IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jiang v. Oei,*
2023 BCSC 921

Date: 20230601
Docket: S159351
Registry: Vancouver

Between:

Yicheng Jiang

Plaintiff

And:

Paul Oei, Loretta Lai, Canadian Manu Immigration & Financial Services Inc., Cascade Renewable Organic Fertilizer Corp., Organic Eco-Centre Corp., Joseph E. Peschisolido, and Peschisolido Law Corporation dba Peschidsolido & Company and Yvonne Y. Hsu

Defendants

And:

Paul Oei, Loretta Lai, Desjardins Financial Securities Investments Inc./ Desjardins Securite Financiere Investissements Inc., Desjardins Financial Security Life Assurance of Canada/ Desjardins Securite Financiere Compagnie D'Assurance Vie, and Yicheng Jiang

Third Parties

And:

Paul Oei, Loretta Lai, Canadian Manu Immigration & Financial Services Inc., Joseph E. Peschisolido, and Peschisolido Law Corporation dba Peschisolido & Company

Fourth Parties

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the Plaintiff: N.J. Muirhead
J.F. Gray

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The Defendant Paul Oei on his own behalf and as agent for the Defendants Loretta Lai, Canadian Manu Immigration & Financial Services Inc., Cascade Renewable Organic Fertilizer Corp. and Organic Eco-Centre Corp.:	P. Oei
Place and Dates of Trial:	Vancouver, B.C. February 7, 13–17, 21–24, 27–28, 2023 March 1–3 and 24, 2023
Place and Date of Judgment:	Vancouver, B.C. June 1, 2023

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[1] This is a claim in misrepresentation, negligence, and fraud advanced by the plaintiff Yicheng Jiang against two individuals, Paul Oei and Lorretta Lai (the "Individual Defendants"), and three companies associated with the Individual Defendants: Canadian Manu Immigration and Financial Services Inc. ("Canadian Manu"), Cascade Renewable Organic Fertilizer Corp. ("CROF"), and Organic Eco-Centre Corp. ("OEC") (collectively, the "Defendant Companies").

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Overview

[2] Mr. Jiang was a Chinese national who, by 2009, had a successful career in China, and was looking to immigrate to Canada.

[3] He researched and considered various potential destinations, by himself and with other wealthy people in China who wished to emigrate.

[4] In 2008, he took a trip to Canada to inspect various projects in different provinces.

[5] In 2009, he learned about a company called Cascade Renewable Carbon Corp. ("CRC") from a university classmate.

[6] In August 2009, he travelled to Canada with Jia Xu, who was the assistant of Ming Zhang, another businessperson who was looking for an immigration project in Canada.

[7] He travelled to various places in Canada, from east to west, and reviewed numerous investment opportunities. At the end of this trip, he was introduced to the Individual Defendants.

[8] Between August 2009 and May 2010, the plaintiff and others from China travelled to Vancouver on at least five occasions, and on each occasion met with the Individual Defendants and others. They were told about CRC and its intention to build organic waste recycling plants using a patented technology. The evidence regarding the initial meetings between Mr. Jiang and the Individual Defendants is critical to this case and will be set out in greater detail below.

[9] Each time he returned to China from Vancouver, the plaintiff and his fellow travellers relayed what they had learned to other people in China, who had also expressed interest in immigrating to Vancouver by means of an investment project.

[10] The investors, including Mr. Jiang, understood that investing in CRC would entitle them to emigrate to Canada under the British Columbia Provincial Nominee Program (the "BC PNP").

[11] By May 2010, the plaintiff and various other investors had transferred approximately $3.7 million to Peschisolido & Company (the "Law Firm"), at the direction of Mr. Oei. Some of these funds, but not all of them, were transferred to CRC.

[12] In May 2013, CRC declared bankruptcy. The plaintiff and his family never qualified under the BC PNP to immigrate to Canada.

[13] In November 2015, the plaintiff sued the Individual Defendants, the Law Firm, a lawyer at the Law Firm, and Desjardins Financial Securities Investments Inc. and Desjardins Financial Security Life Assurance of Canada (collectively, "Desjardins") with whom Mr. Jiang and the investors believed the Individual Defendants were affiliated.

[14] Before the commencement of the trial, the plaintiff's claims against the Law Firm, the lawyer, and Desjardins were settled.

[15] The plaintiff's claims against Mr. Oei, Ms. Lai, and the Defendant Companies proceeded to trial.

[16] The Individual Defendants portray the events giving rise to this action as an investment which unfortunately went sour, in part because of the actions of CRC's management. They say that they did not make the representations alleged, or that they were simply repeating what they were told by others.

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Issues

[17] The primary issues to be determined in respect of the misrepresentation claims against Mr. Oei and Ms. Lai are as follows.

a) What representations were made?

b) What representations were false?

c) Were false representations relied upon by the plaintiff?

d) Did reliance on false representations cause damage?

[18] In addition, this Court must consider whether there are claims proven against the Individual Defendants for:

a) misappropriation;

b) damages arising from their conduct in relation to the bankruptcy of CRC; or

c) encouraging or inducing or otherwise affecting the bringing of lawsuits in China against Mr. Jiang.

[19] This Court must also consider whether:

a) the plaintiff is entitled to advance claims based on the investments of other investors;

b) the plaintiff's entitlement to advance his claims is affected by the doctrine of illegality;

c) Ms. Lai is liable, separate and apart from Mr. Oei; and

d) it ought to make a declaration that any judgment against Mr. Oei or Ms. Lai would not be discharged by an assignment in bankruptcy.

[20] Finally, this Court must determine whether any of the Defendant Companies are liable to the plaintiff.

<u>Witnesses, Credibility and Admissibility</u>

[21] The plaintiff testified, and also called the following witnesses:

a) Mr. Xu, who travelled to Canada with Mr. Jiang on the first trip; he was the assistant to Ming Zhang, a businessman in China;

b) Yvonne Hsu, the lawyer at the Law Firm through which some of the investors' funds were paid;

c) Wenge Lu, a friend of Mr. Jiang who invested in CRC; and

d) Yutong Lin, Mr. Jiang's ex-wife.

[22] Mr. Oei and Ms. Lai testified but did not call any additional witnesses.

[23] I found Mr. Xu to be a particularly straightforward and credible witness. Neither he nor his employer, whom he was representing with respect to this investment, ended up investing in CRC, and so he had no financial stake in the outcome of this action.

[24] Although the evidence of almost all of the other witnesses was flawed in various ways, I am unable in this case to make blanket findings of credibility that will cause me to disregard any witness' testimony entirely.

[25] The evidence of Mr. Oei and Ms. Lai was often problematic. On some issues, it was shown to be contrary to their testimony on their examinations for discovery. Mr. Oei admitted to having memory problems.

[26] Mr. Jiang, on the other hand, testified in an angry and combative manner, and was often unresponsive to questions. He repeatedly gave protracted responses to questions which were more in the nature of arguments than answers. Although his

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anger is somewhat understandable given the facts of this case, the manner in which he testified reflects poorly on the reliability of his evidence.

[27] In addition, it is troubling that on an application for security for costs, it appears that Mr. Jiang represented to the Court that he owned four properties in Saskatchewan for the purpose of demonstrating to the Court that security for costs was unnecessary, then testified at trial that those properties were beneficially owned by others.

[28] At the end of the day, I intend to examine each disputed factual issue on an individual basis, and will seek to reach conclusions on most or all of the issues without having to rely primarily on my assessment of the credibility of any of the witnesses. It is important to recall the words of Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.) who stated:

> … 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. …

Facts and Evidence

[29] There was a large volume of evidence advanced in this trial. While I have considered all of it, my reasons will address only the key facts and evidence which are relevant to the issues described above.

[30] From August 2009 to May 2010, Mr. Jiang and other investors met with the Individual Defendants on numerous occasions. These meetings and the statements made at the meetings by the Individual Defendants to Mr. Jiang and others are at the core of the plaintiff's misrepresentation claims.

The Coffee Shop Meeting

[31] The first meeting between Mr. Jiang and the Individual Defendants occurred at a coffee shop in Richmond. Mr. Xu also attended this meeting.

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[32] At the relevant time, Mr. Jiang spoke only Mandarin. Mr. Xu spoke Mandarin and some English. Mr. Oei spoke English and Cantonese. Ms. Lai spoke fluent Mandarin, and some Cantonese and English. As a result, Mr. Oei could not communicate directly with Mr. Jiang. Rather, Ms. Lai was required either to provide explanations to Mr. Jiang directly or to translate for Mr. Oei.

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[33] The meeting at the coffee shop was quite lengthy—in the order of two to three hours. There is conflicting evidence about what occurred.

[34] Mr. Jiang testified that at this first meeting:

a) Ms. Lai told Mr. Jiang that the CRC project was to turn commercial organic garbage into organic fertilizer.

b) Ms. Lai said they had the exclusive right to use a patent to process organic garbage in Canada. The owner of the patent was a professor in the United States. This professor was also chairman of the U.S. Renewable Garbage Committee. CRC had bought out the exclusive right to use this patent in Canada, and so no one else would be able to compete. This specific patent was unique and had many advantages over other technologies.

c) Mr. Jiang was told that this method was strongly supported by three levels of government, and that the government was hoping that project could be set up as soon as possible.

d) Ms. Lai said that CRC was going to earn revenue “on both ends”. When it collected garbage, the government would pay it money. Once it turned waste into organic fertilizer, it would make money again by selling the fertilizer.

e) The Individual Defendants told Mr. Jiang that they were the principals, or the persons in charge of the Vancouver branch of Desjardins. This was important to Mr. Jiang because the Desjardins company was very famous

in China. The Chinese immigration consulting companies located in China promoted a fund in the name of Desjardins. Before they came to Canada, the investors already knew the Desjardins name. Desjardins was a designated company to the federal immigration program and the Quebec immigration program.

f) Mr. Oei and Ms. Lai said that CRC was a forward-thinking project which met the needs of the society and had a strong capability to make a commercial project. Companies with such a business model would easily be listed on exchange markets. Mr. Jiang was told that because of these considerations, Desjardins approved of the project.

g) Ms. Lai said that the project only needed the final cost of building the plant—$5 million. Mr. Jiang testified that Mr. Oei and Ms. Lai specifically explained to him that investments from investors would be used for building the plant and to start the production.

h) Mr. Oei and Ms. Lai told Mr. Jiang of immigration benefits that would flow from an investment in CRC. Mr. Jiang testified that they told him that the CRC project would be recognized by government as an approved project under the BC PNP.

i) Mr. Oei and Ms. Lai said that CRC was owned by 28 Caucasian Canadian shareholders, and that it was led by Gerald Salberg who was a technology expert in the environmental protection industry.

j) Mr. Oei and Ms. Lai said that CRC was previously approved by the Royal Bank of Canada (“RBC”) for a loan to build a plant, but because of the financial crisis, RBC changed its mind and the plant was not built. They told Mr. Jiang that Desjardins still thought this was a good project.

k) Ms. Lai said that sales would be guaranteed, as CRC had already reached an agreement with Canadian Tire, and Canadian Tire had agreed to sell CRC’s products.

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[35] Mr. Xu largely corroborated the evidence of Mr. Jiang regarding the meeting at the coffee shop. He testified that he understood from Mr. Oei and Ms. Lai that this project was very beneficial to society as a whole and something that Canadian society needed.

[36] Mr. Xu also testified that Mr. Oei and Ms. Lai told him that the invested money was to be used for the construction of the site, to purchase some equipment, and for marketing arrangements and such things.

[37] He testified that Mr. Oei and Ms. Lai said that since this project was based on a US patent, the plant construction was already approved, and a permit was obtained from the government to build the plant. That meant that construction could be started right away.

[38] He testified that with this patented project, not only could investors make money but they could also achieve their immigration objectives.

[39] Mr. Xu testified that he was told that the project fit into the BC PNP. The amount of investment sought by CRC exceeded the immigration requirements. He testified that he was told that investors could receive a Canadian work permit within three months of their remittance of their investments, and permanent residency status within six months.

[40] Mr. Jiang's evidence was that these specific statements about immigration timing took place at a later meeting.

[41] The position of the Individual Defendants is that they did not make the representations alleged. I understood the defendants' position to be that any representations regarding the company came from Mr. Salberg or other management personnel at CRC, and that any representations regarding immigration came from the immigration consultants.

[42] Although the plaintiff and Mr. Xu were cross-examined at length by Mr. Oei (who was acting on his own behalf and on behalf of the other defendants), neither

was directly challenged regarding their evidence about what happened at the meeting.

Other Meetings

[43] Mr. Jiang testified that Ms. Lai and Mr. Oei said that the statements that they made about immigration could be corroborated by an immigration judge, and referred in this context to Louis Sekora, a former citizenship judge and city councillor.

[44] During the same trip to Canada which included the coffee shop meeting, there was a dinner at a Chinese restaurant. Mr. Jiang testified that, at this dinner, Mr. Sekora was introduced to him as an immigration judge and a government official, and that Mr. Sekora told him that the project was under the BC provincial immigration act, and complied with the legislation. Mr. Jiang was assured that if investors would invest in the project they would be able to achieve speedy immigration.

[45] Also, on the same trip, it appears that Mr. Xu and Mr. Jiang were introduced to Mr. Salberg. Although the *viva voce* testimony on this point was unclear, there are emails from Mr. Salberg to Mr. Xu on August 23 and August 30, 2009, which show that they met and discussed the project sometime prior to August 23.

[46] There were further trips involving Mr. Jiang and other investors in November 2009, and in February, April, and October 2010.

[47] The meetings in November 2009 and February 2010 appear to have been, at least in part, similar to the initial meetings in August. Additional investors travelled to Canada each time and the project was explained to them.

[48] In November 2009, an email was sent to Mr. Jiang by Qian (Cathy) Zhou, an assistant to Mr. Oei or Ms. Lai, copied to the Individual Defendants. It replied to various questions involving immigration (which will be addressed further below) and

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attached a profit projection, which suggested that a $1 million investment for 7.5% of the shares of CRC would generate, by the fifth year, an annual return of $945,000.

[49] Mr. Jiang testified that this email was consistent with what the Individual Defendants told him in person, but was even more detailed.

[50] At some point, probably in February 2010, Mr. Jiang was introduced to an immigration consulting firm that, he understood, had been retained by Mr. Oei. That firm was called CanLink, and the principal contact between it and the investors was Alice Tang.

[51] Mr. Xu testified that on one of the trips, Ms. Lai pointed at a store that they were passing on the road, and said that there was already a sales contract signed with this store. It would be able to sell CRC products later. Mr. Xu could not remember the name but recalled that she said the word “tire”. This evidence is corroborative of Mr. Jiang’s evidence that he had been told that there was a contract in place with Canadian Tire.

[52] Both Mr. Jiang and Mr. Xu testified that they were told by the Individual Defendants that they had made investments in CRC. Mr. Xu testified that they told him how much they invested, but he could not recall the number.

[53] In April 2010, various investors, Mr. Jiang, and the Individual Defendants went to an Air Force base in Seattle where they observed a small organic waste disposal facility.

Transfer of Funds

[54] Mr. Jiang testified that the official way to transfer funds out of China at the relevant time was to apply to the municipal government for approval. The municipal government would submit a request for approval to the Chinese provincial government which would pass it on to a department in Beijing. Then the applicant would be given a quota for an amount to invest in a foreign country, according to the

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official exchange rate. However, this was a lengthy process; even for a large company with good connections, it would take two years.

[55] Given that CRC and the Individual Defendants were insistent on receiving funds as soon as possible, Mr. Jiang and the other investors concluded that their only feasible option was to use a private currency exchange service. Such a service required the payment of funds to entities within China. Subsequently, affiliates of the Chinese entities, located outside of China—for example in Hong Kong or Singapore—would pay equivalent funds to the ultimate recipients in Canada.

[56] There was substantial evidence advanced at trial regarding the steps that the investors were required to take. Certain funds belonging to the investors were frozen in January 2010. A large additional sum of money (in excess of $1.5 million) was paid by the plaintiff or other investors so that the frozen funds could be released. Subsequently, a guarantee fee, akin to an insurance premium, was paid by the investors to assist in ensuring that their funds made their way successfully out of China to Canada. That insurance fee differed from transfer to transfer, but ranged from 15% to 30% of the transferred amount. At some point, CRC agreed to compensate the investors for the insurance fees in an amount equal to 15% of the transferred funds. These funds were invested back into the project.

[57] The evidence regarding the efforts made by the investors to transfer funds to Canada may be relevant to the illegality issue, which will be addressed below, but otherwise the means by which funds were transferred from China to Canada is not particularly germane to the issues in this case.

[58] Ultimately, between February 11, 2010 and May 31, 2011, the investors transferred $3,732,000 USD to the Law Firm’s trust account. Of this sum, $1,497,500 USD was invested by the plaintiff.

The Bankruptcy of CRC

[59] CRC declared bankruptcy on May 13, 2013.

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[60] The plaintiff testified that at around this time, Ms. Lai told him that she and Mr. Oei were trying to completely remove the Caucasian shareholders and to have a Chinese team take over by way of a bankruptcy.

[61] In an email from an assistant of the Individual Defendants to the plaintiff dated June 15, 2013, the plaintiff was advised that Mr. Oei and Ms. Lai had joined the board of CRC. The email stated that Mr. Oei and Ms. Lai had raised issues regarding "abnormal financial dealings and the lack of financial reports".

[62] The email continued:

> Regarding the corruption problem, we decided not to work with the westerners. As a result, in the past few months, we've kept asking our lawyer for advice. The lawyer suggested that we close the company first, and suggested we should buy back all the machinery at CRC company and restructure it to be a new company fully owned by Chinese. Therefore, on May 13 this year, CRC Company announced its bankruptcy and started its restructuring.
>
> Following the advice of the lawyer, we have already signed a patent with respect to this advanced technology with the U.S. Company who invested this special technology and continue to develop this environmental protection related investment project. For the purpose of treating every CRC shareholding client fairly, we cannot simply provide the investment opportunity of the restructured company to the Chinese individuals and disregard the westerners. Therefore, the lawyer suggested that we provide a 15% capital injection plan to the investment partners who are willing to continue their cooperation with us, because we've learned that the westerners do not have the ability to inject more capital.

[63] In contrast to this email, Mr. Oei's testimony was that CRC was in arrears to its landlord or other creditors, and that he and Ms. Lai did not participate in the board's decision to assign the company into bankruptcy because they were creditors.

[64] Ms. Hsu, who was providing advice to Mr. Oei at the time, denied that she gave the advice described in this email to the Individual Defendants.

Lawsuits Advanced by Investors/Claims by Mr. Jiang

[65] In 2013 and subsequently, various lawsuits were advanced by other investors against Mr. Jiang in China. Mr. Jiang paid judgments or settled claims totalling

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15,987,930 RMB. These amounts are claimed by him against the defendants in this Court.

[66] There were allegations made by Mr. Jiang that these lawsuits were encouraged or assisted by Mr. Oei. These allegations are denied by Mr. Oei.

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The Proceedings Before the British Columbia Securities Commission

[67] In 2017, proceedings were commenced by the B.C. Securities Commission, in which it was alleged that Mr. Oei and various companies controlled by him engaged in or participated in conduct in relation to the securities of CRC, CROF, and OEC when they knew, or reasonably should have known, that the conduct perpetrated fraud, contrary to s. 57(1)(b) of the *Securities Act*, R.S.B.C. 1996, c. 418.

[68] Ultimately, the Commission found that investors were told that their funds would be provided to or for the benefit of CRC, and that more than $5 million of the investors' funds were not so used. The Commission held that the respondents (other than OEC) misappropriated those funds.

[69] The Commission concluded that Mr. Oei and affiliated companies misappropriated $5,081,415 and that they repaid $1,993,437 to investors. The Commission made an order that Mr. Oei and Canadian Manu pay $3,087,977 under s. 161(1)(g) of the *Securities Act*. It also imposed an administrative penalty of $4.5 million, and imposed various permanent bans under s. 161.

[70] None of the repayments were made to Mr. Jiang. The Commission did not make any findings specifically with regard to Mr. Jiang. Further, the Commission did not advance proceedings against Ms. Lai.

Analysis

[71] I will address in order the issues set out above.

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Fraudulent or Negligent Representation

[72] The plaintiff's claims sound in fraudulent, or alternatively, negligent misrepresentation.

[73] In order to find the Individual Defendants liable for fraudulent misrepresentation, this Court is required to find that representations were made, that those representations were false, that the Individual Defendants knew that or were reckless as to whether the representations were false, and that the representations caused the plaintiff to act and to suffer a loss: *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at para. 21.

[74] The tort of negligent misrepresentation is similar except that it does not require the plaintiff to show that the Individual Defendants knew or were reckless as to the falsity of the statements in question. It requires a duty of care; a false, inaccurate or misleading and negligently made statement; and reasonable detrimental reliance: *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at 110, 1993 CanLII 146.

[75] In my view, the issues of reliance and causation in this case are straightforward. It is clear from the evidence that Mr. Jiang and other investors relied on what they were told by Mr. Oei and Ms. Lai.

[76] As discussed above, there were many representations made by Mr. Oei and Ms. Lai. However, the most important ones dealt with the use of the investors' funds, with the involvement of Desjardins, and the notion that investing in this project would allow the investors and their families to immigrate to Canada.

[77] On at least two occasions during his testimony, Mr. Oei said, "We have not given guarantees to the investors." However, the plaintiff does not allege that guarantees were made. Rather, he alleges that representations were made which were untrue.

Shares in CRC

[78] The plaintiff understood that as a result of his investment, he would receive shares in CRC. His testimony in this regard is supported by the documents. As stated above, on November 21, 2009, an email was sent to Mr. Jiang by Ms. Zhou, an assistant to Mr. Oei or Ms. Lai, copied to the Individual Defendants.

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[79] This email attached a profit projection, which stated:

> If you invest 1 million for 7.5% of the shares, the annual return on investment is as follows…

[80] Similarly, on November 26, 2009, a translation of an email from the immigration consultants CanLink was forwarded by Mr. Oei to Mr. Jiang without adverse comment. It stated:

> Mr. Jiang invested CAD 3 million to 3.5 million in the [CRC] project through his foreign company in which he is a primary shareholder, so that his foreign company will hold the corresponding number of shares in the total capital of [CRC].

[81] Although this email contemplated that the funds would be invested by Mr. Jiang through a foreign company and not directly, an important aspect of the email was the representation that the investor would hold shares in the capital of CRC.

[82] Mr. Jiang testified that he was told by the Individual Defendants that as soon as the money was sent to CRC, the company would issue shares to the investors—7.5% for every million dollars.

[83] In an email dated December 9, 2010, from Ms. Zhou to Mr. Jiang, copied to the Individual Defendants, Ms. Zhou advised that she was writing to provide responses from Mr. Oei to certain questions posed by Mr. Jiang. She stated: “Each 1 million dollars gets 7.5% of the shares”. Although this email was sent after the investors’ monies were invested, I find that it corroborates the evidence of Mr. Jiang regarding what the investors were told in late 2009 and early 2010.

[84] Mr. Oei acknowledged that the funds were not directly invested in CRC. His evidence was that Mr. Salberg wanted him to raise funds in the Chinese community but he did not want a lot of shareholders. Mr. Salberg understood that If there are 50 shareholders he would have to apply to the Securities Commission and prepare a prospectus. For this reason, Mr. Salberg insisted on indirect investment.

[85] Mr. Oei submitted that the investors knew and agreed with the indirect investment; they understood that if the investment was made too early in the immigration process it would not assist them in qualifying under the BC PNP.

[86] Regardless of the reasons for the indirect investment, I find that the indirect nature of the shareholdings was not made clear to the investors. Mr. Jiang, upon being asked whether Mr. Oei or Ms. Lai said anything about shares being issued in trust to him to a different company, he said “never. Had they said something like this, we would not have invested.” I accept the plaintiff’s evidence in this regard.

[87] I find that Mr. Oei and Ms. Lai knew that the investors would not be receiving shares directly in CRC and that they told the investors, including the plaintiff, that they would. This misrepresentation caused Mr. Jiang’s loss. The Individual Defendants are therefore liable for fraudulent misrepresentation in relation to this issue.

Use of Funds

[88] Mr. Jiang testified that at the coffee shop, Ms. Lai said that the project only needed the final cost of building the plant—$5 million—and that the investments from investors would be used for building the plant and to start production. The plaintiff testified that he was told by Mr. Oei and Ms. Lai that CRC needed money to build a plant, and that this need was critical.

[89] Mr. Xu also testified that Mr. Oei and Ms. Lai told him that the invested money was to be used for the construction of the site, to purchase some equipment, and for marketing arrangements.

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[90] The plaintiff was told that the company was willing to give 7.5% of the company's shares for each million dollars, rather than 5% as was normal, to ensure that the money would arrive on time.

[91] Based on this evidence, I find that the investors were told that their funds would be used in building a plant and for related project expenses.

[92] As discussed above, many of the funds were not used by CRC or indeed received by CRC at all. The Securities Commission found that investors were told that their funds would be provided to or for the benefit of CRC, and that more than $5 million of the investors' funds were not so used.

[93] Mr. Oei argues that it must have been obvious to the investors that he was not working for free, but he does not contend that he was entitled to $5 million in compensation. There was some evidence regarding a commission received by Mr. Oei but there was no clear evidence regarding the use of the balance of the funds.

[94] I find that in relation to this issue, Mr. Oei and Ms. Lai are liable for fraudulent misrepresentation. It is clear that they knew that a significant portion of the funds were not being used for the benefit of CRC and they led the investors, including the plaintiff, into believing that they would be.

[95] In this regard, I do not have to find that Mr. Jiang's funds, specifically, were not used for CRC purposes. The representation made was that the funds raised from investors generally were to be used for the plant and related purposes. That representation induced Mr. Jiang to invest, and it was false.

The Involvement of Desjardins

[96] There was a substantial amount of evidence regarding whether Mr. Oei represented to the investors that Desjardins was in support of this project, and whether Mr. Oei provided Desjardins business cards, or business cards at all, to the investors including Mr. Jiang and Mr. Xu.

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[97] Both propositions were denied by the Individual Defendants. Mr. Oei denied having provided the plaintiff with business cards at the first meeting in the coffee shop, or ever. He testified that it was his “habit” not to give out business cards at a first meeting but instead to maintain control over the relationship by getting the prospective client’s information, so that he would not have to wait for the prospective client to call him. Ms. Lai gave similar evidence, that she did not give out business cards at a first meeting.

[98] However, this evidence directly contradicted testimony given by both Individual Defendants on discovery. On discovery, Mr. Oei testified as follows:

> Q. And did you provide Mr. Jiang with any business cards at that first meeting?
>
> A. Yeah. That’s usually my habit of introducing myself. It’s a courtesy and professionalism, yeah.

[99] Similarly, Ms. Lai gave the following evidence on discovery:

> Q. Did you give out this particular business card to clients or potential clients on or around 2008 or 2009?
>
> A. Of course I did.

[100] Mr. Oei testified that two of the business cards in evidence were old, and bore a former address. He testified that the handwriting on the cards was not his nor Ms. Lai’s.

[101] He also testified that the project had nothing to do with Desjardins, and that there was no mention of Desjardins in any of the presentations. He testified that this was not a project that a company like Desjardins would have interest in at this stage.

[102] This latter argument made by Mr. Oei misses the point. There was no evidence at this trial to support the proposition that Desjardins was actually involved in this project. The question is whether the Individual Defendants led the plaintiff and the other investors to believe that it was.

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[103] I find that at some point, Mr. Oei and Ms. Lai provided or at least gave the investors access to the Desjardins business cards, as they were available at his office's reception desk.

[104] Further, I accept the evidence of Mr. Jiang that Mr. Oei and Ms. Lai told him that Desjardins approved of the project and thought it was a good project.

[105] In my view, Mr. Oei and Ms. Lai made statements and either provided business cards or made business cards available which led the plaintiff and the other investors to believe that there was some association between the project and Desjardins, or that Desjardins approved of or was interested in investing in it.

[106] It is difficult to accept that the plaintiff and Mr. Xu entirely made up the evidence regarding the business cards and what Mr. Jiang was told regarding the connection between the project and Desjardins.

[107] As, in Mr. Oei's words, "the project had nothing to do with Desjardins", the Individual Defendants are liable for fraudulent misrepresentation in respect of this issue.

Qualification Under the BC Immigration Program

[108] The advice given to Mr. Jiang and the other investors regarding the BC PNP was important to them, as their primary purpose for the investment was as a vehicle to immigrate to Canada.

[109] As stated above, Mr. Jiang testified that at the coffee shop, Mr. Oei and Ms. Lai told him that the CRC project would be recognized by the government as an approved project under the BC PNP.

[110] Mr. Xu also testified that he was told that the project fit into the BC PNP and that the amount of investment required by CRC exceeded the immigration requirements.

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[111] Mr. Xu testified that he was told at the coffee shop that investors could receive a Canadian work permit within three months of their remittance of their investments, and permanent residency status within six months.

[112] Mr. Jiang corroborated Mr. Xu's evidence regarding these specific statements about immigration timing although Mr. Jiang testified that the statements were made at a later meeting.

[113] Mr. Xu testified that Mr. Oei made the alleged representations regarding immigration, and that Mr. Sekora confirmed this advice for the investors. In the words of Mr. Xu, speaking to Mr. Oei who was cross-examining him: "in the beginning you said it, then [Mr. Sekora] proved it, to back up the information you provided".

[114] There are two important emails in relation to this part of the claim.

[115] On November 21, 2009, as discussed above, an email was sent to Mr. Jiang by Ms. Zhou, an assistant to Mr. Oei or Ms. Lai, copied to the Individual Defendants. That email stated, in part:

> After consulting Loretta [Lai] and Paul [Oei], we can now reply to your three questions:
>
> 1) On immigration,
>
> (a) if you personally invest 2 million Canadian dollars, you can take your family with you plus three other families. That's four families in total.
>
> (b) if you personally invest 3 million Canadian dollars, you can bring another 5 families. That's a total of 6 families including your own …

[116] Only eight days later, on November 29, 2009, a further email was sent to Mr. Jiang by Mr. Oei, apparently translating and copying advice from the immigration consultant. It stated that subject to certain conditions which are listed below, "we believe that Mr. Jiang's overseas company participating the Cascade project will satisfy the requirements and meet the qualification criteria".

[117] The email is not entirely consistent with the November 21, 2009 email, and the author appeared to believe that Mr. Jiang would be investing in the CRC project

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through a company. However, the email was passed onto Mr. Jiang by Mr. Oei without comment.

[118] The Individual Defendants' defence to this part of the claim appears to be that they were simply repeating or passing on what was said to them by Mr. Sekora or the immigration consultants. They argue that the investors ought to have spoken to the immigration consultants and it was not reasonable for them to rely on Mr. Oei and Ms. Lai in this regard.

[119] I find that given the proximate relationship between Mr. Oei and Ms. Lai and the investors, Mr. Oei and Ms. Lai owed a duty of care to the investors. Mr. Oei and Ms. Lai were the contact people in Canada for the investors regarding CRC. When investors required invitation letters to visit Canada, Mr. Oei took responsibility for obtaining them, and so it cannot be said that the Individual Defendants played no role with respect to immigration issues.

[120] I find that the plaintiff reasonably relied on the emails described above and the corresponding oral advice from the Individual Defendants and suffered loss as a result.

[121] It appears that Mr. Oei and Ms. Lai simply repeated things that they understood to be true without any independent investigation into whether they were. It is clear from subsequent evidence and correspondence from immigration consultants that the emails and oral advice provided to the investors regarding immigration were misleading, at best.

[122] On the other hand, there is insufficient evidence, in my view, to show that the Individual Defendants knew that the advice was false. I find that they made the statements and sent the emails regarding immigration negligently.

Other Alleged Misrepresentations

[123] There were a number of other representations pleaded and argued which, in my view, were not made out on the evidence.

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[124] First, Mr. Jiang testified that he was told that the defendants invested $800,000 in CRC. On this issue, Mr. Xu testified that he was told that Mr. Oei and Ms. Lai had invested in CRC, but he could not recall what they said.

[125] Mr. Oei testified that he and his family members and companies did invest significant sums in CRC, as evidenced by the share registry, although less than $800,000. I find that there is insufficient evidence to show that this representation was materially false. I am also unable to find that the plaintiff reasonably relied on this representation or that it caused a loss.

[126] Second, as discussed above, the plaintiff and Mr. Xu were both told that CRC had already reached an agreement with Canadian Tire, and Canadian Tire had agreed to sell CRC's products. Further, Mr. Oei and Ms. Lai told Mr. Jiang that CRC was previously approved by the RBC for a loan to build a plant, but because of the financial crisis, RBC changed its mind and the plant was not built.

[127] On these two points, I find that the representations in question were made, but no satisfactory proof has been advanced as to their falsity. The plaintiff has asked me to infer from the fact that the business plans and other documents do not mention these issues that the representations were false, but I am not prepared to draw this inference. The falsity of these representations was not admitted by the Individual Defendants on cross-examination.

Misappropriation

[128] In addition to pleading misrepresentation, the plaintiff makes claims in misappropriation.

[129] There was very little financial evidence before the court. There was no expert evidence. There was some evidence, and a finding of the B.C. Securities Commission, that some of the funds remitted by the investors ended up being paid to Mr. Oei or companies controlled by him, rather than to CRC or its affiliates.

[130] As discussed above, the fact that some of the funds were paid to Mr. Oei or his companies and not to the benefit of CRC underlies Mr. Jiang's misrepresentation claim.

[131] However, in my view, the Securities Commission's findings do not support Mr. Jiang's claim for misappropriation.

[132] In this proceeding, in November 2020, the plaintiff advanced an application to strike portions of the response to civil claim filed by the defendants on the basis of the findings made by the Securities Commission. In *Jiang v. Oei*, 2020 BCSC 1890, Justice Skolrood held as follows in the course of dismissing the plaintiff's application:

> [26] Further, the findings of the Commission are not dispositive of nor do they align completely with the plaintiff's claims against the Oei Defendants in the civil action. For example, the Commission found that approximately $5 million of the approximately $13 million raised from investors was misappropriated by the Oei Defendants, however the Commission did not find that the amounts claimed by the plaintiff were part of the misappropriated funds. Indeed, the Commission did not address the individual losses of any of the investors but rather dealt with the investment funds on a collective basis.
>
> [27] At the trial of this action, the plaintiff will have to establish that the funds he invested were in fact misappropriated. It will be open to the Oei Defendants as well as the other defendants to challenge that assertion. It would not be an abuse of process for them to do so given this issue was not decided by the Commission.
>
> [Emphasis added]

[133] The plaintiff has not established in this action that the funds he invested were in fact misappropriated.

Claims Relating to the Bankruptcy of CRC

[134] The plaintiff points to the email dated June 15, 2013, described above, in which Mr. Oei advised the investors that he had been advised by a lawyer to "close the company first, and suggested we should buy back all the machinery at CRC company and restructure it to be a new company fully owned by Chinese", as evidence of a scheme which the Individual Defendants sought to implement.

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[135] Subsequent to this email, Mr. Oei and Ms. Lai sought a further 15% payment from the investors which he said would enable OEC to buy the company's assets out of bankruptcy.

[136] Mr. Oei testified that he and Ms. Lai recused themselves from the CRC board meeting at which it was decided to make an assignment into bankruptcy. Mr. Oei further testified that there were other bidders for the purchase of the assets from the bankrupt estate.

[137] Mr. Jiang did not advance any further funds to OEC as requested, and there were no compensation payments made by Mr. Jiang in respect of funds paid to OEC.

[138] In my view, there is insufficient evidence to demonstrate that the Individual Defendants intentionally caused the bankruptcy to occur or that they did so in order to purchase the assets out of the bankrupt estate. Even if they did, there is insufficient evidence to show that this conduct caused a loss to Mr. Jiang.

Claims Relating to the Chinese Lawsuits Against Mr. Jiang

[139] The plaintiff alleges that Mr. Oei encouraged other investors to sue Mr. Jiang in China, and exercised influence on the Chinese government in favour of the investors against Mr. Jiang. However, the evidence in this regard is sparse.

[140] Mr. Oei testified that he and Ms. Lai fully supported the plaintiff and hoped that he would win his cases in China. He denied exercising any influence over the Chinese government, testifying that he has not been to Hong Kong or China since 2001 and that he has no connection to the Chinese government.

[141] Ms. Lai testified that he has not been to China or Hong Kong in 25 years.

[142] There is insufficient evidence to prove the plaintiff's claim that Mr. Oei persuaded or sought to persuade the investors to sue in China or persuaded or sought to persuade the Chinese government to find Mr. Jiang liable.

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The Plaintiff's Standing to Advance Claims on Behalf of Others

[143] The plaintiff was a channel of communication, although not the only one, between Mr. Oei and Ms. Lai and other investors. Particularly following his trips to Canada in 2009, Mr. Jiang relayed the information received by him to the other investors.

[144] As stated above, when the investment went sour, other investors sued Mr. Jiang in China, and he was required to compensate them for their losses.

[145] In respect of these amounts, the plaintiff's claim is a claim over against the defendants for the loss he incurred as a result of the lawsuits from the other investors. I have no difficulty in finding that the plaintiff is entitled to claim not only his own lost investments but also the amounts which he had to pay to others as a result of being the conduit or channel between those investors and Mr. Oei, Ms. Lai and CRC.

The Illegality Defence

[146] The defendants have pled an illegality defence based on Mr. Jiang's use of a private currency exchange service to circumvent Chinese currency controls. However, this defence is available only in limited circumstances.

[147] In *Kim v. Choi*, 2020 BCCA 98 at para. 44, the Court of Appeal cited the decision of the Supreme Court of Canada in *Hall v. Hebert*, [1993] 2 S.C.R. 159 at 169, in which Justice McLachlin (as she then was) held as follows:

> [44] …
>
> My own view is that courts should be allowed to bar recovery in tort on the ground of the plaintiff's immoral or illegal conduct only in very limited circumstances. The basis of this power, as I see it, lies in [the] duty of the courts to preserve the integrity of the legal system, and is exercisable only where this concern is in issue. This concern is in issue where a damage award in a civil suit would, in effect, allow a person to profit from illegal or wrongful conduct, or would permit an evasion or rebate of a penalty prescribed by the criminal law. The idea common to

> these instances is that the law refuses to give by its right hand what it takes away by its left hand. …
>
> [Emphasis added.]

[148] In my view, these limited circumstances do not exist here. There was no authority brought to my attention for the proposition that circumventing Chinese currency controls as the investors did is contrary to Canadian or British Columbia law, or to Canadian or British Columbia public policy.

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Ms. Lai's Liability Apart from Mr. Oei's

[149] Throughout the course of this trial, both Mr. Oei and Ms. Lai sought to minimize Ms. Lai's participation in the events at issue.

[150] She took the position that she was simply a translator. However, the evidence is that she spoke to investors, at least on occasion, when not translating for Mr. Oei.

[151] Mr. Xu was asked: how much was Ms. Lai translating for Mr. Oei and how much was she presenting on her own? He said for the most part, advice was translated, but when there were parts the investors were unable to understand, both Individual Defendants held themselves out to be experts. He said that they would each speak from their own knowledge.

[152] Regarding immigration issues, Mr. Xu testified that Ms. Lai was always able to explain things to the investors "in a way Chinese people were able to understand". He said:

> In private conversations, we felt that [Ms.] Lai left a bigger impact on us. She would always give us more details and would tell us how things would be done if we were unable to understand. Mostly because Paul [Oei] was not speaking good Mandarin, Ms. Lai was always able to explain to us in a lot of details.

[153] I accept Mr. Xu's evidence in this regard. In my view, Ms. Lai's direct communications with Mr. Jiang and the other investors made her responsible for the misrepresentations described above. Even if she was simply repeating what Mr. Oei or others told her, it is evident from Mr. Xu's evidence that the investors were

listening to and relying on her. In these circumstances, she is liable for false or misleading representations together with Mr. Oei.

Should this Court make a Declaration that Any Judgment is Not Discharged by Bankruptcy?

[154] The plaintiff asks this Court to make a declaratory order under s. 178(1)(d) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [*BIA*], that the judgment debt of the Individual Defendants in this case is not dischargeable in bankruptcy, on the basis that the debt arises out of “fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity”.

[155] However, the authorities suggest that such a declaration would be premature. In *Royal Bank of Canada v. Elsioufi*, 2016 ONSC 5257, Justice Dunphy held:

> **7** Even if I had been required to make a positive finding of fraud in order to issue my judgment, I should still have declined to make an advance declaration under s. 178(1)(e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as requested because I have reached the conclusion that I have no jurisdiction to make such a hypothetical declaration before the issue actually arises.
>
> …
>
> **12** I note that it is now well established that any future court considering whether the defendant can claim the benefit of a bankruptcy discharge notwithstanding this judgment will be able to go behind the formal judgment issued by me to consider both the claim on which it was based and these reasons. The strong policy of our courts in discouraging wrong-doers from abusing the bankruptcy process is in no way blunted by maintaining our court's traditional unwillingness to pronounce on hypothetical issues before their time.

[156] In these reasons, I have described the legal bases upon which I have found the Individual Defendants liable, in case those descriptions are of assistance to a court which is required in the future to deal with issues under what is presently s. 178 of the *BIA*.

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The Defendant Companies

[157] The plaintiff has advanced claims in this action against OEC, CROF and Canadian Manu, although little time was spent on those claims in closing submissions.

[158] OEC was the company used by Mr. Oei to acquire the assets of CRC following the bankruptcy. Mr. Oei testified that OEC successfully bid to procure those assets. Regardless of whether there was an ulterior motive in doing so, it did so as part of a process controlled by the trustee in bankruptcy, apparently with other bidders. There is no evidence that OEC profited in any way from the plaintiff, or that it caused the plaintiff any loss.

[159] It is alleged that Canadian Manu and CROF received funds which were intended for CRC, in breach of trust. The Securities Commission has found this to be so. However, due to the lack of financial evidence at this trial, it is not possible on the evidence to determine which of Mr. Jiang's funds, if any, flowed through to those companies and not to CRC. For the same reasons that I am not prepared to make findings of misappropriation in favour of Mr. Jiang against the Individual Defendants, I am not prepared to make findings against Canadian Manu and CROF for the knowing receipt of trust funds.

[160] I find that the plaintiff has not made out claims against any of the Defendant Companies.

Punitive Damages

[161] The plaintiff seeks an award of punitive damages.

[162] In *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189 at para. 78, the Court of Appeal, citing *Whiten v. Pilot Insurance Co.,* 2002 SCC 18 at para. 94, held that punitive damages should only be ordered in exceptional cases where the conduct in question is deserving of punishment, that is, where there has been "highly reprehensible misconduct that departs to a marked degree from ordinary standards

of decent behaviour" and where the compensatory damages ordered are insufficient to "achieve the objectives of retribution, deterrence, and denunciation".

[163] In my view, the conduct of the Individual Defendants in this case is deserving of punishment. However, the Securities Commission has made an order that Mr. Oei and Canadian Manu pay $3,087,977 under s. 161(1)(g) of the *Securities Act*, has imposed an administrative penalty of $4.5 million, and has imposed various permanent bans under s. 161.

[164] In my view, these awards are sufficient to achieve the objectives of retribution, deterrence, and denunciation. It is not necessary to impose punitive damages in the circumstances of this case, and I decline to do so.

<u>Conclusion</u>

[165] I order, pursuant to the provisions of the *Foreign Money Claims Act,* R.S.B.C. 1996, c. 155, that the Individual Defendants are liable, jointly and severally, to pay to Mr. Jiang the amount of Canadian currency required to purchase the amount of the following currencies set out below:

a) $1,497,500 USD; and

b) 15,987,930 RMB.

[166] In addition, the Individual Defendants shall be liable for interest pursuant to the provisions of s. 2 of the *Foreign Money Claims Regulation,* B.C. Reg. 165/96.

[167] I am minded to award costs of the action against the Individual Defendants at scale B. However, the plaintiff has asked for leave to make submissions on costs following the issuance of these reasons, and I grant leave to him to do so by way of written submissions to the registry, copied to Mr. Oei, within 30 days of the date of these reasons. Mr. Oei shall be entitled to respond in writing, by way of submissions sent to the registry and copied to counsel for the plaintiff, within 45 days of the date

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of these reasons. The written submissions in respect of costs shall each be limited to five pages.

“Loo J.”

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