that trial, confessed to the crimes described above, and was found guilty and sentenced to a suspended sentence of three years imprisonment and five-years of probation.
674. The prosecution and conviction of Tian Zhang was confirmed by Ms. Tao who testified during her cross-examination that she understood Tian Zhang was convicted and received a suspended sentence for concealing and disguising criminal proceeds for Mr. Zhang Sr. Other facts alleged in the Mishan Court Judgment were confirmed by the Plaintiff's witnesses including, among other things:
- (a) Mr. Zhang Sr. testified that he, Mr. Zhang Jr., Tian Zhang, Ms. Tao, and Ms. Yang all went together to visit the properties at issue in the Mishan Court Judgment in Sanya City in January 2017. This is precisely what was found in the Mishan Court Judgment.
 - (b) Mr. Zhang Sr. testified that Tian Zhang owned a property in Sanya City at the address set forth in the Mishan Court Judgment that the Mishan Court found was given to Mr. Zhang Sr. as a bribe. He further testified that this property had been seized by the Chinese government.
 - (c) Mr. Zhang Sr. testified that Mr. Zhang Jr. owned a property in Sanya City, China at the same address set forth in the Mishan City Judgment that the Mishan Court found was given to Mr. Zhang Sr. as a bribe. What is more, the Appraisal Reports produced by the Plaintiff in support of Mr. Zhang Jr.'s purported real estate investment business also show that Mr. Zhang Jr. owned a property at the same address set forth in the Mishan Court Judgment. Mr. Zhang Sr. further testified that this property had also been seized by the Chinese government.

- (d) Mr. Zhang Sr. testified that Ms. Yang owned a property in Sanya City, China at the same address set forth in the Mishan Court Judgment that the Mishan Court found was given to Mr. Zhang Sr. as a bribe.
675. As a result, the Mishan Court Judgment is strong evidence of Mr. Zhang Sr.'s corrupt activities in China that enabled him to generate the wealth necessary to invest the funds at issue in this action.
676. The Mishan Court Judgment is also important because it demonstrates that the Zhang family had a practice of putting properties belonging to Mr. Zhang Sr. in the names of his relatives in order to conceal the fact that they were his. As will be seen below, this is precisely what the Defendants believe occurred with the real estate that was allegedly purchased by Mr. Zhang Jr. in China to generate the wealth that was used to invest in the Projects at issue in this case.
- [151] With respect to the foregoing proceedings in China, I had no expert evidence to prove the foreign law or procedure.
- [152] In *Drew Brown Ltd. v. The "Orient Trader"*, 1972 CanLII 194 SCC, Justice Spence stated (in dissent on the application of the law but not the applicable law) at 345:

It will be apparent, therefore, from the latter clause that the issue in this action must in so far as the interpretation of the contract is concerned, be determined in accordance with the laws of the United States of America. Dicey and Morris in *Conflict of Laws*, 8th ed. (1967) , p. 1113, outline the manner in which this foreign law is to be proved as follows:

- (i) Expert evidence. It is now well settled that foreign law must, in general, be proved by expert evidence. Foreign law cannot be proved merely by putting the text of a foreign enactment before the court, nor merely by citing foreign decisions or books of authority. Such materials can only be brought before the court as part of the evidence of an expert witness, since without his assistance the court cannot evaluate or interpret them.

Duff, J., as he then was, adopted a similar view in *Allen v. Hay* (1922), 69 D.L.R. 193 at pp. 195-6, 64 S.C.R. 76:

It is not disputed that the plaintiff must fail if the right of recovery depends upon the rules of the law of British Columbia. It is, therefore, incumbent upon him to prove the law of the State of Washington. This he must prove as matter of fact by the evidence of persons who are experts in that law. These experts may, however, refer to codes and precedents in support of their evidence and the passages and references cited by them will be treated as part of their testimony; and it is settled law that if the evidence of such witnesses is conflicting or obscure the Court may go a step further and examine and construe the passages cited for itself in order to arrive at a satisfactory conclusion.

- [153] As noted, although Justice Spence was in dissent on the application of the law to the facts at bar, the other justices did not disagree with the legal principle that "foreign law must, in general, be proved by expert evidence".
- [154] In *Friedl v. Friedl*, 2009 BCCA 314, Justice Levine, writing for our Court of Appeal, stated:
- [20] For the purpose of applying foreign law, a BC court must rely on the evidence of an expert competent to explain and interpret the foreign law, and the judge's conclusion on the foreign law is a finding of fact: see *Buerger v. New York Life Assurance Co.* (1927), 96 L.J.K.B. 930 at 939-943 (C.A.); *Tezcan*, at paras. 61-62.
- [155] In *International Air Transport Association v. Canada* (Transportation Agency), 2024 SCC 30, Justice Rowe, writing for the Supreme Court of Canada, noted the important distinction between foreign law and international law:
- [65] In the course of dealing with state practice, the Federal Court of Appeal and the parties addressed the admissibility of expert evidence regarding international law. Before I address this, I would note an important distinction between foreign law and international law. Foreign law is the domestic law of other states (*Hunt v. T&N plc*, 1993 CanLII 43 (SCC), [1993] 4 S.C.R. 289, at pp. 308-9). International law is "the law among states, but it is also a body of law enunciating certain rights and obligations that states have vis-à-vis non-state actors (such as individuals, international organizations, and other entities) and, to a more limited extent, imposing certain obligations on non-state actors in areas of concern to the international community" (J. H. Currie et al., *International Law: Doctrine, Practice, and Theory* (3rd ed. 2022), at p. 14). Foreign law is treated as a question of fact that has to be pleaded and proved, generally by way of expert evidence (*Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, [2020] 1 S.C.R. 166, at para. 97). International law is treated as a question of law. As I explain below, the admissibility of expert evidence concerning international law depends on the same legal criteria as the admissibility of expert evidence in any other area of Canadian law.
- [156] With respect, without expert evidence as to the laws of China, the Court does not have evidence, in particular, as to the workings of the judicial system in China.
- [157] The Court had no expert evidence with respect to the proceedings in China, such as:
- a) the overall structure and organization of the Chinese judicial system;
 - b) how the independence of the judiciary is secured;
 - c) how the rule of law is observed;
 - d) the criteria for charge approval;
 - e) the standard of proof for a criminal conviction; and
 - f) the rules against self-incrimination.

[158] The defendants referred to s. 26 of the Evidence Act, R.S.B.C. 1996, c. 124, which reads:

26 (1) In this section, "evidence of a proceeding or record" refers to evidence of a proceeding or record of, in or before

- (a) a court in the United Kingdom,
 - (b) the Supreme or Federal Courts of Canada,
 - (c) a court, justice or coroner in a province of Canada,
 - (d) a court in a British Colony or possession,
 - (e) a court of record of the United States,
 - (f) a court of record of a state of the United States, or
 - (g) a court of record of any other foreign country.
- (2) Evidence of a proceeding or record may be given in any action or proceeding in British Columbia by an exemplification or certified copy of it, purporting to be under the seal of the court or under the hand or seal of the justice or coroner, as the case may be, without any proof of the authenticity of the seal or of the signature of the justice or coroner or further proof.
- (3) If a court, justice or coroner referred to in subsection (2) has no seal, and so certifies, evidence of a proceeding or record may be given by a copy purporting to be certified under the signature of a judge or presiding magistrate of the court or of the justice or coroner, without any proof of the authenticity of the signature or further proof.

[159] The defendants submit that the reasons of Justice Skolrood, as he then was, in *Bank of China v. Fan*, 2014 BCSC 2043, in which he considers and applies s. 26 of the Evidence Act is guiding authority.

[160] In *Bank of China*, Justice Skolrood, however, specifically noted:

- [7] The intent of the Bank's present application is to prove the background facts relating to the fraud through the foreign judgments so as to obviate the need to prove those facts again in the present proceeding. The Bank submits that the relevant facts have been repeatedly established in court proceedings in jurisdictions with similar legal systems and that it would be unduly onerous, and indeed wasteful of the court's time, to require the Bank to relitigate and re-prove the underlying facts.
- [8] According to the Bank's notice of application, the specific foreign judgments sought to be introduced into evidence are as follows:

Hong Kong Judgments

- a) *HKSAR v. Hui Yat-sing et al.*, DCCC 660/2005, January 18, 2007;

- b) HKSAR v. Hui Yat Sing et al., CACC 29/2007, June 3, 2008;
- c) HKSAR v. Xu Xia-li et al., DCCC 273/2003, September 8, 2003;
- d) Bank of China v. Kwong Wa-Po, Ching Fo-Chu, Xu Xia Li, HCA No. 5291/2001, July 18, 2005;
- e) Bank of China v. Xu Chao Fan, Xu Guo Jun, Yu Zhen Dong, HCA No. 4529/2001, Default Judgments, April 26, 2002; and
- f) Bank of China Limited v. Ever Joint Properties Limited et al., HCA 2841/2006, Judgments of June 22, 2007, October 12, 2007 and May 24, 2011.

United States Judgments

- g) United States of America v. Xu Chaofan et al., Docket No. 2:02-CR-674-PMP-LRL, U.S. District Court, District of Nevada, May 11, 2009;
- h) United States of America v. Chao Fan Xu, Ying Yi Yu, Guo Jun Xu, and Wan Fang Kuang, Nos. 09-10189, 09-10193, 09-10202, U.S. Court of Appeals, ninth Circuit, January 3, 2013;
- i) Bank of China v. Zhen-Dong Yu et al., Case No. 400 488, Superior Court of California, Default Judgment, September 4, 2003; and
- j) Bank of China v. Xu Chao Fan, Case No. 415 518, Superior Court of California, Default Judgment, September 4, 2003.

- [9] In addition, the Bank seeks to introduce into evidence the following transcript of proceedings:

Transcript of proceedings in United States of America v. Xu Chaofan et al., Docket No. 2:02-CR-674-PMP-LRL, U.S. District Court, District of Nevada.

- [10] The defendants agree that the foreign judgments are admissible as evidence in the present proceeding. Where they differ from the Bank is on the effect to be given to those judgments.

- [161] In the case at bar, the plaintiff has not made a similar concession to that which the defendants made in Bank of China.

- [162] Section 26(2) only addresses "evidence of a proceeding or record". I have no expert evidence that any of the proceedings in China engaged a similar legal system to that of Canada.

- [163] In their written submissions, the defendants state:

236. The weight and significance given to foreign decisions will depend on the purpose for which the prior decision is put forward and the use sought to be made of its findings and conclusions. Justice Skolrood, as he then was, described the spectrum of potential uses or effects of previous judgments as follows:

At one end of the spectrum, certain findings may be conclusive and not subject to relitigation in the later proceeding. At the other end of the spectrum, some findings will be admitted as contextual evidence that must be weighed against all other evidence admitted at trial. A third scenario, which exists along the spectrum in between the other two, is that prior findings will constitute prima facie proof, subject to rebuttal by way of other admissible evidence (*Trang v. Alberta (Director of Edmonton Remand Centre)*, 2002 ABQB 658 at para. 55).¹⁵¹

237. In the foregoing case, Justice Skolrood noted that from a review of the relevant authorities, there are no clear guidelines establishing where along the spectrum a particular prior decision will fall and concluded that much would turn on whether relitigation would amount to an abuse of process. Where relitigation of a matter would not amount to an abuse of process, Justice Skolrood held that "those findings are still entitled to some degree of deference and may be admitted as prima facie proof of the underlying circumstances or, at a minimum, contextual evidence to be considered alongside all of the other evidence adduced at trial".

[164] The defendants further submit that "significant weight" should be given to the Chinese proceedings and that the findings "ought to be considered as prima facie proof of the underlying circumstances".

[165] I have given no weight to any of the Chinese proceedings "as prima facie proof of any of the underlying circumstances". As noted, I had no expert evidence with respect to proceedings in China.

[166] I have considered the Chinese proceedings as contextual evidence supporting the reluctance that Mr. Zhang Sr. or Ms. Tao have to return to China to see their son, Tian Zhang. Further, the Chinese proceedings serve to provide contextual evidence for a basis for Canadian income tax filings relating to the disposition of properties that had been reported as owned by Mr. Zhang Jr. in the previous taxation year.

[167] Without expert evidence as to Chinese law for the case at bar, I have not used or otherwise adopted any of the "facts" set forth in the Chinese proceedings.

[168] The defendants also submit that with respect to an "Interpol Red Notice", significant weight should be given to it as evidence that Mr. Zhang Sr. had the means to invest in the subject projects and properties and to rebut any allegation that the defendants are "obstruct[ing] this lawsuit to conceal their wrongdoing".

[169] With respect to an Interpol Red Notice, defendants' counsel in their written submissions, noted two footnotes to the Reasons for Decision in *Petrochemical Commercial Company International Ltd. v. Nexus Management Group SDN BHD*, 2022 ONSC 3721 at para. 7, aff'd 2023 ONCA 308. The first footnote confirms that "Interpol" refers to "The International Criminal Police Organization".

[170] The second footnote reads:

According to the Interpol website, Red Notices are issued for fugitives wanted either for prosecution or to serve a sentence. A Red Notice is a request to law enforcement worldwide to locate and provisionally arrest a person pending extradition, surrender, or similar legal action.

[171] Having given no weight to any of the Chinese proceedings as "prima facie proof of any of the underlying circumstances", I also give no weight to any Interpol Red Notice for such. I understand the defendants to say that the Interpol Red Notice is based on the Chinese proceedings.

[172] I also have reservations with respect to the tendered Interpol Red Notice. All the Court has in evidence is a photo taken by Mr. Yin and Ms. Yin they say they took, with permission, from a Chinese police file. I was not provided with an Interpol Red Notice, certified or otherwise authenticated by Interpol.

[173] I have considered the purported Interpol Red Notice as contextual evidence for each of Mr. Zhang Sr. and Ms. Tao being reluctant to visit China and for the purpose of whether the defendants are "obstruct[ing] this lawsuit to conceal their wrongdoing".

7. The buxton property

[174] With respect to the Buxton Property, in their Amended Amended Response to Civil Claim, the defendants plead (in part):

40. In or about 2017, Mr. Zhang Sr. advised Mr. Yin that he wished to acquire more property and asked Mr. Yin to recommend some properties. Mr. Yin suggested a heritage property located at 4826 Buxton Street, Burnaby, British Columbia (the "Buxton Property").

41. Following negotiations, Mr. Zhang Sr. agreed to purchase the Buxton Property on the following terms:

(a) Mr. Zhang Sr. would send Mr. Yin 10 million RMB for the purposes of purchasing the Buxton Property and the payment of property taxes for the Buxton Property;

(b) Mr. Yin would hold the legal title to the Buxton Property in trust for Mr. Zhang Sr.'s son, the plaintiff.

42. Mr. Zhang Sr. and the plaintiff had independent legal counsel in dealing with the Buxton Property transaction.

[175] As noted above at para. 134, on March 4, 2019, Mr. Yin executed a Declaration of Bare Trust and Agency Agreement with respect to the Buxton Property under which Mr. Zhang Jr. was the beneficial owner.

[176] As part of the plaintiff's case, plaintiff's counsel "read-in" portions from the August 16, 2023 examination for discovery of Mr. Yin. Included was the following "read-in":

Q All right. And can -- I want to look at one other document. ZHA55. This document is in English language. It says "Declaration of Bare Trust and Agency Agreement." Can we go down to the a signature line, please. And on the right-hand side there's two signatures. The upper signature is yours; correct?

A Yes.

Q Okay. And you -- do you recall signing this document indicating that you would hold the Buxton property in trust for [Tong Zhang]?

A Yes.

Q All right. If we can go up to the top. So that -- that document is dated March 4, 2019?

A Yes.

Q All right. And did -- you signed that in the presence of the lawyer Jean Feng as well?

A Yes.

Q And when you signed this document, did you -- oh, by the way, [Tong Zhang] was there too; right?

A Yes.

Q And when you signed the document, you didn't tell Jean Feng that you had taken out a mortgage against the property; right?

A Correct.

[177] The March 4, 2019 Declaration of Bare Trust and Agency Agreement reads (in part):

1. Appointment

The Owner appoints the Nominee as its nominee, agent and bare trustee to hold legal title to the Property for and on behalf of the Owner in accordance with this Agreement with full power to manage and deal with the Property and execute any instrument, document or encumbrance in respect of the Property for the sole benefit and account of the Owner, all at the direction of the Owner as principal and beneficial owner and strictly in accordance with this Agreement, and the Nominee accepts such appointment.

2. Nominee's Agreements

The Nominee acknowledges and agrees that:

- (a) the Nominee has acquired or will acquire and will hold the legal title to the Property as nominee, agent and bare trustee for the sole benefit and account of the Owner as principal and beneficial owner and the Nominee will have no equitable or beneficial interest in the Property, and the equitable and beneficial interest in the Property will be vested solely and exclusively in the Owner;

- [178] The "Owner" and the "Nominee" are defined as "Tong Zhang" (Mr. Zhang Jr.) and "Hang Yin" respectively. The March 4, 2019 Declaration of Bare Trust and Agency Agreement does not refer to Mr. Zhang Sr. in any manner.
- [179] In sum, Mr. Zhang Jr. signed as the "Owner". Mr. Yin signed as the "Nominee". Ms. Jean Feng witnessed each signature.
- [180] Paragraphs 40 to 42 of the Amended Amended Response to Civil Claim do not accord with the language of the March 4, 2019 Bare Trust and Agency Agreement that:
- The Owner [Mr. Zhang Jr.] appoints the Nominee [Mr. Yin] as its nominee, agent and bare trustee to hold legal title to the [Buxton Property] for and on behalf of the Owner [Mr. Zhang Jr.] in accordance with this Agreement [].
- [181] In arguendo, if Mr. Zhang Sr. had attempted to sue Mr. Yin for a breach of trust with respect to the Buxton Property, a readily available defence would be that Mr. Zhang Jr. was the owner.
- [182] If the defendants' pleading were true, the March 4, 2019 Bare Trust and Agency Agreement would have been worded much differently to show the roles of Mr. Zhang Sr., Mr. Zhang Jr. and Mr. Yin.
- [183] It rarely redounds to a witness's credibility where the witness takes a position contrary to a legal document signed by that witness.
- [184] I find that the March 4, 2019 Bare Trust and Agency Agreement is binding upon Mr. Yin. He cannot resile from his appointment as trustee, nor his duties as a trustee. In short, Mr. Yin was the trustee holding the Buxton Property for Mr. Zhang Jr., and now for Mr. Zhang Jr.'s estate.
- [185] With respect to the fiduciary obligations of a trustee, Waters' Law of Trusts in Canada states in part (Donovan W.M. Waters, Mark R. Gillen and Lionel D. Smith, Waters' Law of Trusts in Canada, 5th ed (Toronto: Thomson Reuters Canada, 2021) at 43:
- [] Nothing may be done which is not directed solely towards the best interests of the trust beneficiary or beneficiaries. The ramifications of this character of the office of trustee are many. The prime outcome is that the trustee may not occupy, or permit him or herself to be in a position, where the duties of the office and his or her personal interests may conflict.
- [186] Mr. Yin breached his fiduciary obligations as a trustee by not disclosing the fact that he had mortgaged the Buxton Property which, in turn, meant he was using a significant portion of the purchase funds for his own purposes and certainly "not directed solely towards the best interests" of Mr. Zhang Jr.
- [187] As discussed further below with respect to remedies, among other relief, Mr. Yin will be ordered to disgorge the rent he has received (after appropriate expenses).

8. Promissory note - \$5,630,000

[188] In evidence is a March 4, 2019 \$5,630,000 promissory note with an effective date of March 1, 2017 at an interest rate of 1 percent per annum. Mr. Yin is shown as the "Payor" and Tong Zhang as the "Noteholder".

[189] The relevant "read-in" from Mr. Yin's May 19, 2023 examination for discovery reads:

Q Sir, that -- the document there is a promissory note that's partially in English and partially in your language; correct?

A Yes.

Q And in this document you gave a promissory note for \$5.63 million to [Mr. Zhang Jr.]; right?

A Yes.

CNSL M. HEWITT: Okay. And could we go down to the signature line, please.

Q That's your signature on page 2?

A Yes.

Q That you signed it on March 4th, 2019?

A Yes.

Q And it was witnessed by [Mr. Zhang Jr.'s] lawyer, Jean Feng; correct?

A Yes.

Q All right. And [Mr. Zhang Sr.] had nothing to do with the negotiation leading to this promissory note being signed, did he?

A That's not correct. That was after [Mr. Zhang Sr.] and I did the accounting, and he told me to go with [Mr. Zhang Jr.] and to hire a lawyer and issue this promissory note to [Mr. Zhang Jr.]. That's what happened.

Q Okay. So you're remembering now that you met with the lawyer Jean Feng?

A Yes.

Q You're remembering now that you were represented by a lawyer named Melissa Yeh, Y-e-h?

A Yes.

[190] A further relevant "read-in" is from Mr. Yin's August 16, 2023 examination for discovery which, in referring to the promissory note, reads (in part):

Q And you signed this in front of the lawyer Jean Feng on March 4th, 2019?

A Yes.

Q And when you signed this document, you understood that you were agreeing to pay \$5.63 million to [Mr. Zhang Jr.]; correct?

A Yes.

[191] The promissory note reads (in part):

The Noteholder may assign the Note to a third person without the consent of the Payor. The Payor may repay any or all of the Principal Sum at any time without notice punishment or bonus.

[192] The promissory note is in English and Chinese, including the foregoing provision.

[193] Mr. Yin is a seasoned businessman and was represented by counsel (Ms. Yeh). Further, as noted, the promissory note was also in Chinese.

[194] Having regard to the above-noted provision facilitating assignment without Mr. Yin's consent it would have left Mr. Yin financially vulnerable if the debt had arisen from Mr. Yin's dealings with Mr. Zhang Sr. and not with Mr. Zhang Jr.

[195] Mr. Zhang Jr. (or now, his estate) could sue Mr. Yin on the promissory note or assign the promissory note to a third party (possibly unknown to Mr. Yin) who could then sue on the promissory note if that person were a "holder in due course": Bills of Exchange Act, R.S.C. 1985, c. B-4, ss. 55(1), 73.

[196] Any past dealings between Mr. Yin and Mr. Zhang Sr. would not have legal relevance to an action on the promissory note for a holder in due course.

[197] Further, Mr. Zhang Sr. could still sue Mr. Yin for the \$5,630,000 debt he owed Mr. Zhang Sr. based on the "accounting" Mr. Yin says he undertook with Mr. Zhang Sr., if such were the case.

[198] In sum, Mr. Yin's read-in testimony lacks "business sense" and is not consistent with the language of the promissory note. Mr. Zhang Sr. should have been shown as the Noteholder, if such were the case.

[199] Similar to my finding with respect to the trust for the Buxton Property, Mr. Yin's explanation does not redound to his credibility.

[200] In closing submissions, the defendants say that Ms. Tao has not shown that consideration was given for the promissory note.

[201] With respect, the submission is not consistent with the Noteholder's ability to assign the promissory note to a third person who could then rely on the promissory note assuming the person is a "holder in due course".

[202] More fundamentally, the defendants' submission is not consistent with Mr. Yin's description of the "Asset Division Agreement" (described further below) which includes the promissory note as part of his calculation and which Mr. Yin treats as one of his liabilities that is offset under the "Asset Division Agreement".

[203] In sum, Mr. Yin owes Ms. Tao, as executor of the estate of Mr. Zhang Jr., \$5,630,000 plus interest, which is stated to be "1% per annum".

9. THE PwC TRANSACTION

a) Background

[204] As noted above, plaintiff's counsel asserted in his opening that Mr. Zhang Jr. "entrusted Mr. Yin with millions of dollars brought into Canada from China by Mr. Yin" in exchange for "ownership interests" in "several real estate projects".

[205] Mr. Yin did not cause shares in the capital of any of the relevant corporations to be issued to Mr. Zhang Jr.

[206] As noted at paragraph 15 above, the defendants pleaded that all relevant investments were with Mr. Zhang Sr. (and not with Mr. Zhang Jr.) "together through separate shareholdings in corporate vehicles". [My emphasis]

[207] In arguendo, if Mr. Zhang Sr. were the real investor, there are also no shares issued to him, or other records reflecting the use of funds that one would reasonably expect of a fiduciary handling millions of dollars of an investor's funds.

[208] As noted, Mr. Hewitt in his opening stated:

11. After permanently relocating to Canada in August 2018, Mr. Zhang Jr. immediately sought advice from accounting professionals in order to transfer his investments with Mr. Yin into his own name. Mr. Zhang Jr. very quickly became concerned that things had gone wrong. At first, he was concerned with monies that were paid to a developer, Mr. Peter Luan. These concerns turned out to be valid. But Mr. Zhang Jr.'s review of matters evolved into concerns over Mr. Yin's handling of his investments as the facts became known.

[209] Shortly after immigrating in August 2018, Mr. Zhang Jr. met with Ms. Jun Hu, Chartered Professional Accountant, and discussed Canadian tax compliance, including the differences between the Canadian and Chinese tax systems. She recommended to Mr. Zhang Jr. that he get his financial affairs documented. The documenting of the Buxton Trust and the \$5,630,000 promissory note are both consistent with her advice.

[210] Prior to Mr. Zhang Jr.'s and Ms. Yang's emigration from China, with their three children, in August 2018, a close relationship had developed between the Zhangs and the Yins.

[211] In 2011, Mr. Yin, with Ms. Liu and Ms. Yin, had moved to Vancouver. After moving to Vancouver, Mr. Yin continued to visit and do business in China.

- [212] In August 2014, Mr. Zhang Sr. first met Mr. Yin in connection with a highway toll booth facility Mr. Yin wished to acquire.
- [213] Over the following months, Mr. Zhang Sr. and Mr. Yin became friends. Mr. Zhang Sr. was interested in Canada, including Mr. Yin's real estate activities in Canada.
- [214] On Mr. Zhang Jr.'s and Ms. Yang's visits to Vancouver, the Yins were very helpful and welcoming. The Yins invited Mr. Zhang Jr. and Ms. Yang to their home for dinner and general social activities. The Yins generally helped Mr. Zhang Jr. and Ms. Yang to become familiar with Canada, and Vancouver, in particular.
- [215] Mr. Zhang Jr. came to refer to Mr. Yin as "Uncle Yin". The parties agree that, at that time, the relationship between Mr. Yin and Mr. Zhang Jr. was "very good".
- [216] Prior to immigrating to Canada in August 2018, Ms. Yang gave birth to her second child and then her third child on two of her earlier Vancouver visits. Ms. Yin attended the hospital with Ms. Yang for the births.
- [217] In October 2018, Mr. Zhang Jr. hired Manning Elliott LLP, an accounting firm, to prepare financial statements for 101 Ltd. and 108 Ltd. Mr. Raymond Lu, CPA, was the responsible Manning Elliott LLP partner. Mr. Zhang Jr.'s purpose was to obtain better financial visibility.
- [218] After Manning Elliott LLP was retained, various meetings occurred over the next several months in order to collect financial information for Mr. Zhang Jr. to understand or to verify past transactions and expenditures.
- [219] On January 24, 2019 there was a meeting among Mr. Lu, Mr. Zhang Jr., Mr. Zhang Sr., Ms. Feng, Mr. Yin, Ms. Liu, and Mr. Luan. During the meeting Mr. Luan was asked questions with respect to expenses and contracts related to the No. 3 Road Project. Mr. Luan's corporation, iFortune Homes Inc. was the project manager of the No. 3 Road Project.
- [220] On February 27, 2019, 108 Ltd. and iFortune Homes Inc. agreed to terminate the oral contract iFortune Homes Inc. had for the management of the No. 3 Road Project.
- [221] In April 2019, Mr. Zhang Jr., Mr. Zhang Sr., and Mr. Yin met with Ms. Jenny Li, CPA. Ms. Li is a PwC LLP partner.
- [222] Several days after meeting, on April 29, 2019, Ms. Li sent the following email to Mr. Zhang Jr.:

Hello Tony,

It was nice meeting you, [Mr. Zhang Sr.] and Mr. Yin last week. We are pleased to update you that the client is acceptance is complete. Below is a summary of the proposed scope of work. please call me at [Deleted] if any questions. I will be happy to walk you through the below.

Phase I - facts finding

We will review the following information of these 3 companies (1011066 B.C. Ltd., 1032734 B.C. Ltd., and iFortune Development Inc.) to understand and confirm the facts:

- Financial statements from 2015 to 2018
- T2 and related schedules/forms from 2015 to 2018
- share registry which shows the original shares and changes
- memos and documents which are helpful for the facts finding exercise. We confirm the receipt of memo from Manning Elliott dated March 15, 2019. Please provide the information provided to Manning Elliott for the preparation of the memo.
- any other information identified later in the process

We will report to you on our findings in 1-2 weeks after the receipt of all information required. We will charge you on our hourly rates at a 20% discount. Please note that English is our working language, any written report and correspondence will be conducted in English. We can prepare briefs or executive summaries in Chinese at your request.

Phase II - Discussion and Recommendations

- Based on the findings from Phase I, we will discuss the pertinent Canadian tax implications and give you recommendations if any.

Given that you are a new client, we would require a \$5,000 deposit before the start of the engagement. If you find the above satisfactory, we will issue a formal engagement letter for your signature. Thank you.

Jenny Li

PwC, Partner

[223] On May 2, 2019, PwC LLP was engaged by 1196 Ltd.

[224] Ms. Li also referred Mr. Zhang Jr. to Mr. Michael Lam, CPA, LLN Partners LLP to assist in bookkeeping services.

[225] On June 5, 2019, LLN Partners LLP was retained to provide services with respect to 101 Ltd. and 108 Ltd. (two of the corporations used respectively for the West 41st Project and the No. 3 Road Project).

[226] The retainer letter is addressed to Mr. Zhang Jr. but is signed by Ms. Liu. Ms. Liu. Ms. Liu was a director of both 101 Ltd. and 108 Ltd.

[227] On June 21, 2019, LLN Partners LLP provided draft financial statements for 101 Ltd. and 108 Ltd. The draft financial statements showed Mr. Zhang Jr.'s investment to be approximately \$24 million with respect to the two projects (West 41st Avenue and No. 3 Road Project). Mr. Zhang Jr. understood that the total should be approximately \$38 million.

[228] The discrepancy led to further discussions and meetings.

[229] Matters culminated in a September 26, 2019 email from Ms. P. Gao, CPA, with PwC LLP, to Ms. Yin, the body of which reads:

Hi Ms. Yin,

Tony told me that he proposes to purchase the beneficial ownership of the Richmond properties [i.e. the No. 3 Road Project] owned by company 108 and the shares of 1004 at \$37,700,000. He will use the loan receivables from company 101 and 108 together \$34,000,000 and the interest receivables from 108 (\$3,700,000) to pay for the purchase. Can you please kindly confirm if you agree with the proposal via email.

thanks

Pamela

[230] Attached to the September 26, 2019 email was a schedule showing the relevant interest and principal loan balances. I have summarized the schedule as follows:

108 Ltd.

101 B.C. Ltd.

Total

a. Interest

\$3,716,001

\$4,562,135

\$8,278,136

b. Loan Principal (interest bearing)

\$6,614,038

\$2,990,918

\$9,604,956

c. Loan Principal (non-interest bearing)

\$15,218,816

\$9,176,228

\$24,395,004

d. Total Principal

(b + c)

\$21,832,854

\$12,167,146

\$34,000,000

e. Grand Total

Principal and Interest (a + d)

\$25,548,855

\$16,729,281

\$42,278,136

[231] Later on September 26, 2019, Ms. Yin emailed Ms. Gao stating that she and her mother "agree with their proposal". (As previously noted, Mr. Yin was not a shareholder, director or officer of any of the corporations).

[232] The \$37,700,000 (rounded), to which Ms. Gao refers in her September 26, 2019 email, is comprised of the \$34,000,000 plus \$3,716,001 of the total interest owing by 108 Ltd.

[233] Ms. Yin's and Ms. Liu's acceptance led to the October 15, 2019 PwC Transaction.

b) Implementation of the PwC Transaction

[234] For the PwC Transaction, Mr. Zhang Jr. was represented by Mr. S. Murtha and Mr. D. Gordon of PwC Law LLP and Ms. Liu and Ms. Yin were represented by Ms. M. Yeh of Cleveland Doan LLP (who had also acted for Mr. Yin with respect to the \$5,630,000 promissory note).

[235] PwC LLP, the accounting firm, was also engaged to provide accounting and tax services with respect to the PwC Transaction with Ms. J. Li, Mr. L. Wei, and Ms. P. Gao providing PwC LLP's services.

[236] Although not a party, Mr. Yin was privy to the transaction and directed Ms. Liu and Ms. Yin. Steps in the transaction included the issuance of promissory notes to Mr. Zhang Jr. As Ms. Yin testified, "my father asked us to cooperate with them to transfer the No. 3 Road Project".

[237] The parties, in their submissions, were in agreement that although Mr. Yin was not a registered director, officer, or shareholder with respect to any of the defendant corporations, he was the "directing mind" for all these corporations. Mr. Yin was in effect the controlling shareholder for each of these corporations and a de facto director.

- [238] In brief terms, the PwC Transaction facilitated the purchase of the No. 3 Road Project by 1196 Ltd. As noted above, Mr. Zhang Jr. was the sole shareholder of 1196 Ltd.
- [239] Upon the completion of the PwC Transaction, 1196 Ltd. became the beneficial owner of the No. 3 Road Project property. 1004 Ltd. held the No. 3 Road Project Property as a bare trustee. 1004 Ltd. was wholly-owned by 1196 Ltd.
- [240] The purchase price of \$37,716,001 for the No. 3 Road Project property was paid by the cancellation of \$37,716,001 in promissory notes that, either 101 Ltd. or 108 Ltd. owed Mr. Zhang Jr.
- [241] As part of the PwC Transaction, 108 Ltd. assumed the debts owed by 101 Ltd. to Mr. Zhang Jr.
- [242] Also as part to the PwC Transaction, Mr. Zhang Jr. assigned the debts owed to him to 1196 Ltd., other than \$4,562,135 in interest. A new promissory note for \$4,562,135 (non-interest bearing) was issued by 108 Ltd. to Mr. Zhang Jr.
- [243] In broad strokes, the parties recognized that 101 Ltd. owed (in addition to \$4,562,135 in interest) Mr. Zhang Jr. \$12,167,146 (\$9,176,228 + \$2,990,918 (in interest)) and that 108 Ltd. owed Mr. Zhang Jr. \$18,934,817 (\$15,218,816 + \$3,716,001 (in interest)) plus \$6,614,038.
- [244] The total was \$37,716,001 (\$12,167,146 + \$18,934,817 + \$6,614,038).
- [245] At this stage, it may be seen that without the further accrued interest (i.e. \$4,562,135), the promissory notes issued by 101 Ltd. and 108 Ltd. to Mr. Zhang Jr. totalled \$37,716,001. \$37,716,001 was the agreed purchase price of the beneficial interest 108 Ltd. had in the No. 3 Road Project as the owner of the shares in the capital of 1004 Ltd., which held the No. 3 Road Properties as bare trustee for 108 Ltd.
- [246] As part of the transaction, Mr. Zhang Jr. assigned promissory notes totalling \$37,716,001 to 1196 Ltd., which then cancelled the promissory notes in exchange for the beneficial interest held by 108 Ltd. in the No. 3 Road Project and for the shares in the capital of 1004 Ltd. (bare trustee).
- [247] The \$4,562,135 promissory note (non-interest bearing) issued by 108 Ltd. to Mr. Zhang Jr. is the remnant \$4,562,135 promissory note to which I refer to at paragraph 23 above.
- [248] Ms. Liu and Ms. Yin, as directors, passed the necessary corporate resolutions and signed all other necessary legal documents to facilitate the sale by 108 Ltd. of the No. 3 Road Project to 1196 Ltd.
- [249] Mr. Zhang Jr. passed the necessary corporate resolutions of 1196 Ltd., along with all other necessary legal documents, to facilitate 1196 Ltd.'s purchase of the No. 3 Road Project.

[250] Mr. Yin did not directly participate in the PwC Transaction because he was neither a shareholder nor a director of any of the corporations involved and he had not given any of the promissory notes that were set-off. That said, he was privy to the transaction and the "directing mind" of the defendant corporations.

[251] For the case at bar, the PwC Transaction, in addition to serving to transfer the beneficial interest in the No. 3 Road Project property to 1196 Ltd. (with Mr. Zhang Jr. as sole shareholder), it has evidentiary significance.

[252] First, many of the promissory notes itemize the deposits reflecting the basis for the particular promissory note. For example, a \$15,218,600 promissory note issued by "108 B.C. Ltd." shows as one of many deposits supporting the promissory note "Incoming Wire Onepip (Hong Kong) 23-Sep-16 500,485.00".

[253] As described further below, I had evidence of Mr. Zhang Jr. through his driver, Mr. Peng, delivering large sums of cash to Mr. Yin or others representing Mr. Yin, after which Mr. Yin would arrange for the funds to be transferred to Canada.

[254] Second, each of the promissory notes shows Mr. Zhang Jr. as the holder of the particular note. Mr. Zhang Sr. is not shown on any of the promissory notes.

[255] Third, in none of the PwC Transaction documents is there any reference to Mr. Zhang Sr.

[256] With respect to the PwC Transaction, in examination-in-chief, Mr. Yin testified (in part):

Q You had just said, "If the shares had to be transferred to [Mr. Zhang Jr.] in a legal and reasonable way, the following documents would have to be prepared"?

A Correct.

Q Okay. So please carry on.

A Because neither [Mr. Zhang Jr.] nor [Mr. Zhang Sr.] had any evidence to show that they invested into the No. 3 Road project. All funds were invested by me into that project, so No. 3 Road project company and the West 41st Ave. company would have to issue some fake promissory notes, and through those fake promissory notes, the shares then could be transferred to [Mr. Zhang Jr.].

Q What do you mean, "fake"?

A Because [Mr. Zhang Jr.] never gave me any money, never invested any money into these three projects, and if shares were directly transferred to [Mr. Zhang Jr.], according to the Canadian law, it's not allowed. And so my wife and my daughter were asked to issue some promissory notes to [Mr. Zhang Jr.] in the name of the No. 3 Road company and the West 41st Ave. company, and so, by way of issuing those promissory notes, to transfer the shares in the form of debt to him.

THE INTERPRETER: Sorry, "transfer the debt in the form of shares to him."

A So my wife and my daughter then issued some fake promissory notes to him. Because these promissory notes were not based on any facts, that's why they are fake promissory notes.

Q Okay, a couple of questions about that. Mr. Yin, do you have any information to suggest that the PwC professionals involved knew that these were fake promissory notes?

A I don't have any. I don't know.

Q Now, you said that your wife and daughter executed these promissory notes. Why your wife and daughter?

A Because the two of them, they were shareholders of No. 3 Road project and the West 41st Ave. project.

[257] I hasten to add that there is no assertion, and certainly no basis from the evidence, that PwC LLP (accountants), PwC Law LLP, Cleveland Doan LLP, or other professionals, did not otherwise act in accordance with all professional standards. There is no basis whatsoever that any of the professionals were aware of or otherwise countenanced "fake" promissory notes.

[258] Mr. Yin's testimony further shows that he was privy to the PwC Transaction, was the defendants' directing mind, and was familiar with the promissory notes.

[259] I find that Mr. Yin's explanation that the relevant promissory notes were "fake" is his fabrication designed to discourage a finding by this Court that Mr. Zhang Jr. had the funds necessary to finance the pleaded investments.

[260] I will add that Mr. Yin is particularly avaricious in that he was willing to use his spouse and daughter for a construct involving "fake promissory notes" to serve his own financial self-interests (although each would benefit from Mr. Yin's financial well-being as part of the Yin Family).

[261] In closing written submissions, the defendants submit:

853. The test for what constitutes a sham, is articulated by Lord Diplock in *Snook v. London and West Riding Investments Ltd.*, [1967] 2 Q.B. 786 and has been adopted in Canadian jurisprudence:

it means acts done or documents executed by the parties to the "sham" which are intended by them, to give to third parties or the Court, the appearance of creating between the parties, legal rights and obligations different from the actual legal rights and obligations (if any), which the parties intend to create [T]hat for acts or documents to be a "sham," with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a "shammer" affect the rights of a party whom he deceived.

854. A finding of sham requires a finding of an element of deception. However, as held by the Federal Court of Appeal in *Antle v. Canada*, [2010 FCA 280, leave ref'd, para. 20]:

The required intent or state of mind is not equivalent to mens rea and need not go so far as to give rise to what is known at common law as the tort of deceit... It suffices that parties to a transaction present it as being different from what they know it to be. That is precisely what the Tax Court judge found.

The claim to "some legitimacy" does not detract from a finding of the requisite deceit [*Antle*, para. 21]:

When regard is had to the reasons as a whole, it is apparent that the only reason why the Tax Court judge reached the conclusion that he did is his finding that the appellant and the trustee - as well as all participants in the plan - could say "with some legitimacy" that they believed that the trustee had discretion over the shares (Reasons, para. 71). While the claim to "some legitimacy" may show that there was no criminal intent to deceive (as would be required in a prosecution pursuant to subsection 239(1) of the Act) and perhaps no tortious deceit, it does not detract from the Tax Court judge's finding that both the appellant and the trustee gave a false impression of the rights and obligations created between them. Nothing more was required in order to hold that the Trust was a sham.

855. Based on the evidence adduced in this proceeding, the Court is well placed to find that the PwC Transaction was a sham and of no force. Indeed, by all accounts the PwC Transaction gives the appearance of legal rights and entitlements (including, for example, contractual rights), but does not reflect the true contractual relationship between the parties -- that is, Mr. Zhang Jr. was simply acting as an agent for Mr. Zhang Sr., so any rights and entitlements flowing from the PwC Transaction are as between Mr. Zhang Sr. and the Defendants and not Mr. Zhang Jr. and the Defendants. The Defendants' evidence on the point is very clear -- the true state of affairs is different from what the documentation in respect of the PwC Transaction suggests.

[262] In reply submissions, plaintiff's counsel says that "it is only Mr. Yin who claims the PwC Transaction is a sham".

[263] In the Closing Agenda to the PwC Transaction it is stated:

All accounting and related tax compliance shall be performed by LLN Partners LLP CPA ("LLN").

[264] It is unpardonable to be party to a transaction that one understands to be a sham and to be then willing to have others, including professionals, unknowingly rely on the sham. This is especially so, where the shammer knows that further records such as financial statements and tax returns will be prepared causing innocent third parties to possibly be harmed financially and our tax authorities deceived.

[265] Contract law would be in shambles if a party to a contract could walk away from contractual obligations by simply asserting a sham.

[266] For there to be a sham, the parties must have a common intention "to give third parties or the Court, the appearance of creating between the parties, legal rights and obligations different from the actual legal rights and obligations (if any), which the parties intend to create". There is no evidence that Mr. Zhang Jr. was party to sham, unless I were, at least, first to find that Mr. Zhang Jr.'s wealth had come from his father. As described further below, I find that Mr. Zhang Jr.'s wealth came from his own efforts.

[267] From Mr. Zhang Jr.'s perspective, he had advanced Mr. Yin and had trusted him with approximately \$45,000,000 for investment. Without the October 15, 2019 Purchase Agreement (part of the PwC Transaction), Mr. Zhang Jr. had relatively little to show for it, other than the \$5,630,000 promissory note (unsecured) and the Buxton Property, held in trust for him (with a mortgage that had been placed by Mr. Yin for Mr. Yin's benefit).

[268] The October 15, 2019 Purchase Agreement enabled Mr. Zhang Jr. to own through 1196 Ltd. (with 1004 Ltd. as bare trustee) the No. 3 Road Project worth approximately \$37.7 million.

[269] Further, Mr. Yin is estopped. The Court will hold him to his word. Having helped direct the PwC Transaction and participate through Ms. Liu and Ms. Yin, he cannot now assert that "the true state of affair is different from what the documentation in respect of the PwC Transaction suggests".

[270] As Professor B. MacDougall states in his book, Bruce MacDougall, Estoppel, 2nd ed (Toronto: LexisNexis Canada Inc, 2019) at p. 2:

Estoppel is the general legal term for the doctrines whose basic effect is to hold a person to his or her word.

[Footnote omitted.]

[271] The October 15, 2019 Purchase Agreement also included an "entire agreement" clause, which reads:

8.4 Entire Agreement. This Agreement, its appended Schedules and the relevant joint election forms referred to herein constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous expectations, understandings, communications, representation and agreements whether verbal or written between the parties with respect to the subject matter hereof.

[272] The subject matter of the October 15, 2019 Purchase Agreement is set forth in its Recital I, which reads:

The Vendor has agreed to sell and the Purchaser has agreed to purchase the Assets and the Shares on the terms and conditions set forth in this Agreement as of the Effective Date;

- [273] The "Assets" were the three parcels of real property comprising the No. 3 Road Project of which 108 Ltd., the "Vendor", was the beneficial owner. 108 Ltd. was the sole owner of the shares in the capital of 1004 Ltd. which held the Assets as bare trustee for 108 Ltd. The shares in the capital of 1004 Ltd. are the Shares as defined. The "Purchaser" is 1196 Ltd.
- [274] Mr. Zhang Jr.'s claim for profits related to the earlier sale of three of the properties comprising the West 41st Street Properties or matters related to the remaining two West 41st Street properties were not included or otherwise subject to the Entire Agreement clause.
- [275] The Entire Agreement clause also serves to foreclose Mr. Yin from asserting that the promissory notes were "fake". Further, it defeats Mr. Yin's position described below that the PwC Transaction was part of a broader oral agreement, which he refers to as the "Asset Division Agreement".
- [276] The PwC Transaction serves to show that Mr. Yin (and Ms. Liu and Ms. Yin) viewed Mr. Zhang Jr. as an investor in the No. 3 Road Project (through 108 Ltd. and 1004 Ltd.).
- [277] The PwC Transaction also serves to show that Mr. Yin (and Ms. Liu and Ms. Yin) viewed Mr. Zhang Jr. as an investor in the West 41st Project (through 101 Ltd.).
10. Mr. Zhang Jr.'s Wealth
- [278] The defendants submit that Mr. Zhang Jr.'s wealth represented Mr. Zhang Sr.'s funds which Mr. Zhang Sr. had realized as a senior official in the Chinese Communist Party enjoying senior positions, such as Chairman of the Dadi Urban Construction and Development Investment Company, and abusing these positions by engaging in corrupt practices, such as accepting bribes.
- [279] I have been provided with little evidence to make a finding that Mr. Zhang Sr. was engaged in or otherwise profited from corrupt activities, other than that he had held corporate governmental positions in which he could exercise discretion in awarding contracts. As I stated above, I had no expert evidence with respect to proceedings in China and did not accept any of the Chinese proceedings as "prima facie proof of any of the underlying circumstances", as the defendants submitted the Court should do.
- [280] For several reasons, I find that Mr. Zhang Jr.'s wealth came from his real estate activities in China.
- [281] First, in the PwC Transaction, Ms. Liu and Ms. Yin approved documents and passed corporate resolutions which were consistent with Mr. Zhang Jr.'s wealth generated in China. As noted, Mr. Yin was privy to all of the documents, and in particular, the supporting basis for each of the promissory notes, which he now describes as "fake".

[282] Ms. Liu, Ms. Yin, and Mr. Yin had no apparent reason to resile from Ms. Liu's and Ms. Yin's previous recognition of the promissory notes supporting the PwC Transaction other than to try to defeat the claim before me which Mr. Zhang Jr. brought before his death.

[283] Second, I had evidence from, for example, Ms. Shuyan Zhang of a buoyant Chinese real estate market during the relevant years.

[284] Ms. Shuyan Zhang is one of Mr. Zhang Jr.'s paternal aunts. Ms. Shuyan Zhang is a now retired obstetrician.

[285] Starting in or around 2004, Ms. Shuyan Zhang was engaged in buying and selling Beijing real estate for approximately ten or so years.

[286] Ms. Shuyan Zhang testified that purchasers were only required to provide a 20 percent down payment, and the "flipping" of properties was commonplace. She also testified to the ability to buy a pre-sale ticket and then re-sell the ticket for a significant profit.

[287] With respect to pre-sale tickets, Ms. Shuyan Zhang testified:

Q Okay. You mentioned earlier your nephew Tong Zhang made some money selling presale tickets. Do you remember saying that?

A Yes, yes.

Q And I understand in China what you can do is line up at a sales centre in order to obtain a presale ticket and then that presale ticket entitles you to the right to purchase a property. Did I understand that correctly?

A Correct. Yes, yes.

Q And all you would need to do is get the presale ticket is line up at a certain location and then get a ticket when the ticket location opens; correct?

A Yes. You have to wait in line. Tong Zhang also asked his aunt to go together and wait in line.

Q How do you find out where to line up for the presale tickets?

A Because Tong Zhang had a lot of friends. His little friends had a lot of information and they would know when the development or buildings would be up for sale within the three ring roads of Beijing, or if you supposed to wait in line the previous evening, you know. Tong Zhang made a lot of friends like that. All these friends gave him information.

Q Was this information publicly available? Was it published in newspapers or online for the general public to know when these buildings would go on sale?

A No, no. Sometimes it's just internal information.

Q Internal to whom?

A Just when you're supposed to line up, when you can wait in line and, you know, you then know that. You just go there, you wait, and then you can purchase or you sell the ticket. Even by selling these tickets you can make a lot of money.

Q Okay. So when people were lining up there were quite a few people that lined up to get the presale tickets; correct?

A Yes.

Q And all of those people you believe would have internal information on where to line up?

A In any event, he got internal information.

[288] I realize that the foregoing testimony contains hearsay as to Mr. Zhang Jr. actually lining up for pre-sale tickets, especially with respect to having "internal information".

[289] I do accept Ms. Shuyan Zhang's testimony that the Chinese real estate market included pre-sale tickets with the possibility of making "a lot of money" in quick order.

[290] Twenty percent leverage also makes it possible to greatly increase one's principal when the real estate market is buoyant. As a simple example, say Mr. X purchases Blackacre for \$1,000 in 2004. He puts \$200 down, so he must borrow \$800. In 2006, Mr. X sells Blackacre for \$2,000. After using \$800 to pay off the loan, Mr. X is left with \$1,200. Mr. X, then uses his \$1,200 to put 20 percent down and purchases Whiteacre for \$6,000, borrowing \$4,800. In 2008, Mr. X sells Whiteacre for \$12,000. After paying back the \$4,800 loan, Mr. X's principal is now \$7,200. This is 36 times his initially invested principal of \$200.

[291] I realize that my example does not take into account factors such as loan interest, transaction fees, and taxes. That said, it is apparent that with leverage it is certainly possible to generate very significant returns in a buoyant market in a short period of time.

[292] As a relatively conservative investor, Ms. Shuyan Zhang realized a handsome return on her real estate investments. With respect to one particular property, "Yanjiao", in 2008, she purchased it for 280,000 RMB with a 50,000 RMB down payment and a 230,000 RMB mortgage. In 2016, she sold Yanjiao for 1,600,000 RMB.

[293] In sum, the foregoing supports a finding that the Chinese real estate market at the relevant time afforded the possibility of making significant profits quickly.

[294] I find that Mr. Zhang Jr. was very successful in his real estate dealings in China. As plaintiff's counsel observes:

There is no age or education requirement to buy, sell or rent property. There are many successful people who start young, hit the market at the correct time, and amass a large fortune.

- [295] Third, I had evidence of Mr. Zhang Jr. keeping large amounts of cash in his master bedroom; such accords with wealth. It is opportunistic speculation by the defendants, at this time, that the cash came from corrupt activities asserted to have been undertaken by Mr. Zhang Sr.
- [296] I had no expert evidence that it would be illegal to have large cash amounts in China during the relevant years.
- [297] Mr. Peng was Mr. Zhang Jr.'s driver and his household manager, and also assisted in managing Mr. Zhang Jr.'s real estate. Over time they became friends.
- [298] Mr. Peng, in particular, would deliver cash (often in duffle bags) to Mr. Yin or his representative. Mr. Yin would then cause the cash to be exchanged for Canadian dollars. The attachments to the promissory notes supporting the PwC Transaction provide details of many "Incoming Wires".
- [299] The defendants say that Mr. Peng only met Mr. Yin once or twice and not to deliver cash. Further, the defendants say that any real estate management activities related to Mr. Zhang Sr.'s real estate, which they submit was held by Mr. Zhang Jr. for his father.
- [300] Again, the promissory notes in the PwC Transaction are determinative. The promissory notes are all in Mr. Zhang Jr.'s name and are supported by a list of entries of incoming wired funds.
- [301] I confess to some disquiet in envisioning duffle bags of cash. The defendants did not submit that large cash transactions in China would be illegal.
- [302] I also note that lawyers and accountants have professional obligations to satisfy themselves that they are not assisting in the handling or documenting of funds that may arise from, or be part of, criminal activities. I had no evidence or assertion that the lawyers and accountants involved in the PwC Transaction had not discharged fully their professional obligations. At the time of the PwC Transaction Mr. Zhang Jr. was alive and apparently healthy (he had yet to be diagnosed with leukemia). Accordingly, the professionals acting for Mr. Zhang Jr. could discuss matters with him and pose the necessary questions to discharge their professional obligations.
- [303] I will further add, because Mr. Zhang Jr. has died and one or more of his three young children may wish to read these reasons in the future, that there was no suggestion, or evidence whatsoever, that their father was engaged in the drug trade or some other criminal activities.
- [304] Fourth, consistent with Mr. Zhang Jr.'s wealth coming from his real estate investments, was that Mr. Zhang Jr. and his wife, Ms. Yang, lived in a very nice home in Beijing, and employed both a driver (Mr. Peng) and two nannies. Mr. Zhang Jr. also owned a number of upmarket vehicles.

- [305] Mr. Zhang Jr. had not come from a family of wealth and, in the relevant years, was employed by the Beijing Opera House Theatre. Similarly, Ms. Yang had not come from a family of wealth and was an opera singer for the Beijing Opera House Theatre. Neither enjoyed exceptional remuneration.
- [306] In short, "consistent with the probabilities affecting the case as a whole and shown to be in existence at the time", it is not probable that Mr. Zhang Jr. would wish to show wealth if the wealth had come from corrupt activities undertaken by his father.
- [307] Having regard to ability to use high leverage, a buoyant real estate market, and Mr. Zhang Jr.'s possible network of intelligence regarding the timing of pre-sales, supports a finding that Mr. Zhang generated his wealth represented by the funds brought to Canada along with his wealth consisting of the Chinese properties he did not sell prior to emigrating to Canada from China.
- [308] Fifth, as noted, in August 2018 Mr. Zhang Jr., Ms. Yang, and their children immigrated to Canada and received permanent residents status. Mr. Zhang Jr. did not sell all his then real estate holdings in China in advance of moving to Canada. Many of his properties were held in the names of others (the particular reason for such cannot be determined on the evidence before me). In his Canadian income tax returns he reported all of his properties, whether held in his name or in the name of others.
- [309] I also found Ms. Yang to be a credible witness. I accept that she did not have knowledge of her husband's business dealings and arrangements other than that she understood her husband was involved in investing successfully in real estate in addition to working at the Beijing Opera House Theatre.

11. immigration to canada

- [310] Prior to immigrating, Mr. Zhang Jr. and Ms. Yang had come to Canada in the fall of 2014 for the birth of their second child, a boy, and returned to China with their second son around February 2015. They also came again in early 2017 for the birth of their third child, a girl, and returned to China after she was born.
- [311] In cross-examination, Ms. Yang testified that they had not originally planned to move to Canada as soon as August 2018. She explained that in July 2018 a private school in West Vancouver, in which they had sought to enrol their two older children, had called to say that her two older children had been accepted. With the school year starting in the fall, Ms. Yang and Mr. Zhang Jr., with their three children, then immigrated.
- [312] Mr. Zhang Jr. had his tax returns prepared by Ms. Jun Hu, CPA. In his tax returns, he reports his foreign property. His 2019 T1135 Foreign Income Verification Statement shows Mr. Zhang Jr. owning 21 properties in China with a total cost amount of \$16,674,808. The properties include properties not held in his name.

- [313] In his personal tax return for 2019, Mr. Zhang Jr. reports taxable income of \$3,509,111, of which \$351,442 was net rental income. His total tax payable was \$1,688,465.
- [314] In 2022, all of Mr. Zhang Jr.'s properties in China were seized and confiscated by the Chinese government. The defendants say that only 19 of the 21 properties were seized because of a Chinese investigation into Mr. Zhang Sr.'s activities in China in which the Chinese authorities concluded that Mr. Zhang Sr. had engaged in corruption.
- [315] As noted, Mr. Zhang Sr. denies any such corruption. The defendants say that Mr. Zhang Jr. had properties in his name (or under his control) in order to help disguise the use of Mr. Zhang Sr.'s funds from his corruption.
- [316] I had no evidence that Mr. Zhang Jr. did not have a good relationship with his father, as many sons do, and there is no evidence to show he would not be very supportive of his father. That said, I do not find that Mr. Zhang Jr. would have filed his tax returns reporting property in China that was not owned by him (or otherwise held by him for his father).
- [317] I find that Mr. Zhang Jr. had greater loyalty to his wife and their children than to his father. I do not accept that Mr. Zhang Jr. would deliberately file grossly false tax returns to help his father or to help himself. When the tax returns were filed, Mr. Zhang Jr. was still a permanent resident and not a Canadian citizen. A deliberately and grossly false tax return would risk his, his wife's, and their children's immigration status: Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 36, 44-46; Income Tax Act, R.S.C. 1985, c. 1, (5th Supp.) s. 239.
- [318] During her cross-examination, Ms. Yang testified in what became an uncontrolled poignant voice with respect to the birth of her second child in Canada:

Q I want to talk to you a bit more about your trips to Canada leading up to your immigration?

A Okay.

Q Is it -- your first time that you came to Canada was in 2014; is that right?

A Yes.

Q And the purpose of that trip was to have your second child?

A Okay, let me put it this way: Yes, I need to explain to you. Yes, it's true that the purpose of that trip was to give birth to my second child, because at the time I was employed by Beijing Opera House, right, and at that point, you know, China or the Chinese government did not allow couples to have second child. If I insisted to give birth to my second child, then I would receive a penalty from my employer and they would punish me, or even worse yet, they could, you know, do some extreme measures, such as terminate my pregnancy by force. At the time, we were thinking -- I'm sorry -- Canada is a very tolerant country. We thought it would be a wise idea to give birth to our second child and third child here.

- [319] With the plan to have their young children to be schooled in Vancouver, and her recognition that Canada is "a very tolerant country", I find that Ms. Yang and Mr. Zhang Jr. wished Canada to be not only their country of residence, but also their domicile.
- [320] In sum, I find that Mr. Zhang Jr.'s love and sense of duty to his family would have prevailed over his love and sense of duty to his father, Mr. Zhang Sr.
- [321] I found Mr. Zhang Sr. to be a credible witness. I accept that both in China and in Canada he would discuss real estate matters with his son.
- [322] Mr. Zhang Sr. had considerable experience with respect to engineering and construction matters arising from his own career.
- [323] With Mr. Zhang Jr. investing in real estate and owning properties in China and then investing with Mr. Yin, it would be quite natural and fitting that Mr. Zhang Jr. and Mr. Zhang Sr. would discuss property construction aspects and the like, as part of a father and son relationship.
- [324] As noted, without expert evidence as to Chinese law, I have given no weight to any Chinese proceedings purportedly evidencing Mr. Zhang Sr. was engaged in corrupt activities.
- [325] With respect to Mr. Yin's testimony, described further below, that he paid Mr. Zhang Sr. a bribe in connection with Mr. Yin acquiring a toll booth facility, there was no evidence to support a bribe such as a financial document, an email, a WeChat, a recorded conversation, or anything else.
- [326] Although I have given no weight to the Chinese proceedings as to in anyway showing that Mr. Zhang Sr. was involved in corrupt activities, as noted, I have recognized the Chinese proceedings as contextual evidence.
- [327] In particular, I can readily understand the reluctance to go to or return to a country where it appears that the country would wish to prosecute you for criminal activities, even though one knows there is no proper basis for such.
- [328] The fact that Mr. Zhang Sr. may have advised his wife, Ms. Tao, as executor of his son's estate, with respect to properties and estate matters, is also not remarkable.
- [329] The defendants submit that Ms. Jun Hu was not a credible or reliable witness. I disagree.
- [330] I found Ms. Hu to be a very competent accountant who was well acquainted with the tax filing requirements for high net worth individuals from Mainland China.
- [331] As noted, Ms. Hu is a Chartered Professional Accountant
- [332] Ms. Hu received her CPA designation in 2012. Prior to 2012 she had worked at major accounting firms in Australia and then in Shanghai. Ms. Hu is fluent in Mandarin and English.

- [333] In 2014, Ms. Hu started her own accounting firm. Ms. Hu specializes in tax (mainly compliance) for high net worth clients from Mainland China. She often coordinates or obtains tax advice from a Vancouver tax litigator, which she did with respect to tax compliance aspects for Mr. Zhang Jr.
- [334] As a proud professional who has built a specialized practice, I was not surprised that Ms. Hu took offence to a cross-examination that challenged her professionalism with respect to her work for Mr. Zhang Jr. In the witness box, from time to time, she did become quite animated, including with a tone of indignation.
- [335] Ms. Hu first met Mr. Zhang Jr. in September 2018. At that time, she summarized for Mr. Zhang Jr. the key relevant aspects of Canada's income tax system, including the requirement to report worldwide income and foreign properties (including the filing of a form T1135, "Foreign Income Verification Statement", starting the first calendar year after becoming a Canadian resident).
- [336] In April 2019, Ms. Hu prepared Mr. Zhang Jr.'s 2018 income tax return. Ms. Hu also prepared Mr. Zhang Jr.'s income tax returns for the following years (2019 to 2022).
- [337] Mr. Zhang Jr.'s 2018 income tax return included his worldwide income in 2018 arising after August 13, 2018 (the day Mr. Zhang Jr. became a Canadian resident).
- [338] For 2018, a form T1135 was not filed. Ms. Hu stated that for the first calendar year in which a taxpayer becomes a Canadian resident, the Canada Revenue Agency does not require a form T1135 to be filed.
- [339] A form T1135 was filed for the subsequent years, including for 2022, Mr. Zhang Jr.'s year of death.
- [340] The form T1135s for 2019 to 2021 showed Mr. Zhang Jr. owning 21 real estate properties in China. The total cost amount was \$16,674,808. For 2019 there was a readily apparent error that properly showed the maximum cost amount for Room 201, Unit 1, 2nd Floor, Residential Building, as \$7,553,627, but then incorrectly showed its maximum cost amount at the year end as \$755,363.
- [341] In 2022, 19 of the 21 properties show a loss on disposition. The other two properties do not show a loss.
- [342] Ms. Hu understood that each of the 21 properties had been seized by the Chinese government.
- [343] Ms. Hu explained that the two properties that did not show a loss was because she understood that those two properties were "personal use properties" and accordingly, a loss could not be claimed.

[344] Ms. Hu's understanding that all 21 properties were seized is consistent with her showing no cost amount for either of the two questioned properties at year end. It is also consistent with the presentation in Schedule 3 to the tax return where the property is described as a "Personal use residence property" with no loss claimed.

[345] With respect, the foregoing serves to refute the defendants' submission that the two properties that did not show a loss was because these properties had not been seized. In other words, the defendants submitted that the Chinese authorities had only seized properties that they believed Mr. Zhang Jr. was holding for his father and not those owned (legally and beneficially) by Mr. Zhang Jr.

12. Ms. Liu's credibility

[346] As a result of recent health matters, which I accepted, Ms. Liu did not testify at trial.

[347] More explicitly, I have not made an adverse inference as to Ms. Liu's credibility because she did not testify at trial.

[348] As with Ms. Liu, counsel had agreed that all read-ins tendered by the plaintiff would be admissible against all defendants.

[349] Ms. Liu and Mr. Yin have been married for over 30 years. Ms. Liu speaks Mandarin, but not English.

[350] Ms. Liu was a director at all relevant times of each of the corporate defendants.

[351] From the read-ins, it may be seen that Ms. Liu had testified that she had little knowledge of most matters and had little understanding of the role of a corporate director. She also claimed that she had little involvement with respect to the various corporate properties related to the current action. For example, with respect to the West 41st Project, a portion of the read-in reads:

Q Okay. Have you had any involvement in a real estate development project on West 41st Avenue?

A Yes.

Q Okay. What - - let's find out, first, where that is. Is that the development near the corner of Cambie Street and West 41st Avenue?

A I know West 1st [sic] Avenue. I don't know which is the cross street.

Q Well, this - - the real estate development that you're aware of, where is that located?

A West 41st Avenue.

Q Okay. Well, do you agree that it's on West 41st Avenue and between Cambie Street and Alberta Street?

A I only know it's on West 41st Avenue.

Q Have you ever been to the location of this project?

A Yes.

Q Okay. Do you know what's there right now?

A I don't know about right now.

Q Okay. The project on West 41st Avenue, does it involve 101 company?

A I don't know.

Q Okay. Well, I guess what do you know about this project?

A I know the land was sold.

Q What land?

A West 41st Avenue.

Q Do you know what - - was it residential property that was sold?

A I don't know.

Q And do you know who sold the property that you're talking about? The property or properties that you're talking about?

A I don't know.

Q Okay. Well, I guess I'm trying to just find out what you do know about this project other than the properties were sold. Is that it or do you know anything else about it?

A Nothing else.

Q Okay. Do you know if 101 co still owns any properties on West 41st Avenue or part of that project?

A I don't know.

Q Okay. Have you told me everything you know about that project at this point?

A I think so.

Q Was your husband, Mr. Yin, involved with that project?

A I don't know.

Q Well, I - - okay. How do you know about this project on West 41st Avenue?

A My husband told me.

Q Okay. So if your husband told you, your husband must be involved in the project then?

A I don't know.

[352] 101 Ltd. is a wholly-owned subsidiary of 103 Ltd. Ms. Liu has been the sole shareholder of 103 Ltd. since August 10, 2017.

[353] Ms. Liu also signed many of the corporate documents and directors' resolutions that arose as part of the PwC Transaction. One or more of the PwC accountants and PwC LLP lawyers spoke Mandarin.

[354] Ms. Liu also claimed that she was unaware of what jobs or positions her husband has held. Two relevant read-ins read:

Q Okay. So I want to go back and ask you a few more questions about your husband, Mr. Yin. Do you know if Mr. Yin has a job? An employment?

A Where are you - - do you mean?

Q Anywhere. Is he employed?

A I don't know.

Q Okay. You don't know if he's employed right this minute? Is that what you're saying?

A Yes.

Q Has Mr. Yin ever been employed in the past?

A I don't know when - - what that means. What you mean "employed"?

Q A job. Has he ever held a job?

A I think so.

Q Well, he's your husband. What can you tell me about jobs that he's held?

A I don't know.

Q So you've been married to him for decades, but you're unaware of any jobs he's ever held? Is that your testimony, ma'am?

A He's always very busy. I don't know if that's work.

Q Yeah. No. I'm just trying to confirm. That's your testimony that, although you've been married to him for decades, you're unaware of any specific job he's ever held?

A He's always busy for his business, and I don't know exactly what he did.

Q Okay. Is that your complete answer to my question then?

A Yes.

And the second read-in:

Q Do you have any idea what Mr. Yin has done to earn income in the last 10 years?

A I never asked. I don't know.

[355] With respect to a joint personal bank account Ms. Liu had with Mr. Yin, a relevant read-in reads:

Q Right. But did Mr. Yin have the ability to deposit money into your personal bank account?

A So far, as I recall, this is - - there was a joint account. So I just did whatever he asked me to do.

Q And I'm asking you about your own personal bank accounts. Did you receive - -

A I don't remember.

Q Did you receive millions of dollars from Mr. Yin's accounts and then distribute those funds yourself out of your personal accounts?

A I don't remember.

Q Is it possible that that happened, ma'am?

A I don't remember.

Q Is it possible?

I'm getting no answer. Madam Interpreter, the question was is it possible?

A I don't remember.

Q Is it possible that millions of dollars from your husband's companies went in and out of your personal bank accounts without your knowledge?

A I don't remember.

[356] Contrary to her assertion of unawareness, Ms. Liu used assets of corporations for which she was a director to help fund (by way of mortgages on corporate property) for her personal investment or other personal activities. Two key examples follow:

a) \$900,000 for the Royal Oak Project

[357] As noted, the Royal Oak Project is owned by 1084 B.C. Ltd. At all relevant times, Ms. Liu was a director and shareholder of 1084 B.C. Ltd.

[358] The other shareholder and director is Ms. Liu's friend, Ms. Rong Hua.

[359] As described below, \$900,000 in funds to help acquire the fourth property for the Royal Oak Project came from the July 17, 2017, \$1,925,000 BlueShore Mortgage secured by the Surrey Coffee Shop Property (held by 107 HoldCo Ltd.). Ms. Liu and Ms. Yin signed the mortgage documents.

[360] In her December 17, 2024 examination for discovery read-ins, Ms. Liu testified:

Q Would you agree with me that some of the money used to purchase the Royal Oak properties came from a mortgage on the building that contains the Surrey coffee shop. Wait for her, to hear the question.

A Yes.

Q And why was that done? Why was the Surrey property mortgaged in order to buy the Royal Oak property?

A Permitted to apply for mortgage. Permitted to apply for mortgage. In Canada there is such - there is such. They have gave - Canada operates - I don't know how to say that clearly - permitted - permitted to do so.

Q Okay. The mortgage obtained on the Surrey property, was that done by you or your husband or both of you?

A I did.

Q Okay. Because you were a director of the company that owned it; right?

A Permitted. Permitted. Permitted to do so, for the company to get the mortgage; so I did. You always use "director". This word I don't understand. I don't understand this word.

Q Okay. You said that the four Royal Oak properties were paid for using the mortgage and your family's money; right?

A Yes.

[361] Having regard to the Surrey Coffee Shop Property being used to help finance 1084 Ltd.'s purchase of the property making up the fourth Royal Oak Project, I reject that Ms. Liu was as uninformed and disinterested as she claims. Ms. Liu was a director and had a 50 percent shareholding in the capital of 1084 Ltd. (the corporation that held the Royal Oak Project) at the time.

[362] Separately, in closing written submissions, plaintiff's counsel also observed:

783. In the defendants' opening statement defendants' counsel advised:

And this is a company that is owned by Mrs. Liu and her friend Ms. Rong Hua. And this company, 1084 Ltd., owns four properties on Royal Oak that Mrs. Liu and Ms. Hua invested in together. And what happened here is after the asset division agreement was reached, Mrs. Liu transferred \$900,000 of mortgage proceeds obtained from the 770 company [107 Holdco Ltd.] which, as we saw earlier, owns the Surrey coffee shop. Mrs. Liu transferred \$900,000 from 770 [107 Holdco Ltd.] to 1084 [Ltd.] for her investment in a portion of the Royal Oak properties. Now, the Royal Oak properties don't really have anything to do with this case, other than the fact that my friends have added 1084 [Ltd.] as a defendant because they claim that the asset division did not actually split off

784. Of course, the timing does not follow because Mr. Yin testified that his "settling of accounts" that would grant him control over 107 HoldCo Ltd. occurred in the summer/fall of 2019. The mortgage at issue here was taken out two years earlier in 2017.

[Emphasis by plaintiff's counsel]

[363] I agree with the submission by plaintiff's counsel.

b) \$5,000,000 Jin Ocean Mortgage for personal purposes

[364] Since the April 7, 2015 incorporation of 103 Ltd., Ms. Liu has been shown as its sole shareholder and director.

[365] As noted, 101 Ltd. was the corporation that purchased the West 41st Project.

[366] At the time of the purchase of the five properties making up the West 41st Project, 103 Ltd. and iFortune Development Inc. had relative 80 percent and 20 percent shareholdings in the capital of 101 Ltd.

[367] As noted above, on August 10, 2017, 103 Ltd. acquired iFortune Development Inc.'s 20 percent interest in 101 Ltd. and since this time 103 Ltd. has been the sole shareholder of 101 Ltd.

[368] In August 2020, Ms. Liu used 101 Ltd. to secure funds for her personal purposes.

[369] Plaintiff's counsel, in their written submissions, summarized matters relating to Ms. Liu obtaining funds from 101 Ltd. as follows (I have removed the references to the transcript and banking records):

424. On August 13, 2020, 101 Ltd. obtained a mortgage from Jin Ocean Investment Corporation on the remaining West 41st Properties (408 & 426 West 41st Ave, Vancouver) for a principal amount of up to \$5 million CAD (the "Jin Ocean Mortgage").

425. The interest rate on Jin Ocean Mortgage was 15.00 % per annum compounding monthly.

426. On August 18, 2020, the proceeds of this mortgage in the amount of \$4.6 million CAD were deposited in the bank account of 101 Ltd. That same day, \$4.5 million CAD was then transferred to Mrs. Liu's personal bank.

427. On August 19, 2020, Mrs. Liu transferred \$3,617,316 CAD to her US BMO account, which was converted to \$2,730,050 USD. On August 20, 2020, Mrs. Liu wired \$2,846,199 USD to "Maywind Trading LLC".

428. Mr. Liu refused in her examination for discovery to disclose the recipient of those fund, claiming they had been sent pursuant to a confidential contract. A request was made to produce all documents and information related to this confidential contract.

429. Following numerous demands, almost a year after her examination for discovery by consent order dated December 9, 2022, Mrs. Liu was required to respond to the requests made at her examination for discovery by January 20, 2023.
430. At trial, Mr. Yin testified that he learned of the Jin Ocean Mortgage at his examination for discovery. He says he asked Mrs. Liu about this mortgage after his discovery and she told him that the majority of the proceeds went to her US account "to support Wengui Guo" and a small portion was transferred to the bank account of Ms. Yin. Mr. Yin later testified in cross examination that Mrs. Liu had told him that she invested the proceeds in virtual coins. He claims that to be a scam though there are no records of the scam.
431. Mrs. Liu sent the balance of the mortgage proceeds from the Jin Ocean mortgage to her daughter Ms. Yin from September to December 2020. This money was used by Ms. Yin to pay for the construction of the house located on Westhill Wynd.
432. Ms. Yin testified that the construction of the Westhill property occurred in 2019 and 2020. Her parents provided the funds for the construction work. She did not pay anything for the construction work. Ms. Yin testified that a portion of the funds provided by her mother to pay for the construction of the Westhill property came from the Jin Ocean mortgage.
- [370] The references support fully plaintiff's counsel's summary, which I will adopt as my findings of fact.
- [371] Relevant portions of a read-in from Ms. Liu's December 1, 2021 examination for discovery reads:
- Q Okay. And did you, in August 2020, go and get a mortgage from the Jin-Ocean Mortgage Investment Corporation?
- A Yes. Yes.
- Q And do you remember what the amount of the mortgage was?
- A Five thousand hundred.
- Q Is that -
- THE INTERPRETER: Sorry. Sorry. 5 million.
- CNSL M. HEWITT:
- Q \$5 million?
- A Yeah. I remember it's 5 million.
- Q And that was against two of the residential properties on West 41st Avenue; right?
- A Yes.

Q And you did that \$5 million transaction without any direction from your husband, Mr. Yin; right?

A Correct.

Q And why did you do that?

A Because that's what I want to do.

Q And you felt you were allowed to do that?

A Yes.

Q And you could do that without any consultation with Mr. Yin?

A He won't come back, and I can't - I could not reach him. So

Q But my question was you felt that you could do that without any consultation with him; is that right?

A I could not reach him, so I made the decision myself.

Q Okay. So that's not quite my question. My question is did you feel that you were authorized to do this without consulting with Mr. Yin?

A At the time, yes.

Q Okay. And you -

A Because I couldn't reach him.

Q Okay. And you certainly didn't consult with the plaintiff or his father for this mortgage; right?

A Is there a reason that I need to contact the plaintiff or his father? Because whatever he - they did with my husband, I have no idea.

Q Well, that's what I'm asking here. I'm just trying to confirm. Did you actually consult with the plaintiff before getting the \$5 million mortgage on the West 41st properties?

A No.

Q You didn't feel that you had to; right?

A Correct.

Q And you -

A I think that I only need to consult my husband. But since he's not free and I could not reach him, so I made the decision myself.

Q And you knew that the properties were owned by 101 company; right?

A I know it's owned by a company, but I don't know which company.

Q Well, this -- the mortgage we're looking at says that the money was borrowed by 1011066 BC Ltd. Is that 101 company? That's the one you know; right?

A I don't know the interlink between different companies. I just get the mortgage.

Q Well, right. You got a mortgage for 101 company. So, ma'am, how is it that you went to the bank and you got them to give \$5 million to 101 company if you didn't know that it was their property and that they control it?

A I know the property is under our company's name, but I just don't remember which one is exactly the company.

And further:

Q Okay. And if we can just scroll down to the signature lines on this mortgage agreement. Now we're looking at page 4 of 9 of this mortgage, and there's the same -- it looks like the same signature three times on the right. Is that your signature?

A Yes.

Q Okay. So you were the one person involved in arranging to get this mortgage on behalf of the company that owned it; is that fair?

A Yes. That is my mortgage.

[372] With respect to the Jin Ocean Mortgage, Mr. Yin, in his examination in chief, testified:

Q Okay. And any other mortgages taken out on the West 41st properties remaining?

A I learned, during the discovery of the other lawyer, that a 5 million loan incurred again later.

Q How did you come to learn about that during your discovery?

A Because at the time the lawyer asked me if I was aware of the 5 million loan, and I was not aware of that. So after the discovery, I went back and asked my wife, and my wife told me there was a 5 million loan.

Q Have you come to learn what that loan was used for?

A Well, later, I asked my wife. My wife said that a majority of the loan went to

THE INTERPRETER: The witness said "the third person".

This interpreter does not know whether he said "his" or "her".

A his or her personal account in the United States to support Wengui Guo, and a small portion of that my wife gave to the account of my daughter.

Q Do you know who Wengui Gao [sic] is?

A I do not know.

Q Do you know if Wengui Gao [sic] is trying to take over China?

A I do not know.

Q Why didn't you know about this mortgage at the time your wife took it out, or this loan?

A Because during that time I was in China, I was under investigation. I was dragged into that because of the corruption and bribery case of Chunli Zhang and for me to transfer money from China to Canada for him.

Q Do you know approximately when this mortgage was taken out?

A I heard from my wife. It seems like it's 2020.

[373] In his cross-examination with respect to the Jin Ocean Mortgage, Mr. Yin testified:

Q Did your wife ever tell you that she borrowed \$5 million against your properties?

A I'm not sure about any time before 2023. But after you asked me questions in the discovery, I asked her, and she told me.

Q What did she tell you?

A I asked her. I said that, "The lawyer asked me - - asked me questions and said that you obtained a loan of 5 million against the 41st Ave. properties. Is that true?" She said, "Yes."

Q Did she tell you why?

A She said that she invested in a virtual coin?

Q A virtual coin?

THE INTERPRETER: Coins:

A Yes.

Q You know that's not true?

A I'm not sure whether she was telling me the truth, but that's what she told me.

Q But now you know that wasn't true?

A Right now, my understanding is that she was scammed.

Q Is there any record of the scam?

A This is my understanding, because she told me in 2023 that the money would come back, but by the end of that year, the money did not come back.

Q No, no. The question is: Is there any record of the scam?

A No.

Q Did you know that \$3.6 million were wired out of the country by your wife from those proceeds -- those mortgage proceeds?

A Yes.

Q Did you know that \$900,000 of those mortgage proceeds went to your daughter's bank account?

A Yes.

Q And you know that that \$900,000 was used to pay for your daughter's renovation of her personal residence?

A Yes.

[374] As may be seen, Ms. Liu arranged for the Jin Ocean Mortgage and apparently may have used the majority of the proceeds for possibly an enigmatic and quixotic purpose.

[375] I do not accept that Ms. Liu is credible in generally portraying herself as unaware with respect to the key financial matters, especially having regard to the large sums involved, the required legal documents, and the currency transfer related to the Jin Ocean Mortgage.

[376] Further, I do not accept her stated lack of knowledge as to what positions or jobs Mr. Yin had had. As will be seen further below, Mr. Yin testified that Ms. Yin prepared his income tax returns.

[377] In sum, I find that Ms. Liu was attempting to distance herself from her own misappropriation of funds.

13. Ms. Yin's Credibility

[378] I did not find Ms. Yin to be a credible witness. She would downplay matters or pretend she knew less than she actually knew.

[379] For example, with respect to her English language abilities, the read-ins from Ms. Yin's February 22, 2023 examination for discovery read:

Q Okay. So you are speaking today through a Mandarin interpreter; is that right? And you've nodded your head yes, but you'll have to speak your answer.

A Yes.

Q Okay. And in your first answer you responded in English; correct?

A Yes.

Q Okay. But if you were going to use an interpreter, then you'll have to speak through the interpreter for every question; okay?

A Yes.

Q You understand this?

A Yes.

Q Okay. You've affirmed to tell the truth today?

A Yes.

Q Okay. And is Mandarin your first language?

A Yes.

Q Do you speak some English as well?

A Little bit.

Q Okay. Do you - are you educated in the English language at all?

A Yes.

Q Okay. What level of education do you have in English?

A What do you mean by English education?

Q Well, I asked if you were educated in English. You said yes.

A University.

Q Okay. You attended University in the English language?

A Correct.

Q That was the University of British Columbia?

A Yes, correct.

Q Do you have a degree?

A Like graduation diploma?

Q Diploma -

A Certificate, yes, I do.

Q Certificate or degree?

A Like a bachelor's.

Q Okay. Bachelor's degree?

A Correct.

Q In what subject?

A Economics, correct.

Q Okay. So you studied university economics at UBC in the English language?

A Correct.

Q And what year did you graduate?

A 2018.

Q Okay. So when I'm speaking English, you understand everything I'm saying; right?

A Under normal circumstances, but since counsel might use a lot of legal language, I might not be able to understand it all.

Q Okay. Can you read in English?

A Yes, I can read some.

[380] As noted, Ms. Yin attended the University of British Columbia and obtained a Bachelor's degree in economics. She graduated in 2018.

[381] The study of economic theories and matters such as fiscal and monetary policies in an academic setting requires the ability to comprehend English at a high level.

[382] I reject as true Ms. Yin's gross understatement that she "can read some" English.

[383] Ms. Yin was not prevented from truthfully testifying: "I am proud of my English language skills that I have further developed in Canada. I graduated from UBC in 2018 with a Bachelor's of Arts degree in Economics".

[384] Ms. Yin was a shareholder and served as a director of several of the defendant corporations.

[385] At trial, in connection with the July 2017 \$1,925,000 BlueShore Mortgage placed on the Surrey Coffee Shop Property, Ms. Yin testified that as a director she must be "responsible".

[386] With this context, Ms. Yin also testified that she did not know that a director has a duty not to give money to oneself to the detriment of the corporation or its shareholders. In cross-examination, Ms. Yin testified:

Q Do you know anything about the duties of a director of a company?

A Some of them.

Q Do you understand - - which ones do you know?

A That means I am responsible.

Q Anything else?

A No.

Q Do you understand the director has a duty of - - to act in the best interests of the company?

A That, I don't know.

Q Do you understand that the director has a duty not to give money to themselves, to the detriment of the company and any other shareholders?

A I don't know.

Q When you approved that mortgage, did you consider that maybe, as a director, you should refuse to do that?

A I did not.

Q Did you think, as a director, you should ask where the money was going?

A No.

Q And you didn't ask those things?

A I did not ask.

Q It was your parents that were telling you what to do with the company that you were the director and president of?

A Are you referring to 770 [107 Holdco Ltd.] company?

Q Yes.

A Yes.

Q And the reason that you didn't ask any questions and the reason you just did what you were told is that your father was the only decision-maker in that company?

A My father was a decision-maker, but that was not the - - that was not the reason why I did not ask the questions.

Q Why didn't you ask any questions?

A I just did not.

[387] With respect to the July 17, 2017 \$1,925,000 BlueShore Mortgage on the Surrey Coffee Shop Property, Ms. Yin with her mother accepted the terms of a July 14, 2017 commitment letter from BlueShore Financial on behalf of 107 Holdco Ltd. (the corporation that owned the Surrey Coffee Shop Property) to borrow \$1,925,000. Ms. Yin and her mother also committed to personally guarantee the loan.

[388] The body of the "Acceptance" portion of the July 14, 2017 commitment letter reads:

The Borrower [107 Holdco Ltd.] hereby acknowledges and agrees to the terms and conditions contained in this commitment letter and authorize the Lender to instruct its solicitors to prepare the mortgage documentation. The Borrower further acknowledges that the commitment fee set forth herein is a reasonable estimate of the Lender's cost incurred in investigating and preparing the loan and of holding monies available to fund same and shall be forfeited to the Lender as liquidated damages if the loan is not disbursed within the time limit set out therein.

[389] The commitment fee was \$19,750, of which \$10,000 BlueShore Financial acknowledged as already received.

[390] Section 15.3 of the July 14, 2017 BlueShore Financial commitment letter provides that as a term of the loan:

Personal guarantee agreement for the full loan amount signed by Yu YIN and Yan Chun LIU.

[391] Ms. Liu and Ms. Yin signed on behalf of 107 Holdco Ltd. as the borrower. Further, each signed the Acceptance as "Personal Guarantors".

[392] At the time of the commitment letter, Ms. Yin testified that she knew Mr. Zhang Jr. or Mr. Zhang Sr. had invested in the Surrey Coffee Shop Property. Ms. Yin testified that she did not ask for the permission of either of Mr. Zhang Jr. or Mr. Zhang Sr. to place the mortgage on the Surrey Coffee Shop Property.

[393] In sum, I have the following facts:

- a) Ms. Yin is an intelligent individual;
- b) By July 2017 she was well into her studies at the University of British Columbia;
- c) She knew she was a director of 107 Holdco Ltd.;
- d) She signed on behalf of 107 Holdco Ltd., along with her mother, the "Acceptance" of the BlueShore Financial July 14, 2017 commitment letter;
- e) She was willing to personally guarantee the \$1,925,000 BlueShore Mortgage;
- f) She knew that as a director she must be responsible;
- g) She knew that either Mr. Zhang Jr. or Mr. Zhang Sr. had made a significant investment in relation to the Surrey Coffee Shop Property;
- h) She acknowledges that she did not ask "where the money was going";
- i) She says she did not know that a director has a duty not to give money to oneself to the detriment of the corporation or other shareholders; and
- j) The reason for not asking any questions was "I just did not".

[394] In sum, I find that Ms. Yin was willfully blind.

[395] As to which reference is made above at paragraph 105, on September 1, 2023, Ms. Tao obtained a court order requiring Ms. Yin (and the other defendants) to forthwith provide a "mortgage statement regarding the [Surrey Coffee Shop Property] which states the current outstanding balance on the mortgage registered against the property".

[396] As noted above, on November 8, 2024, Justice Lyster found Ms. Yin, and the other defendants, to be in contempt: *Tao v. Yin*, 2024 BCSC 2045.

[397] Paragraph 54 of Justice Lyster's reasons read:

Paragraph 8(b) is clear and unambiguous. It required the defendants to forthwith provide the Surrey mortgage statement. They provided it on December 7, 2023, some three months after the Order was pronounced. No explanation has been provided in the evidence for the delay in providing it, although counsel submits that it was not in the defendants' possession at the time the Order was pronounced, that Ms. Yin made efforts to get it from the bank, she then travelled to China before she could finish those efforts, and immediately upon her return accessed the mortgage and provided it to counsel. That explanation ought to have been, but was not, included in Ms. Yin's affidavit. Regardless of the lack of evidence to substantiate that explanation, it is not sufficient to explain the three-month delay in providing the Surrey mortgage.

[398] At trial, Ms. Yin testified that she accepted without questioning her father as to the source of large deposits (in the millions) he made to their joint and her personal bank accounts, or generally without questioning their subsequent use by him, while she used some of the funds for her personal expenditures.

[399] With respect to personal expenditures, Ms. Yin, in examination-in-chief, testified:

Q We'll talk about that later.

Now, you mentioned that your dad transfers money into your accounts. So is the money that's transferred into your bank accounts for your use only?

A No. No, I used the money for my living expenses, and I also used the fund to pay for the mortgages or the loans. And if my father or my mother needed to use those funds, for example, pay bills, I would use the funds to pay bills. And sometimes the funds were used to pay the mortgage for my parents' house.

[400] In the spring of 2016, Mr. Yin and Ms. Liu purchased for Ms. Yin a home on Westhill Wynd in West Vancouver. The purchase price was approximately \$3,758,000 (financed with a \$1,600,000 mortgage).

[401] Part of Ms. Yin's February 22, 2023 read-ins read:

Q Okay. Did your parents select the property for you?

A Yes. They had picked that.

Q And did your parents pay for the property for you?

A Yes. They had paid for it, and there were a mortgage on it.

Q Who paid the mortgage?

A From my account, but paid for by my parents.

Q Did your parents tell you where they got the money to purchase the Westhill property?

A I don't know.

Q I asked you whether your parents told you where they got the money. I didn't ask you if you know where they got the money.

A No, they have not told me.

Q Okay. Do you agree with me that your parents came up with the well over a million dollars to purchase this property for you?

A Do you mean that over \$1 million was paid towards that property?

Q From your parents.

A Possible.

Q And they didn't tell you anything about where the money came from?

A No, they have not told me.

[402] Ms. Yin also presented as nonchalant about her use of approximately \$900,000 she received from her mother to help fund the construction in 2019 and 2020 of a new home on the Westhill Wynd property and other personal expenses.

[403] As noted above, funds for the construction of her new home came from the Jin Ocean Mortgage.

[404] Ms. Yin had and has only modest income.

[405] While I accept that Ms. Yin took directions from her father, I do not accept, especially having regard to her education, that she was as disinterested as she claims or accepted significant funds for her home without an ounce of inquisitiveness as to the nature of their source.

[406] I recognize that Ms. Yin refers to the Westhill Wynd home as "my family's property" of her parents and herself. She also views the Ottaburn Avenue property in which her parents reside as "my family's property". The Westhill Wynd home is registered solely in her name in the Land Title Office.

[407] As noted, on November 8, 2024, Justice Lyster found the defendants, including Ms. Yin, to be in contempt of court.

[408] In cross-examination at trial, Ms. Yin was directed to a finding Justice Lyster made at paragraph 43 of the Justice's reasons. The cross-examination reads:

CNSL M. HEWITT:

Q So, 43, after considering your evidence, the judge said this:

In my view, the defendants did not make best efforts to provide the plaintiff with the Buxton mortgage statement forthwith or as soon as possible. In particular, no real explanation is provided for why "the timing did not work out as Yu Yin was travelling for a few months during the relevant period" after Mr. Yin signed the power of attorney in December 2023.

Do you understand the judge reached that conclusion?

A Yes, I see that.

Q And you accept her conclusion?

A What do you mean, that accept that conclusion?

Q She concluded that:

the defendants did not make best efforts to provide the plaintiff with the Buxton mortgage statement forthwith or as soon as possible.

Do you accept that conclusion?

A I disagree. My mother and I were here. We were not able to provide it. My father was in China, and he was not able to provide it.

Q So this judge found you in contempt, and you disagreed with her finding; is that what you're saying?

A I am just telling the truth.

Q You disagree with the judge's conclusion?

A We were not able to provide, but judge - - that's what judge said. I disagree.

Q Okay. Do you understand that breach of a court order is a serious thing?

A Yes.

Q Do you understand that contempt of a court order is a very serious thing?

A Yes.

[409] I do not accept Ms. Yin's explanation that her "father was in China and he was not able to provide it". As Justice Lyster notes, Mr. Yin had signed a power of attorney in December 2023.

[410] Ms. Yin was not re-examined on this aspect.

[411] Justice Lyster's finding as to Mr. Yin's (and Ms. Liu's and Ms. Yin's) contempt was clear. Ms. Yin's disagreement with Justice Lyster's finding reflects a witness who cannot be relied upon by the Court to be objective.

[412] Ms. Yin had a particular motive to lie. Her financial well-being depends on her father's financial dealings. Her financial well-being includes her Westhill Wynd home (over which the plaintiff has filed a certificate of pending litigation).

[413] I find that where it was in Ms. Yin's financial interests she would try to minimize her knowledge, involvement, and responsibilities, including her duties as a director.

[414] In sum, I do not find Ms. Yin to be a credible witness. I particularly reject that she would recognize that as a corporate director she is "responsible" but not know that directors cannot "give money to themselves, to the detriment of the company or any other shareholders". Ms. Yin lacks veracity.

14. Mr. Yin's credibility

[415] In his examination-in-chief, Mr. Yin described his dealings with Mr. Zhang Sr. in 2013 in facilitating the purchase of a toll booth facility that Mr. Yin sought for his corporation in China.

[416] After some delays, Mr. Zhang Sr. obtained the necessary approvals (which included the approval of the mayor). Mr. Yin testified (in chief):

A About one month later -- that was the end of 2013 -- Chun Li Zhang called me. He said, "Brother, the thing -- the matter that you asked me to help with, I've done it. Go to the accounting department directly, and sign a contract and just pay the money, and that's it."

And so regarding that issue -- for that issue, right, I went to the accounting department around the end of 2013. I completed all these procedures without any issue.

Q Okay. So you're saying those procedures were to purchase the tolling booth?

A Correct.

CNSL R. GAGNON: All right. So I'm debating whether we carry on right now.

THE COURT: We have five more minutes. Keep this --

CNSL R. GAGNON: Press on?

THE COURT: Yes, squeeze the juice.

CNSL R. GAGNON: You bet.

A The price was 1.68 million. The floor size of the tolling booth was close to 2,000 square feet.

THE INTERPRETER: Sorry, "square metres".

A There was a third-party appraisal report available at the time when we signed the contract, and that appraisal was based on the market-value condition. So in terms of that matter, it, you know, concluded.

Q Okay. So after you purchased the tolling booth, when did you next interact with the Zhangs?

A That was the spring festival or Chinese New Year 2024, early 2024.

THE COURT: '14, I think.

CNSL R. GAGNON: Yeah.

A: Yeah, '14.

CNSL R. GAGNON: Okay.

Q All right. Please carry on. So it was the New Year's festival in 2014?

A Yes, yes. So I called Chunli Zhang during the spring festival. I said, "It's spring festival. Thank you, big brother, for your help." I said, "I'll go to visit you, pay a visit." What I meant was to give him some gift money. At the time, Chunli Zhang was very friendly, and he said, "No, that's not necessary." And I said, "You know, it's New Year's time, and it's just a token of my appreciation."

And later, he agreed for me to go to his office. After I arrived at his office, I left 100,000 RMB, and then I left. And I said, "I want to thank you."

And then after the spring festival of 2014, Chunli Zhang called me, and he said that his son and daughter-in-law just returned from Beijing, and he said he wanted to invite me for a dinner and so that I could meet with his son and his daughter-in-law.

[417] From the foregoing it is clear that Mr. Yin (for his corporation) paid market value for the toll booth facility.

[418] Further, it is not shown that Mr. Zhang Sr. was soliciting a bribe or otherwise seeking or expected illegal compensation. The "token" of appreciation Mr. Yin was suggesting could easily have been a box of chocolates, a nice bottle of wine, or a cultural equivalent.

[419] Mr. Zhang Sr. was not cross-examined with respect to the 100,000 RMB, if there were such.

[420] With respect to the Rule in Browne v. Dunn, counsel filed the following agreement:

The parties through their counsel agree as follows:

1. The plaintiff has raised the issue that defence witnesses have testified to certain matters that ought to have been put to Chunli Zhang when he testified, to honour the rule in Browne v. Dunn.
2. The defendants disagree, saying that all such matters were addressed with Chunli Zhang in general terms and did not require Chunli Zhang to be confronted with more specific information in order to honour the principle because it can be presumed from his existing evidence that those matters would be denied.
3. The plaintiff agrees not to seek the exclusion of evidence that it says violated the rule, or to assert that it should be given low weight based on an alleged violation of the rule in Browne v. Dunn.

4. The defendants will not assert in closing argument that testimony from their witnesses is uncontradicted when the subject matter of such testimony was not put to the witness in the plaintiff's case.
5. The plaintiff may rely in argument on the presumption that Chunli Zhang would have denied that matter.

[421] In cross-examination, Mr. Zhang Sr. spoke to his knowledge as to the punishment for corruption in China. The relevant portion of the cross-examination was:

CNSL R. GAGNON:

Q I'm going to repeat my question, Mr. Zhang. I asked you in your vast experience do you know what sort of punishments are given to communist party members when they are found to have engaged in the type of corruption I've just read to you?

A Well, that would depend on the seriousness of the nature of criminal offence.

Q Okay. What would be if it is of the most serious nature of corruption, embezzling upwards of 300 million yuan and taking bribes?

A I'm really not sure about the sentencing standard - - standards.

Q In your experience what's the most severe sentence you witnessed a Chinese Community Party member suffer as a result of a finding of corruption?

A Well, the most serious one would be sentenced to death. Death sentence, right. And some would, you know, make a plea and then they will eventually get a suspended death sentence, and some even get to be released and found not guilty.

[422] In the examination in chief of Mr. Yin, he was not asked, or in other testimony state or suggest, that his understanding of the Chinese penalties for corruption were significantly different from that Mr. Zhang Sr. described.

[423] The evidence was that senior Chinese civil servants such as Mr. Zhang Sr., enjoyed only modest incomes and were restricted as to investment activities.

[424] Mr. Yin's story is not in harmony with "the preponderance of the probabilities" in the purported circumstances.

[425] In arguendo, if Mr. Yin had bribed Mr. Zhang Sr., it is improbable, unless he were foolish and fearless, that he would be willing to accept Mr. Zhang Sr.'s funds for investing in Canada approximately a year or so later. He would fear being financially associated with investment funds derived from corruption in which he had partaken.

[426] In sum, I reject Mr. Yin's testimony regarding a bribe or other financial reward that he says he gave to Mr. Zhang Sr. for his help in relation to the purchase of a toll booth facility.

- [427] Further, Mr. Yin had a clear motive to lie in the case at bar. It was in Mr. Yin's interest to sully the reputation of Mr. Zhang Sr. as a corrupt individual, and Mr. Zhang Jr. by association, in order to attack the veracity of each before the Court.
- [428] With respect to the Buxton Property, Mr. Yin had acquired it to hold in trust for Mr. Zhang Jr. (as I have found above) on October 11, 2016 for approximately \$2,000,000. Mr. Yin placed a mortgage of approximately \$1,100,000 against the Buxton Property without Mr. Zhang Jr.'s knowledge or consent.
- [429] In short, Mr. Yin misappropriated the mortgage funds secured by the Buxton Property for his own use or benefit.
- [430] As another example, Mr. Yin also had a motive to lie based on Ms. Liu's misappropriation of approximately \$1,925,000 in funds advanced under the BlueShore Mortgage secured by the Surrey Coffee Shop Property. In each instance, significant portions of funds were used for financial or personal purposes unrelated to any investment for Mr. Zhang Jr. (or Mr. Zhang Sr.).
- [431] With respect to Mr. Yin's own investment funds, Mr. Yin, in cross-examination, in relation to his income tax returns, testified (in part):

CNSL M. HEWITT:

Q Okay. Sir, regarding your 2016 return, we noticed that it wasn't filed until April 2023. Do you know why that is?

A I don't know English, and I don't know.

Q You don't know why they were filed in 2023?

A I don't have a clear recollection.

Q Okay. On this return -- well, I'm not going to take you to the pages because I guess they're in English. It might not help. I'm just going to suggest some things to you. You didn't report holding funds more than 100,000 in any Chinese bank account in this return. Do you remember, just before lunch, that you had -- I'd taken you to the part of the return from 2015 that said the maximum funds held outside Canada was \$547,000, approximately, and now you don't report -- in 2016, you didn't report holding funds in excess of \$100,000 outside of Canada. Does that make sense?

A Yes, I understand.

Q What happened to that money that you were holding in China in 2015 but apparently weren't in 2016?

A I don't have a clear recollection.

Q Okay. But since it's only about a half a million dollars, it wasn't nearly enough to enable you to make investments into the projects that you're claiming in this case?

A Not true.

Q Well, okay. West 41st, you'd made a few different claims, but my best understanding is you put \$4 million into that one. Is that right?

A I don't recall clearly about that.

Q Okay. You seem to be suggesting you contributed at least \$9 million to the No. 3 Road project. Am I right?

A The No. 3 Road project, I invested 15.5 million.

Q That's a lot more than \$547,000, isn't it?

A Yes.

Q You say you contributed \$3 million to the Surrey property?

A Yes.

Q You say you had to put up \$2 million of your own money initially for the Buxton property purchase?

A Yes.

Q So you're saying your investment in these projects or your contribution was well in excess of 15 million, maybe even \$20 million?

A Not that much, not as much as 20 million.

Q 15?

A More than that.

Q Right, so the money obviously wasn't coming from your accounts in China?

A The -- those were from China. I just didn't declare it for the tax return. The money came out from my Chinese bank account.

[432] In re-examination, Mr. Yin testified:

Q Okay. You also reviewed a number of your tax returns in cross-examination, so I just have a couple questions about that.

A Okay.

Q You looked at tax returns between the period of 2015 and 2020, just for reference, the time frame. In that time period, how were your taxes prepared?

A At the time - - well, I do not know English. I do not know much about the - - of the filing of income tax returns. Those were prepared by my wife. I did not know why she filed it that way.

Q What's your involvement in the filing of your taxes?

A Just eventually I was provided with income tax return documents, and I was asked to sign - - I just signed on them. I do not know English. I do not - - I did not know what's going on.

[433] I have several findings.

[434] First, it is not credible that if a taxpayer has not filed a return that should have been filed six or so years earlier, the taxpayer does not know the reason the tax return was not filed on a timely basis, especially when it was filed it was only about two years before.

[435] Second, Mr. Yin's 2016 tax return (filed April 2023) and the tax return for the previous year do not show, even roughly, the funds purportedly used as part of Mr. Yin's investments. Mr. Yin's explanation that "I just didn't declare it for the tax return" is wanting.

[436] Third, all Canadians, including most if not virtually all recent immigrants, know that a tax return is an important document with significant legal consequences when not properly completed. Especially as a seasoned business person, I reject Mr. Yin's testimony that "I did not know what was going on".

[437] Mr. Yin excuses himself by testifying, "I do not know English". He says that the tax returns were prepared by his wife. His wife speaks Mandarin and no English.

[438] Mr. Yin does not testify as to the reason he was satisfied that his wife was knowledgeable of his tax matters and that she had the knowledge and experience to prepare a more complicated tax return. As noted, Ms. Liu had testified (in her read-ins) that she had little knowledge as to what Mr. Yin actually did in his business or for work.

[439] Lastly, Mr. Yin's testimony, "I did not know what's going on", does not square with his testimony with respect to his Chinese accounts: "I just didn't declare it for the tax return".

[440] An offhand approach to an income tax return (which must be certified) by the taxpayer harms both the taxpayer's credibility and reliability.

[441] On May 4, 2023, Associate Judge Hughes ordered, among other matters, that the defendants serve an amended list of documents. Each of the defendants was also ordered to serve an affidavit verifying the defendants' list of documents.

[442] At trial, in cross-examination, Mr. Yin testified:

Q Sir, do you remember that in, it looks like it was, May 2023, you had to swear an affidavit about your document production in this case?

A Yes.

Q And the court had actually ordered that such an affidavit be sworn?

A Yes.

Q And the affidavit had to address all the documents that were available to you for this case; right?

A Yes.

Q If we go down to paragraph 5. I'm going to read to you what you said in paragraph 5, sir:

In moving back to China, I did not bring a computer with me from Canada. I did not bring hardcopies of records regarding Canadian properties, or any Canadian companies.

A Yes.

Q That's what you swore under oath in 2023?

A Correct.

Q And was it true?

A Yes, that's true.

Q All right. So your testimony that I read to you from yesterday and the day before, then, it was false?

A Well, at the time, my understanding was wrong. I mistook that as it was referring to the documents regarding the regular transactions of the Canadian projects, those projects.

Q Sorry, which time were you wrong; was it yesterday, or the day before, or when you swore this affidavit in 2023?

A Back then in 2023, when I was swearing the affidavit, my understanding was wrong.

Q Okay. I thought you had just said that it was true, but now you're saying it was false; is that right?

A Well, I mean, at the time, I did say that, but the reason I said that was because my understanding was wrong.

Q Okay. So the - - so the evidence you gave in 2023 was false?

A It's not that it's false; it's, rather, I misunderstood it, I misunderstood it.

Q "Factually incorrect", how about that?

A That's my misunderstanding.

[443] As noted, Mr. Yin is a seasoned businessperson. I cannot accept that under any reasonable scenario that Mr. Yin would not make a copy of any records regarding the Canadian properties (or otherwise back-up his computer) before going to China. The records pertained to the "Canadian properties" with financial aspects in the millions.

[444] In sum, I do not find Mr. Yin to be a credible or reliable witness.

15. Asset Division agreement

[445] As noted above, Mr. Yin asserted that the PwC Transaction was part of a broader oral agreement which the defence referred to as the "Asset Division Agreement". The Entire Agreement clause in the October 15, 2019 Purchase Agreement is set forth at paragraph 271 above.

[446] The defendants' closing submissions described the Asset Division Agreement as follows:

795. Mr. Yin testified that Mr. Zhang Sr. had asked him to pay the \$5.63 Promissory Note, repay the mortgage on Buxton and make up his shortage for the No 3 Road Project; and because he was not able to raise the amount of funds Mr. Zhang Sr. demanded, he offered that they could divide the projects to resolve their debts. After some discussion and several calculations, he and Mr. Zhang Sr. determined that Mr. Zhang Sr. would take the No 3 Road Project and he would keep the Surrey road project and the two remaining West 41st Project homes to resolve the debts between them (the "Asset Division Agreement"). Mr. Yin testified about how transferring the No. 3 Road Project to Mr. Zhang Sr. cancelled his debts owing to him and finally settled their business relationship as follows:

- (a) The No 3 Road Project was valued at \$37.7 million CAD;
- (b) He had invested \$15,500,000 CAD in the No 3 Road Project; so he would need to recover that amount to transfer the No 3 Road Project to Mr. Zhang Sr.;
- (c) First, he deducted Mr. Zhang Sr.'s \$3 million CAD capital investment in the Surrey Coffee Shop Project ($15,500,000 - 3,000,000 = \$12,500,000$);
- (d) Then, he deducted \$6 million CAD (\$4 million CAD of which was the capital for the remaining homes in the West 41st Project and \$2 million CAD of which was the profit he estimated they would attract when sold) ($12,500,000 - 6,000,000 = \$6,500,000$);
- (e) Then, he deducted the 5.63 Promissory Note ($6,500,000 - 5,630,000 = \$870,000$). At this point, Mr. Zhang Sr. would owe Mr. Yin \$870,000 to take the No 3 Road Project;
- (f) But, then, Mr. Zhang Sr. raised that Mr. Yin had sold him two homes that he made a profit of \$1.4 million CAD on, for which Mr. Yin had earlier agreed not to sell for a profit. Thus, Mr. Yin agreed that they could offset the \$870,000 balance owing by Mr. Zhang Sr. with the \$1.4 million CAD he had earned selling homes to Mr. Zhang Sr. As a result, in the end, Mr. Yin and Mr. Zhang Sr. agreed that Mr. Yin would owe Mr. Zhang Sr. only \$530,000 after transferring the No. 3 Road Project. As set out above, the remainder of his outstanding debts were offset by the transfer of the No. 3 Road Project;
- (g) Mr. Yin further testified that, soon after, he transferred \$400,000 USD from 101 Ltd.'s account to completely resolve his debts owing to Mr. Zhang Sr. This is also supported in Mr. Zhang Jr.'s text messages with Ms. Yu Yin, in which on or about November 4, 2019, Mr. Zhang Jr.

texted Ms. Yu Yin and stated "I withdrew a \$440,000 USD Cashier's check from 1011 Company today and took it with me. I already talked to Uncle Yin. I will give the stuff to Aunt Yin tonight." The Plaintiff argues that this text is not helpful because earlier in the correspondence, Mr. Zhang Jr. states that he "needs to go to the Richmond government to deal with the drainage issue. However, that is no basis to argue that this draft was not to finally settle their accounts, as Mr. Yin testified. Indeed, by November 4, 2019, the parties had just recently concluded the PwC Transaction, discussed below, so Mr. Zhang Jr. needing to pay for the drainage issue was not the Yin's concern anymore. Thus, all this establishes is that Mr. Zhang Jr. needed the money when [he] collected it.

[My emphasis.]

[447] In the Amended Amended Response to Civil Claim, the defendants pleaded with respect to their business relationships that in late 2018 or early 2019 Mr. Zhang Sr. and Mr. Yin (and Ms. Yin) entered into an oral agreement to terminate their business relationships and divide their assets as follows:

47a. Following negotiations in or about early 2019, Zhang Sr. and Mr. Yin and Ms. Liu entered into an oral agreement to terminate their business relationships and to divide their shared assets as follows:

- (a) Zhang Sr. would acquire all of the outstanding shares of 108 Ltd. and ownership of the No. 3 Road Project for the price of CAD \$11 million;
- (b) Mr. Yin and Ms. Liu would acquire all of the outstanding shares in 101 Ltd. and ownership of the West 41st Project for CAD \$4 million, and all the outstanding shares of 107 Ltd. and ownership of the Surrey Coffee Shop for CAD \$3 million, representing a total of \$7 million;
- (c) Mr. Yin would provide to Zhang Sr. a promissory note in the amount of CAD \$5.63 million, representing the adjusted amounts as between them in respect of a \$4 million mortgage on the West 41st Project, an after-tax dividend owed to Zhang Sr. in respect of the West 41st Project; the mortgage on the No. 3 Road Project, and Mr. Luan's management fees for the West 41st Project in the sum of CAD \$500,000

(collectively, the "Corporate Reorganization").

48. The parties were represented by independent legal counsel in effecting the Corporate Reorganization.

[My emphasis.]

[448] There is no evidence of independent legal counsel being retained to effect the "Corporate Reorganization".

[449] The "Corporate Reorganization" did not happen. Mr. Yin now says that instead there is the Asset Division Agreement.

[450] I reject that there was the "Asset Division Agreement" or any other agreement regarding a comprehensive settlement.

[451] At Mr. Yin's March 28, 2023 examination for discovery, he had agreed that he had "come up with about \$4 million" as his contribution to the No. 3 Road Project (not the invested \$15,500,000 now claimed).

[452] With respect to the No. 3 Road Project, Mr. Yin's calculation at the time of the March 28, 2023 examination for discovery was in round numbers: \$11 million from the sale of West 41st properties, a \$7 million bank mortgage, \$15 million from Mr. Zhang Sr., and \$4 million from himself, for a total of \$37 million.

[453] Under cross-examination with the relevant portion from his March 28, 2023 examination for discovery put to him, Mr. Yin testified:

Q Now, you've told me a number of times that your evidence in 2023 was not accurate and your more recent memory was accurate. Is this another example of where your evidence in 2023 was inaccurate?

A Yes.

Q You're saying your more recent memory is better than the memory when you were testifying in 2023?

A Yes.

Q Okay. And I can tell you that we left you - - in that transcript, we left you an outstanding request, number 11, to identify the documents that demonstrate your contribution of \$4 million to the No. 3 Road property purchase, including any records of the funds arriving from China or moving between bank accounts and ultimately to that transaction. Do you remember that?

A Yes.

Q And this is another one of these occasions where we had an outstanding request; we received an answer. We went back to examining you at the second time; you couldn't answer. We made the request again. We went back a third time, asked you the same question again at a third discovery. Right?

A Yes.

Q And ultimately your counsel provided a list of documents that may respond to the request, and none of those documents had anything to do with your \$4 million contribution to the No. 3 Road project. Do you agree?

A I disagree.

Q Okay. I'm going to suggest to you that you never contributed \$11 million to the No. 3 Road project and you certainly never invested - - provided - - or contributed, sorry, \$15.5 million. Do you agree with me?

A Disagree.

[454] In his Response to Civil Claim (filed December 1, 2020), Mr. Yin pleaded:

37. Following discussion, Zhang Sr. and Mr. Yin entered into an oral agreement to acquire the No. 3 Road Project on the following terms:

[]

(g) In exchange for his total capital contribution of approximately CAD \$11 million, together with the capital contributions to be made pending the development permit and for obtaining construction financing, Mr. Yin would receive 50% of the shares in 108 Ltd.

[455] This portion of the Response to Civil Claim was not subsequently amended.

[456] In explaining a \$15,500,000 claim as his contribution to the No. 3 Road Project, Mr. Yin in cross-examination testified:

Q Okay. And how much do you say that you contributed to the No. 3 Road project?

A 15.5 million.

Q Okay. And so now I'm looking at your response to civil claim again, paragraph 37(g), and I'll read it to you:

In exchange for his total capital contribution of approximately CAD \$11 million, together with the capital contributions to be made pending the development permit and for obtaining construction financing, Mr. Yin would receive 50% of the shares in 108 Ltd.

So, sir, that says your financial - - total capital contribution was approximately \$11 million. Now you're saying 15.5 million was your contribution to the No. 3 Road project. Which one is accurate?

A 15.5 million.

Q Okay. So that's - - so the reference to \$11 million in your response to civil claim is inaccurate?

A Correct.

Q Okay. And so that 15.5 that you're saying now, that's based on your current memory?

A Yes.

[457] There is also not an email, text, contemporaneous note, or other documents to support Mr. Yin's current assertion.

[458] With respect to the asserted Asset Division Agreement, Mr. Yin's testimony is not credible. His testimony is not in "harmony with the preponderance of the probabilities which a practical and informed person would recognize as reasonable in that place and in those conditions".

[459] A seasoned businessperson would not be mistaken with respect to millions of dollars, or fail to document, even informally, a settlement agreement, especially one with the various components such as the purported Asset Division Agreement.

[460] In sum, I find that the purported Asset Division Agreement never existed.

16. disentangling the web

[461] As Justice Southin observed, "disentangling the truth from the web of deceit and exaggeration" is a task of "much difficulty". That said, I can readily make the following key findings.

[462] First, Mr. Yin's testimony that the promissory notes in the October 15, 2019 PwC Transaction were "fake" is a lie designed to support his false assertion that Mr. Zhang Sr., and not Mr. Zhang Jr., was the investor.

[463] Second, Ms. Liu, without any qualms, on August 7, 2017, used \$900,000 from the BlueShore Mortgage to help fund the purchase of the fourth property for the Royal Oak Project, despite knowing that Mr. Zhang Jr. or Mr. Zhang Sr. had invested in the Surrey Coffee Shop Property.

[464] Similarly, on August 18, 2020, Ms. Liu, through the Jin Ocean Mortgage, stripped approximately \$4,500,000 from 101 Ltd. for her personal purposes, which included approximately \$900,000 for Ms. Yin's home.

[465] In short, with respect to the July 2017 \$1,925,000 BlueShore Mortgage, Ms. Liu diverted funds for her personal financial purposes without a care as to detriment of Mr. Zhang Jr.'s financial interests.

[466] Third, Ms. Yin, with willful blindness, facilitated, including committing to personally guarantee, the \$1,925,000 BlueShore Mortgage, of which \$900,000 was used by her mother for her mother's investment in the Royal Oak Project.

[467] Ms. Yin testified that at the time she knew that either Mr. Zhang Jr. or Mr. Zhang Sr. had invested a significant sum in the Surrey Coffee Shop Project.

[468] In sum, Ms. Yin did not care that the BlueShore Mortgage may serve her mother's separate financial interests. She did not care about the detriment to Mr. Zhang Jr.'s or Mr. Zhang Sr.'s financial interests.

[469] Overall, Mr. Yin acted, knowingly so, to Mr. Zhang Jr.'s financial detriment. Ms. Liu and Ms. Yin each acted with willful blindness as to Mr. Zhang Jr.'s financial detriment. Their respective personal interests or the Yin Family's overall financial interests drove their actions.

17. Liability

[470] Generally, my liability findings are against the defendants, on a joint and several basis, other than as against 1084 Ltd.

[471] I find that Mr. Yin, Ms. Liu, and Ms. Yin conducted the financial affairs of the Yin Family with little regard for business norms and the law, including fiduciary duties.

[472] The defendants should not benefit from the current disarray. The plaintiff is entitled, on the whole, to reach into the personal defendants' pot of financial slurry to recover the plaintiff's damages.

[473] I find that Mr. Zhang Jr. entrusted Mr. Yin with \$45,000,000 (converted from RMB) to partake with Mr. Yin as owners in several real estate projects in our province.

[474] At the outset, Mr. Yin was living in Greater Vancouver and was active in real estate investment. Mr. Zhang Jr. was living in Beijing with Ms. Yang.

[475] As is quite common in real estate development, the business vehicles used were corporations, with the exception of the Buxton Trust (which involved an older single family home).

[476] It is apparent that Mr. Zhang Jr. trusted Mr. Yin. Mr. Zhang Jr. caused to be delivered the requisite investment funds in cash (RMBs) to Mr. Yin (or his representative) with the cash then converted by Mr. Yin into Canadian funds for use in real estate development (investment) in the Greater Vancouver area.

[477] As may be seen from paragraph 4a of the Amended Amended Response that Mr. Yin says he invested with Mr. Zhang Sr. in the subject Projects "together through separate shareholdings in corporate vehicles, and not as partners".

[478] The foregoing pleadings serve to confirm that corporate vehicles were, on the whole, to be used for the investments.

[479] As previously noted, there is no evidence of Mr. Zhang Sr. being shown as a shareholder of a corporation (or otherwise as an investor) with an interest in any of the Projects.

[480] The defendants do not deny that "corporate vehicles" were to be used, but just say that Mr. Zhang Sr. and not Mr. Zhang Jr. was the investor.

[481] As may be seen, paragraph 4a of the Amended Amended Response also serves to plead that the relationship would not be that of one as partners.

[482] For there to be a partnership, there must be that which is frequently referred to as a "ring of agency". That is, each partner is the agent of any other partner for the purpose of the partnership's business (and of the firm): Partnership Act, R.S.B.C. 1996, c. 348, s. 7.

[483] I had no evidence that there was ever the intention of Mr. Zhang Jr. and Mr. Yin that each would be able to legally bind the other with respect to any of the Projects. I find that the relationship between Mr. Zhang Jr. and Mr. Yin was not one of a partnership.

[484] With the foregoing in mind, I will now highlight several of the legal principles submitted by the plaintiff that engage liability. These are:

- a) civil fraud;
 - b) knowing assistance (and knowing receipt);
 - c) fraudulent conveyance;
 - d) oppression; and
 - e) conspiracy.
- a) Civil Fraud

[485] In *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, Justice Karakatsanis, writing for the Supreme Court of Canada, set forth the elements of the tort of civil fraud. Justice Karakatsanis stated:

[21] From this jurisprudential history, I summarize the following four elements of the tort of civil fraud: (1) a false representation made by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness); (3) the false representation caused the plaintiff to act; and (4) the plaintiff's actions resulted in a loss.

- b) Knowing Assistance (and Knowing Receipt)

[486] In *Bank of China v. Fan*, 2015 BCSC 590, Justice Skolrood, as he then was, set forth the legal framework for knowing assistance and knowing receipt. Justice Skolrood stated:

[92] Knowing assistance and knowing receipt are equitable claims that date back to the decision of Selborne L.C. in *Barnes v. Addy* (1874) L.R. 9 Ch. A. 244 at 251-252, cited, amongst other places, in *Royal Brunei Airlines Sdn Bhd v. Tan* (P.C.), [1995] 2 A.C. 378 at 382 [Royal Brunei Airlines]:

[The responsibility of a trustee] may no doubt be extended in equity to others who are not properly trustees, if they are found actually participating in any fraudulent conduct of the trustee to the injury of the cestui que trust. But strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps of which a court of equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a

dishonest and fraudulent design on the part of the trustees.

[93] Building on Selborne L.C.'s comments, Nicholls L.J. in *Royal Brunei Airlines* went on to say at 382:

In the conventional shorthand, the first of these two circumstances in which third parties (non-trustees) may become liable to account in equity is "knowing receipt," as distinct from the second, where liability arises from "knowing assistance." Stated even more shortly, the first limb of Lord Selborne L.C.'s formulation is concerned with the liability of a person as a recipient of trust property or its traceable proceeds. The second limb is concerned with what, for want of a better compendious description, can be called the liability of an accessory to a trustee's breach of trust. Liability as an accessory is not dependent upon receipt of trust property. It arises even though no trust property has reached the hands of the accessory. It is a form of secondary liability in the sense that it only arises where there has been a breach of trust.

[94] Both knowing assistance and knowing receipt are recognized in Canada. For example, in *Air Canada v. M & L Travel Ltd.* 1993 CanLII 33 (SCC), [1993] 3 SCR 787, Iacobucci J., after citing Selborne L.C. in *Barnes v. Addy*, said at 810:

In addition to a trustee *de son tort*, there were traditionally therefore two ways in which a stranger to the trust could be held personally liable to the beneficiaries as a participant in a breach of trust: as one in receipt and chargeable with trust property and as one who knowingly assisted in a dishonest and fraudulent design on the part of the trustees. The former category of constructive trusteeship has been termed "knowing receipt" or "knowing receipt and dealing", while the latter category has been termed "knowing assistance".

[95] *Air Canada* involved directors and shareholders of a travel agency which received the proceeds from the sale of Air Canada tickets and which were intended to be held in trust for the airline pending an accounting. However, the travel agency deposited the ticket funds directly into its operating account. Funds in the agency's operating account were seized by the agency's bank in connection with a defaulted loan and Air Canada then sued the directors personally for the amounts owed on the sale of the tickets.

[96] Iacobucci J. held that knowing receipt had no application on the facts given that the directors did not receive the trust funds in their personal capacity (at 810-811). He then considered whether the directors were liable for knowing assistance on the basis that they assisted with knowledge in the dishonest or fraudulent actions of the trustee, which in that case was the diversion of the trust funds by the agency into its operating account.

[97] Dealing first with the requisite degree of knowledge, Iacobucci J. held that actual knowledge was required, although recklessness or wilful blindness will suffice (at 811-812). Constructive knowledge however is insufficient. Iacobucci J. cites a number of authorities that establish that while receipt of a benefit from a breach of trust may ground an inference that the stranger to the trust knew of the breach, the receipt of a benefit is neither a sufficient nor a necessary condition for the drawing of such an inference (at 812).

[98] Iacobucci J. then canvassed two divergent lines of authority considering the nature of the underlying breach of trust and the issue of whether proof of fraud and dishonesty is required. He adopted what might be termed a hybrid approach or one that, as he said, is consistent with both lines of authority (at 618):

I would therefore "take as a relevant description of fraud 'the taking of a risk to the prejudice of another's rights, which risk is known to be one which there is no right to take.'" In my opinion, this standard best accords with the basic rationale for the imposition of personal liability on a stranger to a trust namely, whether the stranger's conscience is sufficiently affected to justify the imposition of personal liability. In that respect, the taking of a knowingly wrongful risk resulting in prejudice to the beneficiary is sufficient to ground personal liability. [Citations omitted.]

[99] Iacobucci J. reviewed the law of knowing assistance again in *Gold v. Rosenberg*, 1997 CanLII 333 (SCC), [1997] 3 S.C.R. 767 and he summarized the essential elements that must be established by a plaintiff seeking to recover damages, (at para. 34, in dissent but not on this point):

- 1) there is a trust;
- 2) the named trustee perpetrated a dishonest and fraudulent breach of trust; and
- 3) the defendant participated in and had actual knowledge of the trustee's dishonest and fraudulent breach of trust.

[100] However, for a claim of knowing assistance the plaintiff does not need to prove that the defendant personally received trust property. This is because liability "arises even though no trust property has reached the hands of the accessory": *Royal Brunei Airlines* at 382.

[101] Knowing receipt serves as a different but complimentary cause of action to knowing assistance. Knowing assistance applies where a defendant has assisted a trustee to fraudulently breach a trust. In contrast, knowing receipt applies where the defendant has received property in breach of a trust and they failed to make reasonable inquiries despite suspicious circumstances. The basis for a claim in knowing receipt was summarized by LaForest J. in *Citadel General Assurance Co. v. Lloyds Bank Canada*, 1997 CanLII 334 (SCC), [1997] 3 SCR 805 [Citadel], a companion case to *Gold*, at para. 49 as follows:

In "knowing receipt" cases, relief flows from the breach of a legally recognized duty of inquiry. More specifically, relief will be granted where a stranger to the trust, having received trust property for his or her own benefit and having knowledge of facts which would put a reasonable person on inquiry, actually fails to inquire as to the possible misapplication of trust property. It is this lack of inquiry that renders the recipient's enrichment unjust.

[102] In *Gold*, Iacobucci J. provided a summary of the requisite elements that must be proven by a plaintiff seeking to recover damages for knowing receipt (at para. 53):

- 1) The property in issue was subject to a trust in favour of the plaintiff;

- 2) The property which the defendant received was taken from the plaintiff in breach of trust; and
- 3) The defendant did not take the property as a bona fide purchaser for value without notice. The defendant will be taken to have notice if the circumstances were such as to put a reasonable person on inquiry, and the defendant made none, or if the defendant was put off by an answer which would not have satisfied a reasonable person.

[103] Elsewhere in *Gold*, Iacobucci J. provided succinctly described the essence of knowing receipt as follows (at para. 49):

Rather, the cause of action in knowing receipt arises simply because the defendant has improperly received property which belongs to the plaintiff. The plaintiff's claim amounts to nothing more than, "You unjustly have my property. Give it back." Unlike knowing assistance, there is no finding of fault, no legal wrong done by the defendant and no claim for damages. It is, at base, simply a question of who has a better claim to the disputed property.

[104] With respect to the requirement that the defendant actually receive trust property, Iacobucci J. noted that mere possession by the defendant is not sufficient. Rather, in order to ground liability, the defendant must have received the property in his or her own right or for his or her own benefit, as distinct from, for example, as an agent for a third party (at para. 40).

[105] In terms of the requisite degree of knowledge, in contrast to knowing assistance, a knowing receipt claim does not require proof of actual knowledge. Rather, the plaintiff must prove only that the defendant received the trust property in circumstances that would have alerted a reasonable person to the possibility of a breach of trust: *Citadel* at paras. 48-49. In this sense, knowing receipt imposes a stricter standard on strangers to a trust who receive trust property than on those who assist in a breach of trust:

In such a case [of knowing receipt], the conflict between the beneficiary and the stranger is at its most acute, because the court has in effect to determine which of them has the better title to the trust property. The winner takes all and the loser is left with a claim against the trustee that is likely to be worthless. Because the beneficiary stands to lose outright his beneficial interest, equity is at her most demanding, and insists upon compliance with her most exacting standard.

(Harpum, Charles, "The Stranger as Constructive Trustee" (1986), 102 L.Q.R. 114 at 126, cited in *Gold* at para. 52).

[106] The rationale for the different degree of knowledge for knowing receipt claims was explained in *Citadel*: when a defendant is the only person who stands to gain from a transaction, more should be expected of her than if she gained nothing (at paras. 48, 53).

[487] As may be seen from the above, the requisite degree of knowledge for knowing assistance is "actual knowledge", although "recklessness or willful blindness will suffice".

c) Fraudulent Conveyance

[488] The leading case addressing the elements of a fraudulent conveyance is *Abakhan & Associates Inc. v. Braydon Investments Ltd.*, 2009 BCCA 521 (leave ref'd, 33545 (June 24, 2010)).

[489] In *Braydon*, the key issue was where a person "puts assets out of reach of [the person's] creditors" is a "fraudulent or dishonest intent" required for there to be a fraudulent conveyance.

[490] Chief Justice Finch, in writing for our Court of Appeal, stated:

[73] The only intent now necessary to avoid a transaction under the modern version of the [Fraudulent Conveyance Act] is the intent to "put one's assets out of the reach of one's creditors" (per *RBC v. Clarke*). No further dishonest or morally blameworthy intent is required.

[491] In sum, a fraudulent or dishonest intent is not required.

d) Oppression

[492] In *McDougall v. Knutsen*, 2023 BCSC 211, I summarized the law of oppression under our provincial legislation as follows:

[68] Section 227(2) of the BCA reads:

(2) A shareholder may apply to the court for an order under this section on the ground

- (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or
- (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.

[69] Under s. 227(3) of the BCA, the Court has broad powers to make an order with "a view to remedying or bringing to an end the matters complained of".

[70] In *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, the Supreme Court of Canada considered the oppression remedy under the Canada Business Corporations Act, R.S.B.C. 1985, c. C-44 [CBCA].

[71] The relevant CBCA provisions are broader than s. 227 of the BCA. In addition to "oppression" and "unfair prejudice", the CBCA also includes "unfair disregard" of relevant interests. In these reasons, I will use the word oppression to include unfair prejudice.

[72] In *BCE Inc.*, the Court set forth a two-prong analysis. The Court stated:

- [56] []. One should look first to the principles underlying the oppression remedy, and in particular the concept of reasonable expectations. If a breach of a reasonable expectation is established, one must go on to consider whether the conduct complained of amounts to "oppression", "unfair prejudice" or "unfair disregard" as set out in s. 241(2) of the CBCA.
- [73] With respect to "reasonable" expectations, the Court, in BCE Inc., stated:
- [62] As denoted by "reasonable", the concept of reasonable expectations is objective and contextual. The actual expectation of a particular stakeholder is not conclusive. In the context of whether it would be "just and equitable" to grant a remedy, the question is whether the expectation is reasonable having regard to the facts of the specific case, the relationships at issue, and the entire context, including the fact that there may be conflicting claims and expectations.
- [74] With respect to the second prong, and having regard to s. 227(2) of the BCA, the effect of the impugned conduct is key in determining whether the affairs of Cobra Ltd. were conducted in a "manner oppressive to one or more of the shareholders": Icahn Partners LP v. Lions Gate Entertainment Corp., 2011 BCCA 228 at para. 71
- [75] Returning to BCE Inc., the Court specifically noted that "as in any action in equity, wrongful conduct, causation and compensable injury must be established in a claim for oppression": BCE Inc. at para. 90. (Emphasis added.)
- [76] The focus of the governing provisions is on fairness. In BCE Inc., the Court stated:
- [71] It is impossible to catalogue exhaustively situations where a reasonable expectation may arise due to their fact-specific nature. A few generalizations, however, may be ventured. Actual unlawfulness is not required to invoke s. 241; the provision applies "where the impugned conduct is wrongful, even if it is not actually unlawful": Dickerson Committee (R. W. V. Dickerson, J. L. Howard and L. Getz), Proposals for a New Business Corporations Law for Canada (1971), vol. I, at p. 163. The remedy is focused on concepts of fairness and equity rather than on legal rights. In determining whether there is a reasonable expectation or interest to be considered, the court looks beyond legality to what is fair, given all of the interests at play: Re Keho Holdings Ltd. and Noble, [1987 ABCA 84]. It follows that not all conduct that is harmful to a stakeholder will give rise to a remedy for oppression as against the corporation.
- [77] In BCE Inc., the Court further set forth various factors that may come into play, including the nature of the corporation and preventive steps that the claimant could have taken to afford protection. The Court further noted that shareholders' agreements "may be viewed as reflecting the reasonable expectations of the parties": BCE Inc. at para. 79.

- [781] In BCE Inc., the Court also stated the oppression remedy (and similar provisions) "has not displaced the fundamental rule that the duty of the directors cannot be confined to particular priority rules, but is rather a function of business judgment of what is in the best interests of the corporation, in the particular situation it faces": BCE Inc. at para. 87.
- [493] I was upheld on appeal and without disagreement with my summary: McDougall v. Knusten, 2024 BCCA 55, paras. 21 - 23.
- [494] I will further add that in BCE Inc. v. 1976 Debentureholders, 2008 SCC 69, the Supreme Court of Canada, with respect to reasonable expectations, stated:
- [75] Reasonable expectations may emerge from the personal relationships between the claimant and other corporate actors. Relationships between shareholders based on ties of family or friendship may be governed by different standards than relationships between arm's length shareholders in a widely held corporation. As noted in Re Ferguson and Imax Systems Corp. (1983), 1983 CanLII 1646 (ON CA), 150 D.L.R. (3d) 718 (Ont. C.A.), "when dealing with a close corporation, the court may consider the relationship between the shareholders and not simply legal rights as such" (p. 727).
- [495] In the case at bar, I realize that Mr. Zhang Jr. was not a "shareholder" as that word is commonly understood. However, s. 227(1) of the Business Corporations Act, S.B.C. 2002, c. 57, has an expansive definition of "shareholder" for the purposes of "oppression" or an "unfair prejudice" remedy.
- [496] In this regard, s. 227(1) of the Business Corporations Act reads:
227. Complaints by shareholder - (1) For the purposes of this section, "shareholder" has the same meaning as in section 1(1) and includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section.
- e) Conspiracy
- [497] In Can-Dive Services Ltd. v. Pacific Coast Energy Corp. (1993), 96 B.C.L.R. (2d) 156, 1993 CanLII 6870 (C.A.), Chief Justice McEachern stated:
- [4] According to Canada Cement LaFarge v. British Columbia Lightweight Aggregate Ltd., 1983 CanLII 23 (SCC), [1983] 1 S.C.R. 452 [[1983] 6 W.W.R. 385], at pp. 471-72, the tort of conspiracy exists if:
- (1) whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,
 - (2) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.

[5] Accordingly, the following elements must be proved:

1. an agreement between two or more persons;
2. concerted action taken pursuant to the agreement;
3. (i) if the action is lawful, there must be evidence that the conspirators intended to cause damage to the plaintiff;
(ii) if the action is unlawful, there must at least be evidence that the conspirators knew or ought to have known that their action would injure the plaintiff (i.e., constructive intent);
4. actual damage suffered by the plaintiff.

18. Liability Findings

a) Generally

[498] As may readily be seen from paragraphs 4a and 4b of the Amended Amended Response to Civil Claim, the defendants say that Mr. Zhang Sr., and not Mr. Zhang Jr., invested in the subject projects.

[499] In short, Mr. Yin denies any liability by saying that his dealings were with Mr. Zhang Sr. and that Mr. Zhang Jr. was a willing accomplice in pretending the funds were his funds and not that of his father.

[500] I have little evidence to support Mr. Yin's defence other than bald assertions, such as that the promissory notes in the PwC Transaction, involving millions of dollars, are "fake".

[501] Further, as I have found, Mr. Zhang Jr. would be unwilling to risk the permanent residency status of himself, Ms. Yang, and each of his children by participating in the construct of millions of dollars of fake promissory notes.

[502] Similarly, Mr. Yin wishes to recant or recast legal documents signed by him. In this regard, I am referring to the \$5,630,000 promissory note and the Buxton Trust.

[503] In sum, I find that Mr. Zhang Jr. was the investor in the subject properties and projects, and not his father.

b) Civil Fraud

[504] With the finding I have made that Mr. Zhang Jr. was the investor using his own funds, the four elements of the tort of civil fraud are met.

[505] First, Mr. Yin represented to Mr. Zhang Jr. he would be an investor with him in the West 41st Project, the Surrey Coffee Shop Property, and the No. 3 Road Project with similar interests.

[506] Second, Mr. Yin knew his representations were false. He took no steps to implement the investments despite investing himself.

[507] Third, Mr. Yin's false representations caused Mr. Zhang Jr. to act by advancing funds for investment.

[508] Fourth, as a result, Mr. Zhang Jr. suffered losses in that he did not share in the profits to which he was entitled.

c) Knowing assistance - Ms. Liu, Ms. Yin

[509] As noted, the plaintiff does not plead that Ms. Liu or Ms. Yin were fraudulent, but that each knowingly assisted Mr. Yin. The three requirements of knowing assistance are met.

[510] First, there was a trust in relation to the funds advanced by Mr. Zhang Sr. to Mr. Yin.

[511] Second, Mr. Yin perpetrated a dishonest and fraudulent breach of trust.

[512] Third, each of Ms. Liu and Ms. Yin participated and each was willfully blind. For example, each was willing to arrange, as a director, a mortgage secured by property held by 107 Holdco Ltd. to obtain funds for purposes wholly unrelated to the Surrey Coffee Shop Property despite understanding that Mr. Zhang Jr. or Mr. Zhang Sr. had invested in the Surrey Coffee Shop Property.

[513] Each of Ms. Liu and Ms. Yin knew they were directors of 107 Holdco Ltd. Ms. Yin's testimony, in particular, further shows willful blindness. She knows that a director must be responsible but she says she does not know directors cannot give funds to themselves "to the detriment of the company or any other shareholders".

[514] In sum, each of Ms. Liu and Ms. Yin acted in the interests of the Yin Family or their own personal interests while being willfully blind to the fact that Mr. Zhang Jr. or Mr. Zhang Sr. had invested funds.

d) Fraudulent Conveyance

[515] Each of Mr. Yin, Ms. Liu, and Ms. Yin engaged in fraudulent conveyances by putting assets out of reach of Mr. Zhang Jr.

[516] Mr. Yin took Mr. Zhang Jr.'s investment funds and used Mr. Zhang Jr.'s funds for his own purposes with one exception.

[517] The one exception is that portion of Mr. Zhang Jr.'s funds for the purchase of the Buxton Property that was actually used for the purchase of the Buxton Property. In other words, the purchase price minus the principal (and any interest) of the mortgage Mr. Yin placed on the Buxton Property.

[518] Each of Ms. Yin and Mr. Yin participated by receiving large sums of money which were then used for personal purposes or generally serving the Yin Family's interests. The Westhill Wynd home held in Ms. Yin's name as one example. With respect to Ms. Liu, the Jin Ocean mortgage is a good example.

e) Oppression

[519] In the case at bar, the affairs of the defendant corporations, other than 1084960 B.C. Ltd., were undertaken by Mr. Yin, Ms. Liu, and Ms. Yin in both an oppressive and unfairly prejudicial manner.

[520] In short, Mr. Zhang Jr. could reasonably expect, as plaintiff's counsel submits, that "the defendants could not divert assets to the use of Mr. Yin and his family, thereby excluding Mr. Zhang Jr."

[521] In the case at bar, Ms. Liu and Ms. Yin acted without regard to the duties of a director. For example, Ms. Yin never took steps to inform herself as to the duties of a director.

[522] Generally, Ms. Yin relied on her father for directions, who was not a director.

[523] The reasonable expectation of a shareholder is that a corporate director will observe the duties of a director in the course of acting as a director.

[524] In the case at bar, for the most part Ms. Yin took directions from her father without any review or independent consideration.

[525] With respect to the BlueShore Mortgage, Ms. Yin, willfully blind, allowed the BlueShore Mortgage to be secured against the Surrey Coffee Shop Property held by 107 Holdco Ltd., while knowing that either Mr. Zhang Jr. or Mr. Zhang Sr. had a financial interest, without caring for either of their interests or 107 Holdco Ltd.'s interests. 107 Holdco Ltd.'s interests would not be served by advancing funds for the Royal Oak Project.

[526] Similarly, Ms. Liu, in placing the BlueShore Mortgage on the Surrey Coffee Shop Property, served her personal financial interests to the financial detriment of 107 Holdco Ltd. Ms. Liu's personal financial interest was her shareholding in 1084 Ltd., which undertook the Royal Oak Project.

[527] Similarly, Ms. Liu, in obtaining the Jin Ocean Mortgage by using the West 41st properties 101 Ltd. owned, undertook 101 Ltd.'s affairs in an oppressive and unfairly prejudicial manner. The Jin Ocean Mortgage did not serve the financial interests of 101 Ltd. in any way whatsoever. As noted, the majority of the mortgage proceeds were likely used by Ms. Liu for an apparently personal cause in the USA. The balance was used for the construction of Ms. Yin's personal residence.

[528] In making my finding of oppression and the unfairly prejudicial manner in which the subject defendant corporations were conducted, I have considered the close personal relationship that Mr. Zhang Jr. (and to a lesser extent Ms. Yang) had with the Yin Family, in particular, with Mr. Yin and Ms. Yin.

[529] In this context, I find Mr. Zhang Jr. viewed Mr. Yin as a family friend, who his father also respected, and who had the knowledge and experience to facilitate his investing with Mr. Yin in Greater Vancouver real estate.

[530] In short, the relationship was "not simply legal rights as such".

f) Conspiracy

[531] I do not find that elements of the tort of conspiracy have been met. Although Mr. Yin, Ms. Liu and Ms. Yin generally acted in the interests of the Yin Family, this still falls short of an "agreement" with "concerted action taken pursuant to the agreement".

[532] In this regard, the Jin Ocean Mortgage shows Ms. Liu acting without Mr. Yin's agreement or direction and very much for her own self interests.

19. Remedies

a) Draft Order

[533] As noted, at Schedule "A" is a draft Order that plaintiff's counsel has prepared. I will first address the "Specific Terms" of the draft Order and then the "General Terms".

b) Buxton Property

[534] In evidence is the March 4, 2019 Declaration of Bare Trust and Agency Agreement. Mr. Zhang Jr. is clearly stated to be the "Owner" and Mr. Yin to be the "Nominee".

[535] Under the Buxton Trust, Ms. Tao, as executor, is entitled to have clear title to the Buxton Property in her name, unencumbered by any mortgage. Accordingly, I will grant the declarations and orders sought at paragraphs 7 and 8 of the draft Order.

[536] Mr. Yin and Ms. Yin have been receiving rental income from the Buxton Property. The plaintiff's calculation of the total rental income as of the time of trial, June 2025, was \$145,039 and estimates a further \$1,791 in rental income per month.

[537] I agree with plaintiff's counsel that the interest expense related to the mortgage on the Buxton Property should not be deducted in computing the rental income.

[538] I also agree with plaintiff's counsel's submission:

47. Ms. Yin had actual or constructive knowledge of the breach of trust at the latest by December 2020, when she filed a defence that acknowledged Buxton was held in trust for Zhang Jr. At that point in time, there can be no doubt that Ms. Yin knew or ought to have that Zhang Jr. was demanding that Mr. Yin comply with his obligations in the Bare Trust. Ms. Yin is therefore jointly and severally liable for profits in the amount on Buxton from 2021 forward (\$98,941).

[539] I will grant the order sought at paragraph 9 of the draft Order with two refinements. First, the order should reflect the further rental income. Second, the defendants may have the plaintiff's calculations of the net rental income reviewed by the Registrar, if they wish, and if the Registrar is satisfied that a review is appropriate.

[540] I will also grant the declarations set forth in paragraph 6 of the draft Order. With respect to paragraph 6(b), I am satisfied that Mr. Yin did not seek or otherwise obtain the permission of Mr. Zhang Jr. (or Mr. Zhang Sr.) to place a mortgage on the Buxton Property for his financial benefit.

[541] I will also grant as sought in paragraph 10 of the draft Order, a remedial constructive trust on title to the Westhill Wynd property to ensure recovery in the event the plaintiff must initially fund or assume liability for the discharge of the mortgage on the Buxton Property (approximately \$1,100,000).

[542] Ms. Yin did not fund the purchase of the Westhill Wynd property or the construction of a new home on the property, and, as noted above, views the property as "my family's property".

c) Surrey Coffee Shop Property

[543] The orders sought at paragraphs 11 to 14 of the draft Order readily flow from my findings, including the approximately \$1,700,000 disbursed under the Blue Shore Mortgage (I note that paragraph 14 should refer to 1084 Ltd.).

[544] I will make one amendment to the proposed orders. With respect to paragraph 12, the sale will be subject to the approval of the Court.

[545] I make this amendment for two reasons: First, in my view, it will reduce the risk of further controversy or litigation. Second, it will allow the defendants to keep the Surrey Coffee Shop Property if they provide the requisite funds and matters are otherwise to the Court's satisfaction.

[546] For the court's approval, I will make myself available if reasonably possible.

d) West 41st Project

[547] For the West 41st Project, the sought orders are at paragraphs 15 to 20 of the draft Order.

[548] With respect to paragraph 15, I adopted at paragraph 86 above the plaintiff's calculation of the \$4,474,650 profit with respect to the first three of the West 41st properties.

[549] With respect to the remaining two West 41st properties, the plaintiff seeks \$2,980,000, which is two-thirds of \$4,474,650.

[550] The total proceeds of disposition from the sale of the first three properties was \$25,225,000. If the total proceeds were to be divided equally the total proceeds for each property would be \$8,408,333 ($\$25,225,000 \div 3$).

[551] In their written submissions, plaintiff's counsel states that the two remaining properties are listed for sale for \$15 million.

- [552] Mr. McEwen shows the cost base for each of the remaining properties to be \$3,850,137 and \$3,535,374 for 408 and 426 West 41st respectively or \$7,385,511 in total.
- [553] With a sale for \$15 million the total gain would be \$7,614,489 (\$15,000,000 - \$7,385,511).
- [554] One-half of \$7,614,489 is \$3,807,244 (\$7,614,489 ÷ 2).
- [555] As may be seen, the plaintiff's sought amount of \$2,980,000 is relatively conservative.
- [556] I will award the \$2,980,000 the plaintiff seeks with the terms set forth in paragraph 16 of the draft Order.
- [557] I will order the remedial constructive trust the plaintiff seeks in paragraph 17. For greater certainty, the remedial constructive trust will not affect a bona fide third party without notice who has a registered charge in the Land Title Office on either or both of the two remaining West 41st properties.
- [558] The equitable liens the plaintiff seeks (paragraph 18 of the draft Order) for \$7,454,650 with respect to the West Wynd and Ottaburn properties are also granted. As noted, one or more of the personal defendants are registered as owners in the Land Title Office and each of the two properties can be fairly described as Yin Family Property.
- [559] The declarations sought at paragraphs 19 and 20 of the draft Order are also granted. The subsequent use of the mortgage proceeds served to put funds "out of the reach of creditors" such as the plaintiff.
- [560] As may readily be seen, the Bank of Montreal mortgage (approximately \$4 million) and the Jin Ocean mortgage (approximately \$4.6 million) served to gut much of the unencumbered value of the two remaining West 41st properties for purposes, for the most part, unrelated to the West 41st Street Project.
- e) Royal Oak Company
- [561] I will order the \$3,900,000 equitable lien as set forth at paragraph 22 of the draft Order.
- [562] The evidence supports that 1084 Ltd. paid approximately \$7,800,000 for the four lots comprising the Royal Oak Project.
- [563] One-half of \$7,800,000 is \$3,900,000 and serves to represent Ms. Liu's contribution, which included the \$900,000 from the BlueShore Financial mortgage.
- f) Promissory Note
- [564] I will grant the orders sought at paragraphs 23 and 24 of the draft Order.
- [565] As discussed above, the \$5,630,000 promissory note was executed on March 4, 2019 with Mr. Zhang Jr. shown as the "Noteholder" and Mr. Yin as the "Payor".
- [566] The sought equitable lien is consistent with a promissory note as a debt instrument.

[567] The equitable lien over the assets of 107 Opco Ltd., 107 Holdco Ltd., 101 Ltd., and the Westhill Wynd property, particularly serves Equity.

[568] The defendants have failed to produce the relevant financial records. As noted above, I reject Mr. Yin's testimony that he took his business records to China without keeping a copy or otherwise backing-up the relevant financial records.

g) Interest

[569] I will also order that paragraph 25 be included as part of the Court Order, with one modification. 1084 Ltd. will be excluded from joint and several liability. 1084 Ltd. will be liable for interest on the award as against it.

h) The General Terms - Declarations

[570] The three declarations sought at paragraph 1 of the draft Order will be made with the modifications as to whether the property interest is subject to a remedial constructive trust or equitable lien.

[571] I will not make a declaration as to a conspiracy as set forth in paragraph 2 of the draft Order.

[572] There will also be a tracing order where such may be applicable.

[573] The final Order will also be interpreted to prevent double recovery as set forth at paragraph 4.

[574] As contemplated and as reflected in paragraph 5, the plaintiff may apply for further assistance of the Court.

[575] Finally, the foregoing orders are subject, as plaintiff's counsel contemplated, to the opportunity to make "further submissions on the precise terms of the order" after judgment.

20. punitive damages

[576] In *Moore v. Barkley*, 2025 BCSC 2153, Justice E. Sigurdson, with respect to punitive damages, stated:

[139] Punitive damages are discussed by our Court of Appeal in *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, referencing the Supreme Court of Canada in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18. The BC Court of Appeal summarized the category of punitive damages as follows:

- [77] The three objectives of punitive damages are retribution, deterrence, and denunciation. Punitive damages awards should be approached with caution and restraint and resorted to only in exceptional circumstances: *Whiten* at para. 69. Punitive damages awards are rational only when compensatory damages do not adequately achieve the objectives of retribution, deterrence, and denunciation: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 87.
- [78] In *Whiten* at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages. The factors include:
- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
 - b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
 - c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
 - d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
 - e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and
 - f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.
- [577] As noted, punitive damages are "the exception rather than the rule".
- [578] The plaintiff only seeks punitive damages as against Mr. Yin.
- [579] Although Mr. Yin engaged in "highly reprehensible conduct" in betraying the trust of Mr. Zhang Jr., leading him to believe to be that they had a close relationship, and then misappropriating millions of dollars, I will make a modest award as punitive damages.
- [580] As noted, the purpose of punitive damages is not to compensate the plaintiff.
- [581] I find that an award of \$25,000 will carry a significant stigma for Mr. Yin in the broader community.

21. conclusion

[582] The Court orders the relief as set forth under the heading, Remedies.

[583] The Court assesses \$25,000 in punitive damages as against Mr. Yin.

[584] I ask that the Order be prepared and submitted to me as soon as reasonably possible.

[585] If there is a need for the Court to settle the Order, the parties should contact Supreme Court Scheduling to canvas my availability.

[586] Similarly, if related matters arise, that may require the Court's assistance, the parties may contact Supreme Court Scheduling to canvas my availability.

22. costs

[587] As I stated at trial, I wished to address costs, if the parties so wished, after my reasons for judgment had been released.

[588] If the parties wish to address costs, I ask that they arrange, within 30 days of these Reasons, through Supreme Court Scheduling, a costs hearing.

"Funt J."

Schedule "A" - Draft Order

Schedule "B" - Numbered Corporations

Corporation

Project

1004732 B.C. Ltd. ("1004 Ltd.")

No. 3 Road

1011066 B.C. Ltd. ("101 Ltd.")

West 41st

1032734 B.C. Ltd. ("103 Ltd.")

West 41st

1064091 B.C. Ltd. ("106 Ltd.")

Surrey Coffee Shop

1079770 B.C. Ltd. ("107 Holdco Ltd.")

Surrey Coffee Shop

1079775 B.C. Ltd. ("107 Opco Ltd.")

Surrey Coffee Shop

1084960 B.C. Ltd. ("1084 Ltd.")

Royal Oak Project

1085842 B.C. Ltd. ("108 Ltd.")

No. 3 Road

1196451 B.C. Ltd. ("1196 Ltd.")

No. 3 Road

(Mr. Zhang Jr.'s corp)

1202158 B.C. Ltd. ("120 Ltd.")

Surrey Coffee Shop

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