

CANADA / JUDGMENT

Zhao v. Chandi

2022 BCSC 1574

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Supreme Court of British Columbia

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2022 BCSC 1574 Zhao v. Chandi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhao v. Chandi,

2022 BCSC 1574

Date: 20220907

Docket: S171382

Registry: Vancouver

Between:

Yu Lin Zhao

Plaintiff

And

Jadwinder Singh Chandi aka Jadwinder Chandi aka Yadwinder Singh Chandi aka Yadwinder Chandi and Ghulam Murtaza

Defendants

And

Yu Lin Zhao and Gary Wang

Defendant by Counterclaim

Before: The Honourable Madam Justice Horsman

Reasons for Judgment

The Plaintiff, appearing in person:

Yu Lin Zhao

Counsel for the Defendant Jadwinder Singh Chandi:

P. Grewal

R. Sidhu, A/S

J. Bhatti A/S

Place and Date of Trial:

April 4, 6-8, 14, 19-22, 25-29,

May 2-6, June 27, 2022

Place and Date of Judgment:

Vancouver, B.C.

September 7, 2022

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OVERVIEW

- [1] At the heart of this case is a dispute between the plaintiff Yu Lin Zhao ("Ms. Zhao"), and the defendant Jadwinder Singh Chandi ("Mr. Chandi") over the terms of an agreement for Mr. Chandi's purchase of an undivided one-half interest in property owned by Ms. Zhao. Mr. Chandi has paid Ms. Zhao \$400,000, which he says is all that he owes her under an agreement of purchase and sale that the parties signed. Ms. Zhao says that Mr. Chandi owes her an additional \$300,000, plus interest, which he has refused to pay. She says Mr. Chandi's liability for the additional \$300,000 is confirmed in promissory notes that he signed.
- [2] The defendant Ghulam Murtaza ("Mr. Murtaza") is a lawyer who acted for Ms. Zhao in the transfer of the property to Mr. Chandi. Pursuant to the August 12, 2021 order of Justice Coval, the action against Mr. Murtaza is stayed pending the outcome of this proceeding. Mr. Murtaza did appear as a witness at trial.
- [3] Mr. Chandi's counterclaim against the defendant by counterclaim Gary Wang ("Mr. Wang") was summarily dismissed: *Zhao v. Chandi*, (20 August 2020), Vancouver Registry No. S171382 (BCSC). Mr. Wang also testified at trial, although he is no longer a party.

- [4] The property in issue is a blueberry farm in Delta, British Columbia that Ms. Zhao purchased in January 2016, with the intent of constructing a high-end dog resort. In May 2016, Mr. Chandi purchased an undivided one-half interest in the farm, with the intent to farm blueberries on the property. There are fundamental conflicts in the evidence regarding issues such as the nature of the parties' pre-agreement discussions, the terms of the agreement, and the extent of Ms. Zhao's vulnerability in the contracting process.
- [5] In 2017, the City of Delta (the "City") expropriated the property for the purpose of highway construction. Pursuant to a court order issued in a separate proceeding, the City of Delta paid \$1.572 million into court as advance compensation under s. 20(1) of the Expropriation Act, R.S.B.C. 1996, c. 125. Ms. Zhao and Mr. Chandi each obtained orders for payment of funds to them out of court: \$786,000 to Ms. Zhao and \$400,000 to Mr. Chandi. The present proceeding will resolve the question of the parties' respective entitlements to the remaining funds in court.
- [6] On its face, this case requires the resolution of a relatively narrow dispute over the terms of the agreement, which, in turn, will determine the parties' respective interests in a quantified sum of money. The case--which took 20 days of trial time--was made more complicated than was necessary by the multitude of peripheral allegations of misconduct each party levelled against the other, often without evidentiary support.
- [7] Ms. Zhao alleges that Mr. Chandi made fraudulent misrepresentations to her about his financial status that induced her to enter the agreement, and that the agreement is unconscionable. Ms. Zhao alleges that Mr. Chandi, assisted by his former spouse Ranbir Dhillon ("Ms. Dhillon"), conspired with Mr. Chandi's notary to dupe her into signing conveyancing documents that did not reflect the parties' agreement. It appears that Ms. Zhao believes Mr. Murtaza may also be implicated in the conspiracy. Ms. Zhao alleges that following the transfer of the one-half interest in the farm to Mr. Chandi, Mr. Chandi earned a substantial profit from the commercial sale of blueberries from the property, without accounting to her for profits. In her original pleadings, Ms. Zhao also alleged that Mr. Chandi sexually assaulted her, although she has not pursued that allegation at this trial.
- [8] Mr. Chandi, for his part, alleges that he was sexually assaulted by Ms. Zhao, and then blackmailed into signing the promissory notes that Ms. Zhao relies upon to support her claims. Mr. Chandi further alleges that it is Ms. Zhao who profited from the commercial sale of blueberries and blueberry plants from the property they co-owned, without accounting to him for the profit. He says Ms. Zhao also did not account to him for the substantial profit he says she earned on the sale of thousands of cedar trees that Mr. Chandi had purchased. Mr. Chandi has filed a counterclaim in which he seeks damages equivalent to his share of these profits, and also damages for Ms. Zhao's alleged retention of his personal property.

- [9] For the reasons that follow, I conclude that the parties agreed that Mr. Chandi would pay Ms. Zhao \$700,000 for the purchase of his one-half interest in the property. Ms. Zhao is entitled to damages for breach of contract in relation to the outstanding purchase monies owed by Mr. Chandi. I dismiss all remaining claims of the parties.

FACTUAL BACKGROUND

Ms. Zhao's purchase of the farm and introduction to Mr. Chandi

- [10] Ms. Zhao immigrated to Canada in 2008. She has lived here ever since. English is Ms. Zhao's second language; her first language is Mandarin. Ms. Zhao's husband resides primarily in China. Ms. Zhao has a daughter who is now a young adult. It appears that the daughter has resided with Ms. Zhao in Canada for periods of time during the relevant events.
- [11] In 2010, Ms. Zhao purchased her first property in Canada, a house on Point Grey Road (the "Point Grey Road House"). Ms. Zhao obtained a mortgage in the amount of \$997,000. She paid the mortgage off in 2015 with funds forwarded to her by her husband in China. Ms. Zhao has not worked since she arrived in Canada. Her husband has provided her with financial support.
- [12] After paying off the mortgage on the Point Grey Road House, Ms. Zhao began to look for land on which to build a high-end dog resort. Ms. Zhao anticipated that the facility would include buildings in which the dogs could be boarded, and outdoor play areas for the dogs, which would include pools. Ms. Zhao retained the services of a realtor to locate an appropriate property. Eventually she was shown a 16.55-acre blueberry farm located at 7725 Ladner Trunk Road in Delta (the "7725 Farm"), that was listed for sale for \$1.6 million. The property appeared suitable to meet Ms. Zhao's needs.
- [13] In January 2016, Ms. Zhao's offer to purchase the 7725 Farm for \$1.205 million was accepted by its owners. The completion date was January 20, 2016. Ms. Zhao paid the purchase price in cash, using funds from a line of credit secured by the Point Grey Road House.
- [14] Prior to the completion date, one of the vendors, Kashmir Singh Bamraha, had offered to sell his farming equipment to Ms. Zhao. Ms. Zhao arranged to meet Mr. Bamraha at the 7725 Farm on January 18, 2016. Ms. Zhao brought her friend Gary Wang with her to the meeting. Ms. Zhao did not have experience with farming. She says she required Mr. Wang's assistance in assessing the equipment. Ms. Zhao also intended to rely on Mr. Wang's services in farming the property, securing building permits, and constructing and operating the dog resort.

- [15] At the meeting on January 18, 2016, Mr. Bamraha advised Ms. Zhao and Mr. Wang that his farm equipment was stored at a neighbouring farm at 7064 Ladner Trunk Road (the "7064 Farm"). The three of them travelled to the farm to view the equipment. As will be explained, Ms. Zhao eventually discovered that the 7064 address is one of two entrances to the 7064 Farm. The other entrance is at 6988 Ladner Trunk Road, which is the business address of LeeBerry Farms.
- [16] Ms. Zhao, Mr. Wang and Mr. Bamraha were greeted on arrival at the 7064 Farm by Mr. Chandi. Mr. Chandi had a conversation with Ms. Zhao and Mr. Wang. Ms. Zhao says that during this discussion, Mr. Chandi led her to believe that he owned the 7064 Farm. In fact, Mr. Chandi did not own the 7064 Farm, rather he provided contract labour services to LeeBerry Farms through his company Azad Labour Contracting Ltd. ("Azad").
- [17] It should be noted that English is also Mr. Chandi's second language; his first language is Punjabi. Mr. Chandi came to Canada from India in 1997. Mr. Chandi required the occasional assistance of an interpreter at trial. Ms. Zhao required the assistance of an interpreter throughout the trial. Ms. Zhao says her English language proficiency is more advanced now than it was when she met Mr. Chandi in 2016. It appears evident to me that Ms. Zhao and Mr. Chandi may have had some difficulty communicating with each other during the relevant events in issue due to language barriers.
- [18] In any event, it is not disputed that during their meeting on January 18, 2016, Ms. Zhao provided Mr. Chandi with her phone number. He later called her. Ms. Zhao says Mr. Chandi counselled Ms. Zhao to purchase new equipment rather than second-hand equipment. They arranged to visit some farm suppliers together. Mr. Wang went with them.

Mr. Chandi's purchase of a one-half interest in the 7725 Farm

- [19] In May 2016, Ms. Zhao agreed to sell Mr. Chandi an undivided one-half interest in the 7725 Farm. There are many significant conflicts in the evidence of Ms. Zhao and Mr. Chandi as to how the agreement came about, and its terms. There are also conflicts in the evidence as it relates to Mr. Murtaza's recollection of events. I will briefly summarize the evidence. My factual findings are set out in the Analysis section of this judgment.
- [20] Ms. Zhao says that as of April 2016, she and Mr. Chandi were in a short-lived "romantic relationship", that led her to place undue trust in Mr. Chandi. She says Mr. Chandi induced her to sell him a one-half interest in the 7725 Farm by misrepresenting his financial status and resources. Ms. Zhao says that in May 2016, she and Mr. Chandi reached a verbal agreement on the following terms:
- (a) Mr. Chandi would pay Ms. Zhao \$700,000 for a one-half interest in the 7725 Farm;
 - (b) Mr. Chandi would invest \$800,000 over the next three years in building and maintaining a house on his portion of the 7725 Farm, while Ms. Zhao would invest the same amount in the dog resort;

- (c) Each of the parties would contribute a further \$150,000 to \$200,000 towards the cost of improving the blueberry business.
- [21] Ms. Zhao says she believed that Mr. Chandi was a successful businessman, and owner of the neighbouring farm, and therefore had the resources to make good on these commitments. She says she would not have agreed to sell Mr. Chandi half of her property if he had not misrepresented his financial status to her.
- [22] Mr. Chandi denies that his agreement to purchase an undivided one-half interest in the 7725 Farm included any additional commitment to future investments in the property. Mr. Chandi says he originally agreed to pay Ms. Zhao \$600,000 for a one-half interest in the 7725 Farm, as well as farm equipment she had stored on the property. Mr. Chandi relies on a list of farming equipment that he claims was prepared by Ms. Zhao for the purpose of their negotiations. Mr. Chandi says he and Ms. Zhao ultimately agreed that the farm equipment would not be included in the agreement. He then reduced his offer to \$400,000, which Ms. Zhao accepted.
- [23] Ms. Zhao denies that the agreement between her and Mr. Chandi ever included farming equipment. She says that Mr. Chandi manufactured the equipment list in an attempt to justify the alleged price reduction.
- [24] The critical events around the signing of the purchase and sale occurred on May 13 and May 19, 2016.

The events of May 13, 2016

- [25] On May 13, Ms. Zhao and Mr. Chandi met with a realtor at a Starbucks coffee outlet on Fraser Street in Vancouver. Mr. Chandi presented Ms. Zhao with a contract of purchase and sale offering to purchase a one-half interest in the 7725 Farm for a purchase price of \$600,000. The terms of the offer included payment of a \$400,000 deposit "to Buyer's notary" within 24 hours of acceptance, and the balance of \$200,000 to be paid within one month of the completion date. Ms. Zhao indicated her acceptance of the offer by signing the contract of purchase and sale (the "May 13 Contract").
- [26] Ms. Zhao says that before accepting the offer, she asked Mr. Chandi why the offer to purchase was not in the amount of \$700,000, as they had verbally agreed. Mr. Chandi told her that he would pay the additional \$100,000 soon, as he expected to receive a payment from his business partner in the near future. She says he signed a promissory note on the same day the offer was made to reflect this commitment, promising to pay Ms. Zhao an additional \$100,000 by July 20, 2016 (the "May 13 Promissory Note"). I note that there is no copy of the May 13 Promissory Note in evidence. As will be explained, Ms. Zhao's evidence is that it was later replaced by another promissory note containing different repayment terms.

- [27] Mr. Chandi denies the existence of the May 13 Promissory Note. Mr. Chandi says his offer to purchase an undivided one-half interest in the 7725 Farm for \$600,000 was signed before he had viewed the equipment list Ms. Zhao provided to him and had decided against purchasing Ms. Zhao's farm equipment. He says that once the farm equipment was removed from the agreement, the purchase price was reduced accordingly.
- [28] After the meeting with the realtor concluded, Mr. Chandi advised Ms. Zhao that his notary, Rajeev Kapur ("Mr. Kapur"), had an office nearby. Mr. Chandi and Ms. Zhao attended nearby branches of the HSBC Bank Canada and Toronto-Dominion ("TD") Bank where Mr. Chandi purchased bank drafts, payable to Mr. Kapur in trust. Mr. Chandi and Ms. Zhao then went together to Mr. Kapur's office.
- [29] Ms. Zhao says Mr. Kapur advised her that she would need separate representation on the conveyance. He referred her to Mr. Murtaza, whose office was close by. Ms. Zhao says she and Mr. Chandi went to Mr. Murtaza's office on May 13, 2016. She says she provided Mr. Murtaza with a copy of the May 13 Contract and the May 13 Promissory Note. She says he made copies of these documents and then returned the original to her.
- [30] Mr. Murtaza denies that Ms. Zhao attended his office on May 13, 2016. He says the first time he met Ms. Zhao was on May 19, 2016.
- [31] I should note at this point that a component of Ms. Zhao's theory that Mr. Chandi and Mr. Kapur--possibly assisted by Mr. Murtaza--were engaged in a conspiracy against her is based on the fact that Mr. Chandi paid Mr. Kapur the \$400,000 deposit, in trust, by way of three bank drafts: a \$216,000 bank draft from HSBC Bank and bank drafts in the amount of \$175,000 and \$9,000 from TD Bank. For reasons that remain unclear to me, Mr. Zhao infers from this that Mr. Chandi must have paid a bribe to Mr. Kapur.

The events of May 19, 2016

- [32] On May 19, 2016, Ms. Zhao attended Mr. Murtaza's office with Mr. Chandi to execute the conveyance documents. The documents included an "Addendum to Contract of Purchase and Sale" (the "Addendum") that included the following provisions:

Further to the Contract of Purchase and Sale dated 13th May 2016 between JADWINDER SINGH CHANDI as Buyer and Yu Lin Zhao as Seller dated the undersigned (sic) agree as follows:

The purchase price will be reduced from \$600,000 to \$400,000.

Both the parties have taken independent legal advice in this matter.

- [33] Ms. Zhao signed the Addendum. She also signed a Form A Freehold Transfer transferring an undivided half-interest in the 7725 Farm to Mr. Chandi for the "consideration" of \$400,000.
- [34] Ms. Zhao says that she asked Mr. Chandi about the price reduction in the Addendum in the presence of Mr. Murtaza. Mr. Chandi told her that he was changing the payment schedule, and that he would make additional payments of \$250,000 by June 20, 2016, and \$52,500 by

September 1, 2016. The additional \$2,500--above the purchase price of \$700,000--consisted of interest. Ms. Zhao says Mr. Chandi signed a promissory note at Mr. Murtaza's office on May 19, 2016 to reflect this commitment (the "May 19 Promissory Note"). She says Mr. Chandi removed the May 13 Promissory Note and replaced it with the May 19 Promissory Note.

- [35] A copy of the May 19 Promissory Note is in evidence. It is in Ms. Zhao's handwriting, and was signed by Mr. Chandi. Mr. Chandi agrees that his signature is on the document, but denies that he signed it voluntarily. Mr. Murtaza, for his part, denies that any of this discussion took place in his presence. Mr. Murtaza denies that Ms. Zhao ever provided him with a copy of any promissory note signed by Mr. Chandi at the time the conveyancing documents were executed.
- [36] Ms. Zhao says she understood the \$400,000 referenced in the Addendum to be a deposit only, and that there would be no transfer of any interest in the 7725 Farm to Mr. Chandi until she had received the amounts due under the May 19 Promissory Note. She says Mr. Murtaza never provided her with copies of the conveyancing documents until she went to his office and collected them on September 6, 2016. While Ms. Zhao agrees that she received, and cashed, the cheque for \$400,000, she says she received the cheque from Mr. Chandi and not from anyone at Mr. Murtaza's office.
- [37] Mr. Murtaza says he first became aware of Ms. Zhao on May 18, 2016, when Mr. Kapur contacted him to ask if he could represent Ms. Zhao in the conveyance. Mr. Murtaza agreed. Mr. Kapur advised Mr. Murtaza that the parties would come to his office on May 19, 2016 so that Ms. Zhao could execute the documents that Mr. Kapur had prepared. Mr. Kapur separately sent Mr. Murtaza the Addendum. Mr. Murtaza says Mr. Kapur told him that the parties had changed the purchase price from \$600,000 to \$400,000.
- [38] Mr. Murtaza says when he met Ms. Zhao on May 19, he explained the May 13 Contract, Form A Freehold Transfer, and the Addendum to her, including that the Addendum reflected a price reduction. He says he explained to her that signing the conveyancing documents would have the effect of transferring an undivided one-half interest in the 7725 Farm to Mr. Chandi. Mr. Murtaza denies that he, or anyone in his office, gave the \$400,000 cheque to Mr. Chandi for delivery to Ms. Zhao, but rather says that either he or his assistant provided it directly to Ms. Zhao. Mr. Murtaza says that in the ordinary course of his practice, executed copies of the conveyance documents would be provided to the client at the time they pick up the cheque.
- [39] After the conveyancing documents were executed, Mr. Kapur applied to the Land Title Office to register the transfer. The application was accepted, and the transfer to Mr. Chandi effected, on May 27, 2016.

- [40] Mr. Chandi did not pay Ms. Zhao an additional \$250,000 by June 20, 2016, as she says he committed to do in the May 19 Promissory Note. Ms. Zhao says she pressed Mr. Chandi for payment. He told her the money he expected to receive from his business partner was delayed, and that he would pay her the \$250,000 by late August or early September at the latest.
- [41] At this time, Ms. Zhao says she continued to believe that Mr. Chandi owned the 7064 Farm. In June 2016, Ms. Zhao discovered that the 7064 Farm had two entrances, and that the property was operated as LeeBerry Farms. Ms. Zhao says Mr. Chandi continued to mislead her to believe that he had an ownership interest in LeeBerry Farms.

The trip to Seattle and the visit to Mr. Murtaza's office

- [42] On August 29, 2016, Ms. Zhao and Mr. Chandi travelled together to Seattle, Washington to pick up Ms. Zhao's daughter from the airport. The events of August 29 and 30 figure prominently in the parties' competing versions of their agreement.
- [43] Ms. Zhao says that before they left Vancouver on August 29, Mr. Chandi signed another promissory note confirming that he owed Ms. Zhao \$250,000 (the "August 29 Promissory Note"). This promissory note is in evidence. It is in Ms. Zhao's handwriting, and was signed by Mr. Chandi. According to Ms. Zhao, the August 29 Promissory Note was instigated by Mr. Chandi, presumably as a confirmation of his commitment to pay the next installment of the purchase price, even if the payment was delayed. She says they stopped at Mr. Murtaza's office on the morning of August 29, without making an appointment, in order to have Mr. Murtaza prepare a formal version of the August 29 Promissory Note. However, Mr. Murtaza was busy with other clients. He greeted them in the reception area only long enough to tell them that they needed to come back the following day.
- [44] There is no dispute that the parties arrived in Seattle on August 29, 2016, and stayed overnight at a hotel before picking up Ms. Zhao's daughter and returning to Vancouver on August 30, 2016. There are significant conflicts in the evidence of the parties as to what occurred during the trip.
- [45] Ms. Zhao's evidence is that upon arriving in Seattle on August 29, the parties booked into a hotel, as planned, and went to dinner together. She says Mr. Chandi bought her Benadryl allergy medication, and forced her to take it immediately. Ms. Zhao went to the bathroom to spit the medication out. She says she feared Mr. Chandi was trying to make her sleepy and she did not know what would happen.
- [46] Ms. Zhao says that she and Mr. Chandi picked her daughter up at the airport the next day, August 30. They then drove back to Vancouver, and went directly to Mr. Murtaza's office to have the August 29 Promissory Note formalized.

- [47] Mr. Chandi's evidence is that he had not planned to travel to Seattle with Ms. Zhao. On the morning of August 29, she called him to ask that he drive her to Seattle because her car was not working. He says Ms. Zhao told him that her daughter was arriving in Seattle that evening, and that they would return to Vancouver the same day. Mr. Chandi agreed to drive Ms. Zhao to Seattle. He denies signing a promissory note on August 29, and denies attending at Mr. Murtaza's office on August 29, prior to driving to Seattle, to have a promissory note formalized.
- [48] Mr. Chandi says that when the parties arrived in Seattle, Ms. Zhao told him that her daughter's flight actually arrived on August 30, and that they would have to check into a hotel together. Mr. Chandi wanted to have separate rooms, but Ms. Zhao insisted they share a room. Mr. Chandi was tired and had a headache. He says Ms. Zhao gave him some Chinese medicine that she said would cure his headache. Instead, it rendered him unconscious. Mr. Chandi says when he finally regained consciousness, he discovered that Ms. Zhao had removed all his clothing. She was sitting across the room from him. He says Ms. Zhao told him that she had taken many naked pictures of him. She threatened to go to the police with the pictures and falsely accuse Mr. Chandi of rape if he did not sign several blank pieces of paper that Ms. Zhao put in front of him. Mr. Chandi then signed the papers.
- [49] Mr. Chandi alleges that Ms. Zhao's extortion of him explains his signature on the various promissory notes that are in evidence. He says Ms. Zhao took the blank pages he had signed and added the details of promissory notes that he did not actually agree to.
- [50] When the parties returned to Vancouver on August 30, 2016, they went to Mr. Murtaza's office together. On Ms. Zhao's instructions, Mr. Murtaza prepared a formal promissory note reflecting Mr. Chandi's promise to pay Ms. Zhao a "loan amount" of \$250,000 (the "August 30 Promissory Note"). Ms. Zhao is critical of Mr. Murtaza for failing to include payment schedule in the August 30 Promissory Note.
- [51] There is no dispute that Mr. Chandi signed the August 30 Promissory Note in Mr. Murtaza's office. Mr. Chandi says he signed the document because Ms. Zhao continued to threaten him with rape charges. As noted, Mr. Chandi denies that he knowingly signed the handwritten August 29 Promissory Note, or that he attended Mr. Murtaza's office on that day.
- [52] Mr. Murtaza's evidence is that Mr. Chandi attended his office with Ms. Zhao on both August 29 and August 30, 2016.

The filing of the first notices of civil claim and the response to civil claim

- [53] Ms. Zhao says it was not until August 31, 2016 that she performed a title search of the 7725 Farm and discovered that Mr. Chandi was a registered owner of an undivided one-half interest. She believed this was contrary to the terms of their agreement, pursuant to which there was to be no transfer until the purchase price was fully paid. Relations between the parties deteriorated rapidly.

- [54] On September 1, 2016, Ms. Zhao filed her first action against Mr. Chandi in Vancouver Registry No. 168015 (the "First Action"). Ms. Zhao alleged that Mr. Chandi owed her a total of \$302,500 towards the purchase of his interest in the 7725 Farm, as reflected in the promissory notes. The relief sought by Ms. Zhao was an order compelling Mr. Chandi to pay her the outstanding purchase price. At the same time, Ms. Zhao filed a certificate of pending litigation ("CPL") against Mr. Chandi's interest in the 7725 Farm.
- [55] Mr. Chandi filed a counterclaim on September 20, 2016. Mr. Chandi did not plead that Ms. Zhao extorted him in order to secure his signature on the promissory notes. Instead, he admitted that he owed a debt of \$250,000 to Ms. Zhao, as reflected in the August 30 Promissory Note, and he stated he was "willing to pay". He stated that the debt related to the purchase of farming equipment. He denied that Ms. Zhao's claim related to an interest in land, which was necessary to support the registration of a CPL against his interest in the 7725 Farm.
- [56] On September 27, 2016, Ms. Zhao filed an amended notice of civil claim in the First Action that substantially expanded her allegations against Mr. Chandi. Among other things, Ms. Zhao pleaded that:
- (a) Mr. Chandi fraudulently represented to her that he was one of the owners of LeeBerry Farms;
 - (b) on April 20, 2016, Mr. Chandi drugged and raped Ms. Zhao;
 - (c) a few days after the rape, Mr. Chandi told Ms. Zhao that he had naked pictures of her, and threatened to show them to her husband and daughter if she did not cooperate; and
 - (d) Ms. Zhao had a pending appointment with the Delta Police regarding the allegations of fraud and sexual assault.
- [57] The relief sought by Ms. Zhao in the amended notice of civil claim in the First Action included a declaration that Mr. Chandi held his interest in the 7725 Farm on a resulting trust for Ms. Zhao, and a return of her title to the property.
- [58] Ms. Zhao subsequently discontinued the First Action. She did not pursue the allegation of sexual assault in the present action. In her evidence at trial, Ms. Zhao explained that she had originally included the allegation of sexual assault in her amended notice of civil claim in the First Action because she wanted to persuade the Land Title Office that Mr. Chandi was a "bad guy". Ms. Zhao apparently believed that her claim to a CPL would be strengthened if she alleged that Mr. Chandi had sexually assaulted her.
- [59] After filing the First Action, Ms. Zhao also contacted Mr. Chandi's employer at LeeBerry Farms. Mr. Chandi says Ms. Zhao repeated the sexual assault allegations to his employer, causing the employer to terminate its contract with Azad, Mr. Chandi's company. Mr. Chandi says this not only caused him to lose employment income, but also led to a loss of income for other Azad employees. Ms. Zhao denies that she told the Mr. Chandi's employer about

the sexual assault allegations. Instead, she says she advised LeeBerry Farms that Mr. Chandi was misrepresenting himself as an owner of LeeBerry Farms. Ms. Zhao apparently believed that the true owner of LeeBerry Farms deserved to have this information. Ms. Zhao acknowledges that Mr. Chandi lost his contract with LeeBerry Farms at this time, but says this was due to unrelated reasons.

- [60] It should be noted here that Ms. Zhao concedes that she has contacted Mr. Chandi's current employer, Mr. Dhir, on several occasions--most recently on the eve of trial--and that she has repeated the rape allegations to him. Ms. Zhao explains her behaviour by saying that she was emotional at the time of these conversations.
- [61] On October 2, 2016, after being served with the amended notice of civil claim in the First Action, Mr. Chandi went to Seattle with his former spouse, Ms. Dhillon, and reported Ms. Zhao's alleged sexual assault and extortion of him to the Seattle Police. Mr. Chandi says he delayed in reporting the incident to the Seattle police because he was experiencing depression. He eventually discussed the matter with Ms. Dhillon, and she accompanied him to Seattle to make a report.

The expropriation of the 7725 Farm

- [62] Mr. Chandi says the first time he became aware of the City's interest in acquiring the 7725 Farm was in mid-August 2016 when he received a call from someone acting for the City. The person told him that the City wanted to buy the 7725 Farm, and asked if he was interested in selling his interest. Mr. Chandi said "no". He says that two to three days later, Ms. Zhao called him and asked him to give her back his portion of the 7725 Farm. Mr. Chandi refused. He says Ms. Zhao became angry and hung up the phone. They did not speak again until the trip to Seattle on August 29, 2016. Mr. Chandi believes that Ms. Zhao's efforts to recover a 100% interest in the 7725 Farm were sparked by her knowledge that the City planned to acquire the property.
- [63] Ms. Zhao denies that she was aware of the City's interest in acquiring the 7725 Farm in August 2016. She says she was first contacted by the realtor representing the City on September 16, 2016. Ms. Zhao says she did not realize at the time that the realtor was acting for the City. She thought he was simply making general inquiries of her willingness to sell the 7725 Farm. On September 30, 2016, the realtor came to her house and delivered a letter from the City. This letter--which was delivered to both parties--explained the City's interest in acquiring the 7725 Farm to accommodate road works in the area. The letter set out the City's offer to purchase the property for \$1.35 million.
- [64] A period of negotiation ensued between the parties and the City that did not result in any concluded agreement for the purchase of the 7725 Farm. The negotiations appear to have been complicated by the ongoing legal dispute between the parties, and the CPL that Ms. Zhao had registered against Mr. Chandi's interest.

- [65] By letter dated December 15, 2016, the City advised the parties that in the absence of substantial agreement on the terms of purchase and sale by January 11, 2017, the City intended to pursue the expropriation of the 7725 Farm.
- [66] In July 2017, the parties were both served with an Approval Certificate under the Expropriation Act. As noted, the City subsequently paid \$1.572 million into court as advance compensation.

The sale of blueberries and cedar trees at the 7725 Farm

- [67] Unsurprisingly, matters did not run smoothly on the 7725 Farm as hostilities between the parties escalated. There are significant conflicts in the evidence of the parties on such basic questions as who managed the 7725 Farm after the one-half interest was transferred to Mr. Chandi. Mr. Chandi says he and Ms. Zhao hired Gurpreet Pandher ("Mr. Pandher") to manage the property. Ms. Zhao says she has never met Mr. Pandher, and that it was her father and Mr. Wang who were overseeing operations at the 7725 Farm. I find it largely unnecessary to resolve these conflicts, except to the extent that they relate to the accounting remedy sought by each party.
- [68] Each party claims that during the brief period of time they co-owned the 7725 Farm, the other made substantial profits off the sale of blueberries and cedar trees. There is very little in the way of independent evidence to substantiate these claims.
- [69] Ms. Zhao says that in the 2016 picking season, she hired commercial pickers to pick blueberries on the property. Ms. Zhao's father, who was visiting from China, provided supervision. Ms. Zhao says Mr. Chandi collected the blueberries at the end of each day, and sold them to Westberry Farms Ltd. ("Westberry") without accounting to her for the profits. She has evidence of two cheques made out to Mr. Chandi by Westberry: one dated July 15, 2016 in the amount of \$1,864.82, and one dated July 29, 2016, in the amount of \$2,741.98. Ms. Zhao suspects that Mr. Chandi received significantly more money from Westberry for the sale of blueberries. She has no evidence of this, despite having called the owner of Westberry, Parmjit Bains, as a witness at trial.
- [70] Ms. Zhao says that in 2017, prior to the City's expropriation of the 7725 Farm, she allowed U-pickers to pick blueberries at the 7725 Farm on the weekend. She says she only earned \$2,000 in net profit on the U-pick operation. She did not share this profit with Mr. Chandi because she was not speaking to him by this time. Ms. Zhao testified in her direct evidence that Mr. Chandi was picking blueberries using a commercial machine at the 7725 Farm in 2017. In cross-examination, she agreed that she only assumed Mr. Chandi picked the blueberries, and that she had not actually witnessed him doing so.

- [71] Mr. Chandi says there were no commercial pickers at the 7725 Farm in either 2016 or 2017. He alleges that in both years, Ms. Zhao, assisted by Mr. Wang, earned a significant profit on the sale of blueberries through a U-pick operation. There is no independent evidence that Ms. Zhao earned any profit from the sale of blueberries in 2016 or 2017 beyond the \$2,000 that Ms. Zhao concedes she earned in 2017.
- [72] Mr. Chandi further alleges that Ms. Zhao earned a significant profit from the sale of blueberry plants from the 7725 Farm, as well as the 4,000 cedar trees that Mr. Chandi had purchased to line the property border.
- [73] In relation to the blueberry plants, Ms. Zhao agrees that in October 2016, after the City advised the parties that it wanted to acquire the 7725 Farm, she did take a few blueberry plants home with her. She posted an advertisement to sell the plants for \$20 each. Ms. Zhao says that while she sold a few plants, she soon gave up on that project because the sale proceeds did not cover the delivery costs. At that point, she allowed some friends to come and take blueberry plants for free. Ms. Zhao says she never made any profit on the sale of blueberry plants.
- [74] In relation to the cedar trees, Ms. Zhao says she paid Mr. Chandi \$3,000 towards the purchase price of the trees because Mr. Chandi told her they could be re-sold for a profit. Thus, she says, she jointly owned the trees with Mr. Chandi. In any event, Ms. Zhao says the only cedar trees she sold were to customers who had already paid a deposit to Mr. Chandi. She arranged for Mr. Wang to deliver trees to these customers on a few occasions. She says the sale proceeds did not cover the delivery costs. Beyond this, Ms. Zhao says she did not sell any cedar trees.
- [75] Once again, Mr. Chandi has no independent evidence that Ms. Zhao earned a significant, or any, profit from selling blueberry plants or cedar trees. The documentary record on this issue consists of two invoices showing that Mr. Chandi paid a total of \$5,092 for the purchase and delivery of 2,700 "ornamental trees" from a local nursery. Mr. Chandi testified that these invoices relate to the cedar trees in issue.
- [76] Each party tendered a significant amount of photographic and video evidence to demonstrate the activities that they say were occurring on the 7725 Farm as relations between the parties deteriorated. Every encounter Ms. Zhao and Mr. Wang had with Mr. Chandi on the property appears to have led to conflict, which was then recorded by one or more of the parties. Mr. Chandi called the Delta Police on at least 10 occasions between September 13, 2016 and April 19, 2017, to report that Ms. Zhao and/or Mr. Wang were taking cedar trees, blueberry plants, or farm equipment from the 7725 Farm. The police officers responding to these calls repeatedly told the parties that this was a civil dispute and not a police matter.

- [77] It is exceedingly difficult to draw any conclusions from the photographic and video evidence about the parties' competing allegations about the sale of blueberries and the cedar trees. The police reports are not, of course, evidence of the truth of any statements recorded in them.

The Provincial Court proceedings

- [78] It should be noted that events concerning the operation of the 7725 Farm after the transfer to Mr. Chandi were also in issue in six actions filed in small claims court between September 2016 and February 2017. Four were filed by Mr. Wang, one by Mr. Chandi, and one by Azad. The six actions were heard together, and addressed in a single judgment by Judge Phillips: *Wang v. Chandi et al.*, (28 June 2018), Provincial Court Files No. 16-56832, 16-57166, 16-57408, 16-57494, 16-57518, 17-57982 (BCPC) (the "Provincial Court Judgment").
- [79] At trial, there was occasional confusion as to whether some of the parties' claims overlapped with matters decided by the Provincial Court Judgment. To the extent there is overlap, I will not determine any matter that has already been decided by the Provincial Court. The Provincial Court Judgment does not deal with the dispute between Ms. Zhao and Mr. Chandi over the purchase of the 7725 Farm, or with either party's claim for an accounting of profits in relation to the sale of blueberries, blueberry plants, and cedar trees.

THE PLEADINGS IN THE SECOND ACTION

The notice of civil claim and amendments

- [80] Ms. Zhao says that after filing the First Action, she received advice that the pleadings she had prepared were deficient. She filed a notice of discontinuance of the First Action. In February 2017, Ms. Zhao filed her notice of civil claim in the current action (the "Second Action"), naming Mr. Chandi and Mr. Murtaza as defendants. Ms. Zhao was represented by counsel at the time she filed her original notice of civil claim in the Second Action. She has represented herself since November 2017.
- [81] In her original notice of civil claim in the Second Action, Ms. Zhao alleged that she and Mr. Chandi had a verbal agreement that he would purchase an undivided one-half interest in the 7725 Farm for a purchase price of \$700,000, with \$400,000 to be paid within 24 hours, \$200,000 within 30 days of completion, and \$100,000 by July 20, 2016. Ms. Zhao alleged that Addendum that she executed on Mr. Murtaza's office on May 19, 2016 did not reflect the parties' actual agreement. She sought damages against Mr. Murtaza for negligence and breach of contract.

- [82] Ms. Zhao filed an amended notice of civil claim in May 2017, a second amended notice of civil claim in October 2017, and a third amended notice of civil claim in January 2018. These amendments provided further particulars of Ms. Zhao's interactions with Mr. Murtaza and Mr. Chandi, but did not fundamentally alter the theory of her case, or her allegations regarding the terms of the agreement.
- [83] In August 2020, Ms. Zhao filed a fourth amended notice of claim which contained substantial amendments. In her fourth amendment, Ms. Zhao alleged for the first time that the parties had reached a verbal agreement on the same terms that she has advanced at trial; that is:
- (a) Mr. Chandi would pay Ms. Zhao \$700,000 for a one-half interest in the 7725 Farm;
 - (b) Mr. Chandi would invest \$800,000 over the next three years in building and maintaining a house on his portion of the 7725 Farm, while Ms. Zhao would invest the same amount in the dog resort; and
 - (c) Each of the parties would contribute a further \$150,000 to \$200,000 towards the cost of improving the blueberry business.
- [84] Ms. Zhao's fourth amendment also alleged, for the first time in the Second Action that Mr. Chandi had committed the tort of fraudulent misrepresentation and had exercised undue influence over her, rendering the property transaction void. Alternatively, she seeks the remedy of a constructive trust for Mr. Chandi's unjust enrichment. Ms. Zhao also seeks an accounting from Mr. Chandi for a lengthy list of items, including profits from the sale of cedar trees and operational expenses incurred by Ms. Zhao in the running of the 7725 Farm.
- [85] Notably, Ms. Zhao does not, in the fourth amended notice of civil claim, allege the tort of conspiracy. She does not allege that Mr. Murtaza was complicit in a scheme to wrongfully deprive her of an interest in her property. The pleaded particulars of her claim against Mr. Murtaza are limited to his alleged failure to meet a standard of professional competence in his representation of her.

Mr. Chandi's response to civil claim and counterclaim

- [86] Mr. Chandi filed his original response to civil claim and counterclaim in March 2017. He filed an amended counterclaim in October 2017, and an amended response to civil claim in September 2020. Mr. Chandi was represented by counsel for periods of time in the Second Action, and at other times, he represented himself.
- [87] In his response to civil claim, Mr. Chandi denies that he agreed to purchase an undivided one-half interest in the 7725 Farm for a purchase price of \$700,000. He pleads that the parties initially agreed that the purchase price for the property and the farm equipment would be \$600,000. The purchase price was later reduced to \$400,000 once it was agreed that the farm equipment would not be included in the deal. In Division 3 of his response to civil claim --"Additional Facts"-- Mr. Chandi sets out his version of the events that occurred on the Seattle trip.

[88] In his counterclaim, Mr. Chandi seeks a variety of relief against Ms. Zhao. He pleads that the parties agreed to share equally in expenses and profits related to the 7725 Farm, and that Ms. Zhao has failed to account to him for profits or contribute to his expenses. He alleges that Ms. Zhao has sold blueberries, blueberry plants, and cedar trees for a profit, and that she holds the monies in trust for him. Mr. Chandi alleges that Ms. Zhao has retained personal property belonging to him. He seeks damages from Ms. Zhao in relation to these matters.

ISSUES

[89] The current version of the notice of civil claim and counterclaim raise the following issues:

- (a) What were the terms of the agreement between Ms. Zhao and Mr. Chandi for the purchase of Mr. Chandi's interest in the 7725 Farm?
- (b) Did Mr. Chandi make fraudulent misrepresentations to Ms. Zhao to induce her to enter the agreement, and did this render the agreement unconscionable?
- (c) What remedies, if any, are available to Ms. Zhao in relation to the purchase agreement?
- (d) Is either party liable to account to the other for the sale of blueberries, blueberry plants, or cedar trees from the 7725 Farm?
- (e) Is Ms. Zhao liable to Mr. Chandi for the wrongful retention of his personal property?

ANALYSIS

Assessment of credibility

[90] There is very little in the way of documentary evidence in this case to corroborate the parties' competing stories. Credibility is, therefore, a central issue.

[91] I have significant issues with the credibility of both parties. It is difficult to overstate the level of conflict between them. Each party appears willing to go to any length to discredit and undermine the other side's position, without regard to the truth. What started out as a relatively simple debt dispute has spiralled into a sprawling set of competing claims over every aspect of their relationship and the operation of the 7725 Farm. The deep level of distrust that characterizes the parties' relationship undermines their objectivity, and their ability to distinguish between fact and suspicion.

[92] Ms. Zhao is unable, or unwilling, to moderate her hostility towards Mr. Chandi. For the sole purpose of obtaining a CPL on Mr. Chandi's interest in the 7725 Farm, she filed a pleading in court alleging that he had raped her. In an apparent effort to have Mr. Chandi fired from his employment, she repeated the rape allegation to his current employer. Ms. Zhao agreed in cross-examination that since commencing this proceeding against Mr. Chandi, she has filed related actions against Mr. Kapur, Mr. Chandi's previous counsel, two of Mr. Chandi's former spouses (including Ms. Dhillon), and Mr. Chandi's mother. It appears that Ms. Zhao does not simply wish to collect a debt from Mr. Chandi, but also to ensure maximum disruption to his

life and employment.

- [93] At trial, Ms. Zhao advanced allegations against Mr. Chandi, and others, that were unpleaded and entirely unsupported by any evidence. Ms. Zhao is suspicious that a conspiracy may have existed between Mr. Chandi, Ms. Dhillon, Mr. Kapur, and possibly Mr. Murtaza, to dupe her into signing the Addendum. Ms. Zhao suggested on more than one occasion at trial that Mr. Kapur had been bribed. However, there is no evidence of this. Moreover, Mr. Kapur is neither a party nor a witness in this case, and there is no allegation of conspiracy in the fourth amended notice of civil claim. In an effort to implicate Ms. Dhillon in the conspiracy, Ms. Zhao tried to put Ms. Dhillon's bank records in evidence, even though the records were obtained in another action and were subject to the implied undertaking of confidentiality.
- [94] Mr. Chandi is no more credible or reliable as a witness than Ms. Zhao. He also appeared willing to invent allegations--such as the alleged events in Seattle--to achieve an advantage in the litigation. Mr. Chandi's evidence that Ms. Zhao provided him with a specific list of equipment that was used to negotiate a purchase price for his interest in the 7725 Farm proved demonstrably false in cross-examination. Mr. Chandi's response was to change his evidence in re-examination.
- [95] Mr. Chandi's position on the core issue of his debt to Ms. Zhao has not been consistent over time. In his response to civil claim in the First Action, Mr. Chandi admitted that he owed Ms. Zhao \$250,000 pursuant to the August 30 Promissory Note. He stated his willingness to pay her that amount. In the Second Action, Mr. Chandi denies that he signed the August 30 Promissory Note voluntarily, and denies that he owes any money to Ms. Zhao. He alleges, instead, that she owes him over \$1 million in profits from the blueberries and cedar trees. Even if Mr. Chandi is not bound by the concession he made in the First Action, I conclude that his shifting position undermines his overall credibility.
- [96] For these reasons, I do not find either to be a credible or reliable witness. Therefore, I will approach the evidence of both of the parties with a significant degree of skepticism when it is not corroborated by objective independent evidence.
- [97] Finally, a word needs to be said about Mr. Wang, who was called as a witness by Ms. Zhao. Mr. Wang is an important witness for Ms. Zhao because he purports to corroborate Ms. Zhao's recently-advanced theory of the terms of her verbal agreement with Mr. Chandi for the property purchase.
- [98] Mr. Wang did not present as an objective witness. He is clearly aligned with Ms. Zhao in the action. Indeed, after Mr. Wang finished testifying, he remained in the courtroom for the duration of trial, taking notes for Ms. Zhao and otherwise assisting her in the presentation of her case. Mr. Wang was defensive and argumentative in cross-examination. As a result of his inability, or unwillingness, to answer questions directly, the intervention of the Court was required on more than one occasion. Mr. Wang's hostility towards Mr. Chandi was palpable. Mr. Wang has obviously been a key figure in the history between the parties, even if he does not remain an active party. As noted, Mr. Wang and Mr. Chandi were opposing parties in six

small claims actions. Whether or not Mr. Wang's hostility towards Mr. Chandi is justified, it prevents Mr. Wang from viewing events with any degree of objectivity.

[99] For these reasons, I will also approach Mr. Wang's evidence with caution.

Issue (a): What were the terms of the agreement?

[100] The interpretation of contracts in Canada has evolved to a practical common-sense approach that is not dominated by technical rules of construction. The objective is to determine the intent of the parties and the scope of their understanding: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47 [Sattva]. The court must consider the words used by the parties, and also the surrounding circumstances, which consists of objective facts that were known, or ought to have been known, by both parties at the time the contract was formed: *Sattva* at para. 53.

[101] The process of contract interpretation is complicated in this case by the fact that the parties' agreement is reflected in more than one written document, there is inconsistency in the documents, and Mr. Chandi disputes the authenticity of some of the documents that Ms. Zhao relies upon to establish the terms of the agreement.

[102] Mr. Chandi's theory is that the parties' final agreement is reflected in the May 13 Contract and the Addendum that was signed on May 19, 2016. Mr. Chandi says that the provisions of these documents are clear and unambiguous, and that they evidence the parties' agreement that Mr. Chandi would purchase a one-half interest in the 7725 Farm for \$400,000. Mr. Chandi's position on the issue of contract interpretation is dependent on two factual propositions:

- (a) the reduction in the purchase price can be explained by the parties' agreement to remove Ms. Zhao's farm equipment from the purchase; and
- (b) Mr. Chandi did not sign any of the promissory notes voluntarily, but rather Ms. Zhao obtained his signatures by extortion.

[103] In my view, neither of these propositions are established on the evidence.

Was farm equipment ever part of the agreement?

[104] The key piece of evidence that Mr. Chandi relies on in support of the first proposition is an equipment list that he produced in this action. In his direct evidence, Mr. Chandi testified that Ms. Zhao had prepared the list and provided it to him at the time the parties were negotiating a purchase price. In cross-examination, Mr. Chandi was confronted by Ms. Zhao with the fact that at least two of the transactions on the list--Costco credits for the return of equipment--actually took place after the parties signed the conveyancing documents on May 19, 2016. In re-examination, Mr. Chandi then changed his evidence and stated, for the first time, that the list included in his document production was not an exact copy of the list that Ms. Zhao provided to him when they were negotiating a purchase price, and that some items had changed. Mr. Chandi also maintained that the equipment list was

provided to Mr. Chandi's lawyer by Ms. Zhao.

[105] I reject Mr. Chandi's evidence on this point. His shifting explanations of the origin of the equipment list are simply not credible. Further, I accept Ms. Zhao's evidence, supported by the lists of documents produced by the parties in this action, that Ms. Zhao did not provide the equipment list to Mr. Chandi's lawyer, and that it appeared for the first time on Mr. Chandi's document list. I conclude that it is Mr. Chandi, not Ms. Zhao, who created the equipment list. He did so in an attempt to manufacture an explanation for the reduction in purchase price that is reflected in the Addendum.

[106] Mr. Chandi's evidence on this point is also implausible when viewed in its factual context. Ms. Zhao purchased the 7725 Farm in January 2016 for a purchase price of \$1.205 million, which was a reduction from the \$1.6 million list price. Ms. Zhao intended to run a dog resort, and not a blueberry farm. It is illogical to suppose that less than four months after purchasing the 7725 Farm, she would have been willing to sell a one-half interest in the property for a price that was substantially less than its apparent market value.

[107] Therefore, I conclude that it was never part of the parties' original agreement that Mr. Chandi would purchase farm equipment as well as property from Ms. Zhao. I find that their negotiations always focused exclusively on a purchase price for a one-half interest in the 7725 Farm.

Did Mr. Chandi voluntarily sign the promissory notes?

[108] Mr. Chandi's explanation of how his signature came to appear on the various promissory notes in evidence is that Ms. Zhao forced him to sign blank pieces of paper during the trip to Seattle by drugging him, removing his clothes, taking pictures of him naked, and then threatening to falsely accuse him of rape. I do not accept his evidence that such events occurred. I find Mr. Chandi's evidence to be an implausible explanation for how he came to sign the promissory notes.

[109] Mr. Chandi's account of what occurred in Seattle is directly contrary to the facts pleaded in his September 20, 2016 response to civil claim in the First Action, in which he acknowledged the debt in the August 30 Promissory Note. Mr. Chandi's evidence as to what occurred in Seattle bears marked similarities to the allegations Ms. Zhao advanced against him in her amended notice of civil claim in the First Action, which was filed immediately prior to Mr. Chandi's report of Ms. Zhao's alleged assault and extortion to the Seattle police. I infer from the timing of Mr. Chandi's report to the police that Ms. Zhao's amended notice of civil claim in the First Action prompted him to construct a similar story to counter Ms. Zhao's allegations.

- [110] Furthermore, Mr. Chandi's evidence on this issue depends on the truthfulness of his assertion that he did not attend Mr. Murtaza's office with Ms. Zhao on the morning of August 29, 2016 for the purpose of having the August 29 Promissory Note formalized. If Mr. Chandi did attend Mr. Murtaza's office on the morning of August 29 for that purpose, then it cannot be the case that Ms. Zhao only obtained his signature on the August 29 Promissory Note when the parties were in Seattle on the evening of August 29.
- [111] Mr. Murtaza was definite in his recollection that Mr. Chandi was with Ms. Zhao at his office on the morning of August 29. Mr. Murtaza did not agree with the proposition put to him in cross-examination that it might have been Mr. Wang, not Mr. Chandi, who was with Ms. Zhao on that occasion. It is improbable that Mr. Murtaza would be mistaken on this point. As of August 29, Mr. Murtaza had met Mr. Chandi but not Mr. Wang, and the two bore no physical resemblance. I accept Mr. Murtaza's evidence that Mr. Chandi was with Ms. Zhao when she arrived at his office on the morning of August 29, 2016.
- [112] Accordingly, I find that Mr. Chandi voluntarily signed the May 19 Promissory Note on May 19, 2016, and that he voluntarily signed the August 29 Promissory Note on the morning of August 29, 2016, before the parties left for Seattle. I do not accept his evidence that Ms. Zhao drugged him, took naked pictures of him, and then secured his signatures on the promissory notes through extortion.
- [113] Before concluding on this issue, I note that expert evidence was adduced in relation to the May 19 Promissory Note. Ms. Zhao took a picture of the document on her phone. She says the picture was taken on May 19, 2016, which establishes the timing of Mr. Chandi's signature on the document. Ms. Zhao no longer has the iPhone that took the photo, but she does have a digital copy of the photos. Both parties tendered expert reports from a forensic examiner to establish the date. Ms. Zhao's expert--Robin Fowler--opines that the metadata establishes that the photo was taken on May 19, 2016. Mr. Chandi's expert--Jason Conley--opines that it is impossible to reach a conclusion of the timing of the photo without analyzing the iPhone that took the photo as metadata on a digital photo may easily be manipulated. Neither of these experts was available to attend trial to be cross-examined on their reports. I am unable to resolve the conflict between them in the absence of cross-examination, and it is unnecessary to do so. In finding that Mr. Chandi signed the May 19 Promissory Note on May 19, 2016, I place no weight on Mr. Fowler's report.

What was the agreed-upon purchase price and terms of payment?

- [114] I conclude that the parties agreed in May 2016 that Mr. Chandi would purchase an undivided one-half interest in the 7725 Farm for a sum of \$700,000. Pursuant to their original agreement, as reflected in the May 13 Contract and May 13 Promissory Note, the payment schedule was as follows:
- (a) payment of \$400,000 within 24 hours of acceptance;
 - (b) payment of \$200,000 within 30 days of completion; and

(c) payment of \$100,000 by July 20, 2016.

[115] As reflected in the May 19 Promissory Note, the parties agreed to a new payment schedule at the time the conveyance documents were executed on May 19, 2016:

(a) payment of \$400,000 within 24 hours of acceptance;

(b) payment of \$250,000 by June 20, 2016; and

(c) payment of \$52,500 by September 1, 2016.

[116] Ms. Zhao later agreed to extend the time for payment of the second installment on the purchase price--the \$250,000--as reflected in the August 29 and August 30 Promissory Notes.

[117] For the reasons I have already stated, I do not accept Mr. Chandi's evidence that the parties agreed to reduce the purchase price to \$400,000. The evidence surrounding the preparation and execution of the Addendum is inconclusive at best. Mr. Kapur, who prepared the Addendum, was not called as a witness by either party. Mr. Murtaza's evidence about what he was told by Mr. Kapur about the Addendum is hearsay. There is, therefore, no credible evidence before the Court regarding the purpose of the Addendum, or the circumstances in which it was prepared.

[118] I accept Ms. Zhao's evidence that she understood the \$400,000 referenced in the Addendum to be only the first installment towards the purchase price of \$700,000. I acknowledge that the Addendum does, on its face, state that the purchase price will be reduced to \$400,000. However, I accept Ms. Zhao's evidence that she signed the conveyancing documents put in front of her without appreciating that the Addendum purported to reduce the purchase price. It is entirely plausible that Ms. Zhao may have missed the significance of the Addendum. English is not her first language, and Ms. Zhao was expecting the conveyancing documents to simply confirm what the parties had already agreed to on May 13, 2016. Furthermore, on the same day that Ms. Zhao signed the conveyancing documents, Mr. Chandi signed a promissory note agreeing to pay Ms. Zhao an additional \$302,500.

[119] It is unnecessary for me for the purpose of this proceeding to reach any conclusive findings on exactly what Mr. Murtaza said to Ms. Zhao about the Addendum at the time she executed the conveyance documents. Whatever advice she may have received, I accept that she did not understand that the Addendum purported to change the terms of the parties' agreement. I also find that the Addendum did not have this effect. The parties' agreement was, as I have found, that Mr. Chandi would pay Ms. Zhao \$700,000 to purchase a one-half interest in the 7725 Farm. By the time the conveyancing documents were executed on May 19, 2016, the parties also agreed that Mr. Chandi would pay an additional \$2,500 as interest. To the extent there is inconsistency between the terms of the Addendum and the May 19 Promissory Note, I find that it is the latter document that reflects the terms of the parties' actual agreement.

- [120] I do not accept Ms. Zhao's evidence that the parties intended that Mr. Chandi's interest in the 7725 Farm would not transfer until the full purchase price was paid. The May 13 Contract, which Ms. Zhao relies upon to support her contention that the \$400,000 was a deposit only, expressly anticipated that Mr. Chandi would pay the additional \$200,000 within one month of the completion date. Ms. Zhao initialled each term of the May 13 Contract, including the terms providing that the completion and possession date was May 20, 2016. The May 13 Promissory Note, which Ms. Zhao herself prepared, anticipated payment of a further \$100,000 by July 20, 2016. The parties always intended, therefore, that the property would transfer to Mr. Chandi before the entire purchase price was paid.
- [121] In my view, Ms. Zhao's position that the property was wrongly transferred to Mr. Chandi is an after-the-fact construction designed to support her claim for relief in the form of an order declaring the transaction be declared void ab initio. Mr. Chandi's failure to pay the full purchase price is a breach of contract. However, I conclude that the parties agreed that an undivided one-half interest in the 7725 Farm would be transferred to Mr. Chandi once the conveyancing documents were executed and before the entire purchase price was paid.

Summary on the terms of the agreement

- [122] In summary, I conclude that Ms. Zhao and Mr. Chandi agreed that Mr. Chandi would purchase an undivided one-half interest in the 7725 Farm for a purchase price of \$700,000. I find they agreed that Mr. Chandi would pay \$400,000 towards the purchase price at the time of the conveyance, and then \$300,000 in two payments to be made after the property had transferred. It was originally anticipated that Mr. Chandi would pay the outstanding purchase price in full by July 20, 2016. The date for payment was later extended by agreement. When the payment date was extended, Mr. Chandi agreed to pay an additional \$2,500 in interest. Mr. Chandi has not paid the outstanding purchase price and interest, and therefore has breached the parties' agreement.

Issue (b): Did Mr. Chandi make fraudulent misrepresentations and/or is the transaction unconscionable?

- [123] Ms. Zhao additionally alleges that Mr. Chandi made fraudulent misrepresentations to induce her to enter the agreement, and she says the agreement is unconscionable. As I understand Ms. Zhao's case, the fraudulent misrepresentations consist of Mr. Chandi's statements about his wealth and financial resources. She says he led her to believe that he could invest a further \$800,000 in constructing a house on the 7725 Farm, and a further \$150,000 to \$200,000 in the operation of the blueberry business. Ms. Zhao says she would not have sold an undivided interest in the 7725 Farm to Mr. Chandi without these commitments, and his misrepresentations that he was financially able to fulfill them. She says that at the time she was negotiating the purchase with Mr. Chandi, Mr. Wang made a verbal offer to purchase a one-half interest in the 7725 Farm for \$725,000. Ms. Zhao says she turned down this offer because Mr. Wang could not make the additional commitments that Mr. Chandi was prepared to make.

- [124] I do not accept Ms. Zhao's evidence that Mr. Chandi made the alleged misrepresentations. I have already explained my reasons for concluding that Ms. Zhao is generally not a credible or reliable witness. She has shown herself to be someone willing to manipulate the facts in order to achieve a desired litigation outcome--for example, alleging that Mr. Chandi raped her in order to secure a CPL on his property. In my view, the same tendency is evident in the allegations of fraudulent misrepresentation and unconscionability. I infer that Ms. Zhao has realized that she will have a stronger case for the remedy of rescission if she alleges fraud or unconscionability. I note that the first time these allegations were advanced by Ms. Zhao in her pleadings was in her fourth amended notice of civil claim that was filed in August 2020--over four years after the parties' agreement was entered into. The delayed nature of Ms. Zhao's claims of fraudulent misrepresentation on the part of Mr. Chandi also undermines the credibility of her evidence on this issue.
- [125] I acknowledge that Mr. Wang's evidence appears to corroborate Ms. Zhao's claims to some extent. He says that he offered Ms. Zhao \$725,000 for a one-half interest in the 7725 Farm, but that he was unable to commit to the additional investment that Mr. Chandi was prepared to commit to. He testified to having overheard Mr. Chandi making the commitments alleged by Ms. Zhao. I also do not find Mr. Wang's evidence to be credible, for the reasons I have stated. Mr. Wang is firmly entrenched on Ms. Zhao's side of this particular dispute. His hostility towards Mr. Chandi undermines his objectivity. Mr. Wang's evidence that he offered to purchase an interest in the 7725 Farm is convenient for Ms. Zhao, but is also difficult to rationalize. Mr. Wang is a home inspector and computer expert by trade. He had no farming experience prior to assisting Ms. Zhao with the 7725 Farm. I find it implausible that Mr. Wang would have been motivated to offer \$725,000 for the purchase of a one-half interest in a blueberry farm.
- [126] I accept that there may have been misunderstandings between Ms. Zhao and Mr. Chandi in their communication, given their language barrier. It may be that Ms. Zhao misunderstood Mr. Chandi to be the owner of LeeBerry Farms rather than a contractor. However, even assuming some misunderstanding may have occurred, I conclude that this did not induce Ms. Zhao to enter the agreement with Mr. Chandi. I find that it was Mr. Chandi's experience in farming, not his status as a business owner, that would likely have persuaded Ms. Zhao to sell him an interest in the 7725 Farm. Ms. Zhao did not need the entire 16.55 acres to run her dog resort. The property had an existing business, which Mr. Chandi had the experience to operate. There were advantages to Ms. Zhao in receiving \$700,000 from Mr. Chandi in exchange for selling half the property--an amount that already generated a profit for her on the original purchase price--with the possibility of further revenue if Mr. Chandi was able to make the blueberry business profitable.

[127] For these reasons, I reject Ms. Zhao's claim that Mr. Chandi made fraudulent misrepresentations to her. I also reject her claim that the agreement is unconscionable. Neither condition for a finding of unconscionability is present. There was no inequality in bargaining power between the parties, and the agreement is not improvident: *Uber Technologies Inc. v. Heller*, 2020 SCC 16 at para. 54.

[128] In light of my conclusions, it is unnecessary for me to address Ms. Zhao's alternative claim for a constructive trust as a remedy for Mr. Chandi's unjust enrichment.

Issue (c): What remedies are available to Ms. Zhao in relation to the purchase agreement?

[129] I have found that Mr. Chandi breached the terms of his agreement with Ms. Zhao by failing to pay her the outstanding purchase price of \$300,000, plus the \$2,500 interest payment provided for in the May 19 Promissory Note. Ms. Zhao is entitled to an award of damages that puts her in the position she would have been if Mr. Chandi had performed his contractual obligations. I therefore order that Mr. Chandi pay Ms. Zhao \$302,500, plus prejudgment interest at the Registrar's rates pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79, starting September 1, 2016.

[130] I further order that Ms. Zhao shall have priority to a payout of the funds that Mr. Chandi owes her before Mr. Chandi receives any proceeds from the City's expropriation of the 7725 Farm that remain in court. As the co-owner of the 7725 Farm at the time of the expropriation, Mr. Chandi is entitled to any remaining funds in Court after Ms. Zhao has been paid out.

Issue (d): Is either party liable to account to the other for the sale of blueberries, blueberry plants, or cedar trees from the 7725 Farm?

[131] I have already reviewed the evidence that was adduced by the parties on the issue of accounting for profits from blueberries, blueberry plants, or cedar trees from the 7725 Farm. Both parties seek substantial repayment orders that are not based on any credible evidence but rather on speculation and supposition. Mr. Chandi claims over \$1 million in reimbursement from Ms. Zhao based only on his own belief of how many blueberries, blueberry plants, and cedar trees were sold, and his own view of what price could have been obtained. Ms. Zhao asks the Court to draw an inference that Mr. Chandi earned over \$28,000 in income from selling blueberries based only on the difference in the income reported in his tax returns for 2015 and 2016.

[132] Neither party adduced evidence that would permit me to make the findings necessary to ground the type of accounting or tracing remedy they each seek. Ms. Zhao agrees that she earned a net profit of \$2,000 from the sale of blueberries in 2017. Mr. Chandi appears to have received money from Westberry on two occasions. Beyond these limited payments, there is simply no evidence to establish that either party sold blueberries, blueberry plants, or cedar trees for a profit, or to quantify the amount of any such profit. Neither party has met their onus on this issue. Accordingly, I dismiss the claims of each party for an

accounting from the other in relation to profits from the sale of blueberries, blueberry plants, or cedar trees.

Issue (e): Is Ms. Zhao liable to Mr. Chandi for the wrongful retention of his personal property?

[133] In his counterclaim, Mr. Chandi also claims against Ms. Zhao for the value of personal property that he says Ms. Zhao has wrongfully retained. In final argument, he provided a list of various invoices that he says relate to expenses he incurred for the operation of the 7725 Farm. These claims are disputed by Ms. Zhao. She says Mr. Chandi's lists of items are "fake". Mr. Chandi's claims are reliant on his own evidence about what property was left at the 7725 Farm and what expenses he incurred in the operation of the 7725 Farm. I have already explained my reasons for concluding that Mr. Chandi is not a credible witness.

[134] I am unable to conclude from the evidence that Ms. Zhao has retained any property owned by Mr. Chandi, or that Mr. Chandi incurred any additional expenses related to the 7725 Farm that would oblige Ms. Zhao to pay reimbursement. I therefore dismiss Mr. Chandi's claims.

CONCLUSION/ORDERS

[135] For the foregoing reasons, I conclude that Mr. Chandi has breached his contract with Ms. Zhao in failing to pay her the agreed-upon purchase price for his one-half interest in the 7725 Farm. I issue the following orders:

- (a) Mr. Chandi shall pay Ms. Zhao damages in the amount of \$302,500, plus prejudgment interest at registrar's rates from September 1, 2016;
- (b) Ms. Zhao shall have priority to a payout of the funds that Mr. Chandi owes her before Mr. Chandi receives any proceeds from the City's expropriation of the 7725 Farm that remain in Court;
- (c) Mr. Chandi, as co-owner of the 7725 Farm at the time of the expropriation, is entitled to any remaining funds in Court once his liability to Ms. Zhao is satisfied;
- (d) Ms. Zhao's remaining claims are dismissed; and
- (e) Mr. Chandi's counterclaim is dismissed.

[136] If the parties cannot agree on an appropriate costs order, they have leave to provide further brief written submissions on costs, not to exceed 3 pages, within 30 days of this judgment. I note that there is a dispute between the parties over their respective responsibility for hearing fees. In my view, given that hearing fees are a disbursement, this dispute falls to be determined in accordance with the terms of any costs order.

"Horsman J."

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