

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Zhang v. Lin*,  
2024 BCSC 1591

Date: 20240829  
Docket: S172062  
Registry: Vancouver

Between:

**Shu Rong Zhang**

Plaintiff

And

**Cuiguo Lin and Ming Hu**

Defendants

Before: The Honourable Justice Funt

## Reasons for Judgment

Counsel for the Plaintiff:

K.J. Learn  
L. Jiang

Counsel for the Defendants:

D. Chen  
J. Hong  
(December 2019 to March 2020)

Counsel for the Defendant, Cuiguo Lin:

J. Liu  
(January 2021)  
S. Xue  
(April 2021 to July 2022)  
A. Mok  
W. Simek

Counsel for the Defendant, Ming Hu:

Z.C. Ng

Place and Dates of Trial:

Vancouver, B.C.  
December 2–6, 9–13, 16–17, 2019  
January 20–24, 27–31 and  
March 2–6, 2020  
January 4–8, 11–15, 18–22  
April 6–9, 12–16, May 10–14, 31  
June 1–4, 7–11, 2021  
February 14–18, July 4–8, 2022

Written Submissions of the Plaintiff:	January 9, 2024
Written Reply Submissions of the Defendant, Cuiguo Lin:	February 23, 2024
Further Oral Submissions:	July 12 and 15, 2024
Place and Date of Judgment:	Vancouver, B.C. August 29, 2024

## TABLE OF CONTENTS

<b>1. INTRODUCTION .....</b>	<b>5</b>
a) The Langley Farmland .....	5
b) The Surrey Bareland .....	6
<b>2. BALANCE OF PROBABILITIES.....</b>	<b>7</b>
<b>3. CREDIBILITY .....</b>	<b>8</b>
<b>4. THE PARTIES' BACKGROUNDS .....</b>	<b>9</b>
a) The Plaintiff, Ms. Shu Rong Zhang .....	9
b) The Defendant, Mr. Cuiguo Lin .....	9
c) The Defendant, Mr. Ming Hu .....	10
<b>5. THE DEVELOPMENT OF THE PARTIES' RELATIONSHIP .....</b>	<b>12</b>
<b>6. THE LAUREL PROPERTY AND THE 411 FARM .....</b>	<b>13</b>
a) The Laurel Property .....	13
b) The 411 Farm.....	14
<b>7. THE SURREY BARELAND.....</b>	<b>15</b>
<b>8. RE-OPENING OF THE JULY 2022 CLOSING ARGUMENTS.....</b>	<b>17</b>
<b>9. THE SURREY DEVELOPMENT LANDS .....</b>	<b>18</b>
<b>10. THE SURREY BARELAND – COOPERATION AGREEMENTS .....</b>	<b>20</b>
<b>11. MR. LIN'S CREDIBILITY .....</b>	<b>25</b>
<b>12. MR. HU'S CREDIBILITY.....</b>	<b>28</b>
<b>13. MS. ZHANG'S CREDIBILITY .....</b>	<b>30</b>
a) When did Ms. Zhang Learn of the Kabak Mortgages? .....	31
b) The July 21, 2017 Lunch Meeting .....	34
<b>14. SMALL INVESTORS .....</b>	<b>40</b>
<b>15. THE SURREY BARELAND – FINDINGS AND REMEDY .....</b>	<b>46</b>
a) Disgorgement.....	53
b) No Interest Based on the Payment of the Interest on the Antrim Mortgage ..	57
c) No Entitlement Based on "10% of Pre-Tax Profit" .....	60
d) No Unfair Prejudice to Other Investment Participants .....	61
<b>16. PUNITIVE DAMAGES .....</b>	<b>62</b>
<b>17. CONCLUSION .....</b>	<b>63</b>
<b>18. COSTS.....</b>	<b>63</b>
<b>SCHEDULE "A" .....</b>	<b>64</b>
<b>SCHEDULE "B" .....</b>	<b>66</b>

**SCHEDULE “C” ..... 68**

**1. INTRODUCTION**

[1] This 79-day trial addressing commercial disputes amongst the parties involving valuable real estate was unnecessarily long, and probably not necessary. Despite the significant financial values of the properties involved, the parties generally did not retain solicitors to contemporaneously document and finalize the parties' commercial arrangements.

[2] The plaintiff, Ms. Zhu Rong Zhang, had real estate dealings with the defendant, Mr. Ming Hu, a friend of her son, and the defendant, Mr. Cuiguo Lin, who was Mr. Hu's father-in-law during much of the relevant time.

[3] The two properties that are the subject of the current action are: (i) 25707 8th Avenue, Langley, B.C. (the "Langley Farmland"); and (ii) 2680-168 Street, Surrey, B.C. (the "Surrey Bareland"). The signal relief Ms. Zhang seeks relates to the breach of fiduciary duties involving the Surrey Bareland.

**a) The Langley Farmland**

[4] The Langley Farmland consists of approximately ten acres with a three-bedroom rancher (with swimming pool), riding rings, paddocks, barns, and equipment. The purchase price was \$1.7 million, of which approximately \$1.1 million was financed by a mortgage. On March 1, 2016, the sale closed with the plaintiff, Ms. Zhang, as its registered owner with unregistered 25% interests held for each of the defendants, Mr. Lin and Mr. Hu.

[5] With respect to the Langley Farmland, Ms. Zhang continued to be its registered owner prior to it being sold (the sale was approved by the Court). The net sale proceeds of \$664,847.51 (with accruing interest) are now held in trust by Mr. Jiang, counsel for Ms. Zhang, pending the resolution of the current action.

[6] Mr. Lin and Mr. Hu brought a counterclaim pleading that there was an oral agreement respecting the Langley Farmland under which Ms. Zhang would be its registered owner and would hold, in trust, a 25% interest for each of them.

[7] Ms. Zhang does not contest that she held in trust a 25% interest (unregistered) in the Langley Farmland for each of Mr. Lin and Mr. Hu.

[8] However, Ms. Zhang says that she suffered damages as a result of Mr. Lin's management of the Langley Farmland. Mr. Lin and Mr. Hu say that they suffered damages as a result of Ms. Zhang's actions after she took possession of the Langley Farmland on February 17, 2017.

[9] On the last day of legal argument, the parties settled their dispute as to damages with respect to the Langley Farmland. Each party withdrew any claim for damages they may have in relation to the Langley Farmland.

[10] In the final result, the net sale proceeds of the Langley Farmland that are currently held in trust will be divided as follows: 50% for Ms. Zhang and 25% for each of Mr. Lin and Mr. Hu. No damages with respect to the Langley Farmland will be awarded to any of the parties.

[11] The Langley Farmland is therefore now only relevant to the parties' overall real estate dealings by providing context to the other subject property, the Surrey Bareland.

**b) The Surrey Bareland**

[12] The Surrey Bareland consists of approximately three acres of land. The total purchase price was \$3,028,523, which was financed in part by a \$1.41 million mortgage (the "Antrim Mortgage"). Ms. Zhang and Mr. Hu each contributed \$809,261.51 to fund the balance.

[13] On August 31, 2015, the purchase of the Surrey Bareland closed, with Mr. Hu as its registered owner. Mr. Hu initially held in trust for Ms. Zhang a 50% interest (unregistered), which was an interest equal to his interest. The parties had agreed that Mr. Lin would acquire an interest in the Surrey Bareland to the extent he paid the interest on the Antrim Mortgage. Mr. Lin would also receive "10% of pre-tax profit [...] as his operating management fee".

[14] Although not subject to claims in the current action, two further properties, 2289-176 Street and 2317-176 Street, Surrey, B.C. are relevant to this action. These properties are referred to as the “Surrey Development Lands”. They are adjacent properties that were held by L23172289 B.C. Holdings Ltd. (“Hold Co”). Mr. Lin and Mr. Hu are both shareholders of Hold Co.

[15] The Surrey Development Lands became financially related to this action when Mr. Lin and Mr. Hu caused two further mortgages (in addition to the Antrim Mortgage) to be placed on the Surrey Bareland to help finance Hold Co’s purchase of the Surrey Development Lands. Neither Mr. Lin nor Mr. Hu told Ms. Zhang that the two further mortgages were being placed against the Surrey Bareland.

[16] As noted, Mr. Hu is the registered owner of the Surrey Bareland. Ms. Zhang seeks to have the Surrey Bareland solely registered in her name upon her funding the discharge of the Antrim mortgage and paying Mr. Hu \$809,261.51 (in recognition of his initial contribution to the purchase of the Surrey Bareland).

[17] The two further mortgages that had been charged on the Surrey Bareland were discharged in December 2020 and January 2021.

[18] For the reasons that follow, Ms. Zhang will be granted the relief she seeks with respect to the Surrey Bareland.

## 2. BALANCE OF PROBABILITIES

[19] In *F.H. v. McDougall*, 2008 SCC 53, Justice Rothstein, writing for the Supreme Court of Canada, stated:

[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[20] In *F.H.*, Justice Rothstein also stated that “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test”: para. 46.

### 3. CREDIBILITY

[21] In *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392, Justice Dillon described the assessment of credibility:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); [*Faryna*] v. *Chorny*, [1952] 2 D.L.R. [354] (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*[Faryna]* at para. 356).

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

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

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

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



**4. THE PARTIES' BACKGROUNDS**

**a) The Plaintiff, Ms. Shu Rong Zhang**

[24] Ms. Zhang is married to Mr. Giufeng Wang (“Mr. G. Wang”). They have two sons, one of whom was involved in the events related to the current action—James Han Biao Wang (“Mr. J. Wang”).

[25] Ms. Zhang was born in the People’s Republic of China in 1965. She finished junior high school in China. Before immigrating to Canada, she had worked at a printing shop for approximately six years and as an insurance salesperson for about one year. She does not speak English. As described by her counsel, she has primarily been a “stay-at-home mom”. She has little business experience.

[26] Before 2008, Ms. Zhang, Mr. G. Wang, and their two sons resided in China. In 2008, they became Canadian permanent residents. Mr. G. Wang subsequently returned to China to continue to undertake a printing business of which he was a significant partner and lost his permanent resident status. He subsequently regained his permanent resident status. In 2017, he sold his interest in the printing business. He is now retired and lives in the Lower Mainland.

[27] Mr. G. Wang enjoys considerable wealth given his past business in China. In China, he has also invested in six or seven residential or commercial properties of which he still owns three or four. He did not engage in real estate development in China.

[28] Mr. J. Wang was born in China in 1992. In 2017, he graduated with a Bachelor of Science from the University of British Columbia. In late 2014 or early 2015, he first met Mr. Hu. As their relationship developed, he expressed his interest in real estate. He wished to learn about the real estate business, which, in turn, his parents supported.

**b) The Defendant, Mr. Cuiguo Lin**

[29] Mr. Lin and his family also previously resided in China. In 2005, they became Canadian permanent residents.

[30] Mr. Lin had operated an import business in China. In Canada, he has become active in real estate investment and development. He has never held a real estate licence.

[31] As described in the parties' July 19, 2022 Joint Statement of Agreed Facts (the "Agreed Statement of Facts"), Mr. Lin "was involved in various investments in real estate in or around the Greater Vancouver Area, sometimes on his own and sometimes with other persons. In most or all those investment projects, Lin was responsible for finding the real estate to invest in".

[32] The Agreed Statement of Facts was prepared contemporaneously with the closing arguments in early July 2022 and finalized on July 19, 2022.

[33] In his opening statement, Mr. Lin's counsel described Mr. Lin "as an experienced real estate investor who identifies, evaluates, and analyzes real estate properties for development and/or investment potential, and he puts together a group of investors to purchase real estate in B.C."

### **c) The Defendant, Mr. Ming Hu**

[34] I understand that Mr. Hu was born and raised in China. Starting in 1999, Mr. Hu attended Columbia International College in Hamilton, Ontario for some pre-university courses. He then attended McMaster University for approximately four years.

[35] At McMaster University, Mr. Hu obtained a Bachelor of Business Administration. His courses were taught in English. At trial, he used an interpreter.

[36] By 2007, Mr. Hu had "started to buy and sell some houses" with one of his friends.

[37] Mr. Hu described himself currently as "self-employed" and that "I do some investments". The investments are "in a variety of areas", including real estate. He undertakes real estate investments with others in addition to investing on his own account.

[38] In 2015, Mr. Hu married Mr. Lin's daughter. Mr. J. Wang was Mr. Hu's best man at the wedding. Mr. Hu and his wife separated in or around early 2017 and were subsequently divorced.

[39] Mr. Hu does not necessarily limit his investments to real estate. He testified that there are "multiple ways you can invest your money". As he described, for him, cars are more than a hobby. He owns a Pagani Huayra Roadster which cost approximately 2.8 million Euros. Each car, Mr. Hu explained, is custom-built for the client over approximately three years.

[40] In addition to pleasure, Mr. Hu also viewed his Pagani Huayra Roadster as an investment. He testified that there are only about 20 Pagani Huayra Roadsters for each model series and as other cars in the group are damaged or destroyed, the remaining Pagani Huayra Roadsters increase in price (a somewhat tontine).

[41] In his re-examination, Mr. Hu described matters:

Q Okay. So is it a rare car or is it a common car?

A Very rare.

Q Okay. Now, a Pagani -- or rather your Pagani, do you expect it to appreciate in value, to remain the same in value or to depreciate in value?

A Appreciation every year, but it varies in the degree to which it happens because it takes at least -- just by ordering it, it takes three years. Each series is a limited edition.

So let's say if there is an automobile accident and then you lose one, then of course it makes your vehicle more precious. So your model would appreciate in price as time goes by.

Q Okay.

MR. NG: Now, I don't think Mr. Learn will object to me asking this one leading question but if he does, I'm giving him this advance warning.

THE COURT: Mr. Interpreter, ask Mr. Hu not to answer until we hear from Mr. Learn.

MR. NG: Okay.

Q So from what I'm hearing basically at the time you were very passionate about cars, but this is not merely a passion because in a way it is also an investment; is that right?

MR. LEARN: That is the purchase of the Pagani? Is that what you're talking about?

MR. NG: Yeah. Yeah. A Pagani and similar supercars.

MR. LEARN: I have no objection to that question, My Lord.

THE WITNESS: Initially it was purely led by passion, but later I gradually learned more about it. Then I have turned it into a way of investment.

[42] Mr. Hu stated that at the time of the acquisition of the Surrey Bareland, his focus was on his wish to open a car dealership.

[43] Mr. Hu's mother, Ms. Su Qin Xia, also lives in the Lower Mainland. Mr. Hu testified that funds for many of his investments came from his parents. He stated that the overall amount was approximately \$4.2 million, as calculated by his parents.

## 5. THE DEVELOPMENT OF THE PARTIES' RELATIONSHIP

[44] The Agreed Statement of Facts<sup>1</sup> describes the development of the parties' relationship:

J. Wang became acquainted with Hu in late 2014 or 2015 on a social occasion.

When he associated with Hu, J. Wang learned about Hu's involvement in real estate investment and expressed his interest in getting involved in real estate investment with Hu.

J. Wang was first invited to Lin's home in March or April 2015, where he met with Lin for the first time.

Hu and Lin's daughter got married in Hangzhou, Zhejiang, China in May 2015. J. Wang attended the wedding personally in Hangzhou, China, and acted as Hu's best man.

J. Wang also met with Lin and his wife in Hangzhou at or around the time of Hu's wedding.

After the wedding, Hu and his wife visited Beijing in June 2015, where he met with Zhang and G. Wang personally.

On or about July 16, 2015, Zhang visited Salt Spring Island, British Columbia from China, where she met with Lin for the first time. At that time, Hu's family and a number of other families that were friends to the Lin family were having a group holiday on Salt Spring Island. J. Wang accompanied Zhang to Salt Spring Island during her said visit.

---

<sup>1</sup> In these reasons, I have reordered the facts in the Agreed Statement of Facts for clarity.

In or around August 2015, Zhang went to reside on a property owned by Hu's mother with a civic address of 3355 Boundary Road, Abbotsford, British Columbia, on which there is a farm with a single-family residence (the "Abbotsford Farm"), owned by Hu's mother, Su Qin Xia. However, there are disputes over whether Zhang ever worked on the farm and whether Lin promised Zhang \$3,000 a month for working on the farm.

[45] As described below, Mr. J. Wang's first real estate dealings were with Mr. Hu in May 2015. Subsequently, Ms. Zhang became involved.

[46] These initial dealings involved two further properties, which the parties refer to as the "Laurel Property" and the "411 Farm". Neither property is financially tied to the subject properties in the current action. However, both properties are relevant as to the parties' overall real estate dealings.

## **6. THE LAUREL PROPERTY AND THE 411 FARM**

[47] The Agreed Statement of Facts sets forth the relevant history regarding these two properties.

### **a) The Laurel Property**

[48] The Agreed Statement of Facts sets forth the following with respect to the Laurel Property:

In or before May 2015, Hu recommended to J. Wang a residential property at 4016 Laurel Street, Vancouver, British Columbia (the "Laurel Property") as their first joint project of real estate investment in the Greater Vancouver Area.

On May 28, 2015, J. Wang entered into a Contract of Purchase and Sale to purchase the Laurel Property at a purchase price of \$1,940,000 (the "Laurel Contract").

On the same date of May 28, 2015, with Hu's consent, J. Wang entered into an addendum to the Laurel Contract to assign the Laurel Contract to Zhang.

At the same time as J. Wang entered into the Laurel Contract, J. Wang agreed with Hu orally that:

- a. The Laurel Property would be purchased as a joint real estate investment between J. Wang or his mother Zhang on one part and Hu on the other part;
- b. The title to the Laurel Property would be registered in the name of J. Wang, or Zhang;

- c. J. Wang or Zhang would apply for a mortgage to fund part of the purchase costs for the Laurel Property;
- d. The balance of the costs for purchasing, maintaining and potentially developing the Laurel Property would be paid equally by J. Wang or Zhang as one part and by Hu on the other; and
- e. Any profit from the investment in the Laurel Property would be shared equally between J. Wang or Zhang as one part and Hu on the other.

By August 31, 2015, assisted by a mortgage broker recommended by Lin, Zhang had applied for and been granted a loan from HSBC Bank Canada, secured by a first mortgage registered against the title to the Laurel Property, of approximately \$1,340,000 to partially fund the purchase of the Laurel Property.

On August 31, 2015, purchase of the Laurel Property was completed. On or around the same date of August 31, 2015, Zhang became the registered owner in fee simple of the Laurel Property.

Also on August 31, 2015, Zhang executed a Declaration of Bare Trust and Agency Agreement, pursuant to which she would hold the title to the Laurel Property for the benefit of 1046858 B.C. Ltd., which was incorporated on August 24, 2015. At all material times, Zhang owned 50% of the shares of 1046858 B.C. Ltd., while the other 50% of shares were equally divided between Mingo Investment Ltd., a corporation in Hu's control, and 1045879 B.C. Ltd., a corporation held by a friend of Hu, called Zhi Min Ye.

In 2016 and before May 2016, Zhang signed a Contract of Purchase and Sale to sell the Laurel Property to an unrelated corporate buyer, which sale was completed on May 2, 2016.

As agreed, Hu contributed half of the out-of-pocket costs or expenses in relation to purchasing and maintaining the Laurel Property.

There was a profit from the investment in the Laurel Property. Upon completion of the sale on or about May 2, 2016, Zhang and Hu (acting on behalf of Mingo Investments Ltd. and 1045879 B.C. Ltd.) shared the said profits equally. There is no dispute over the investment in the Laurel Property or the sharing of the profits.

## **b) The 411 Farm**

[49] The Agreed Statement of Facts sets forth the following with respect to the 411 Farm:

On December 18, 2015, Lin entered into a Contract of Purchase and Sale (the "411 Farm Purchase Contract") to purchase from unrelated sellers a property with a civic address of 411 256th Street, Langley, British Columbia (the "411 Farm"), which is a farm, for a purchase price of \$1,700,000. Lin located the 411 Farm.

Before entering into the 411 Purchase Contract, Lin located the 411 Farm as an investment property.

On January 9, 2016, Lin assigned the 411 Farm Purchase Contract to G. Wang as the new buyer, upon which it was understood and agreed that the 411 Farm would be entirely G. Wang's investment, and neither Lin nor Hu would have any interest in it.

On May 15, 2016, the 411 Farm Purchase Contract was completed with the title to 411 registered under the name of G. Wang.

[50] In sum, by May 2016, the parties had developed a good relationship. Ms. Zhang and Mr. Hu had realized and shared in the profit on the Laurel Property, and Mr. Lin had assisted Mr. G. Wang (Ms. Zhang's spouse) in acquiring the 411 Farm. As well, as described below, on August 31, 2015, the purchase of the Surrey Bareland had also completed without initial controversy.

[51] As will be seen below, the parties' relationship began to deteriorate in June 2016.

## **7. THE SURREY BARELAND**

[52] As noted, the Surrey Bareland is one of the subject properties in this action.

[53] The Agreed Statement of Facts sets forth many of the relevant facts with respect to this subject property:

On or about May 14, 2015, Lin entered into a Contract of Purchase and Sale (the "Surrey Bareland Purchase Contract") to purchase from an unrelated seller a property with a civic address of 2680 168th Street, Surrey, British Columbia ("Surrey Bareland"), which was a piece of bare land with no improvement on it, at a purchase price of \$2,820,000. An addendum to the said Contract of Purchase and Sale, which is also dated May 14, 2015, provided that on completion the title to the Surrey Bareland would be registered in Hu's name.

Lin entered into the Surrey Bareland Purchase Contract for the purpose of investment.

Also on August 31, 2015, the Surrey Bareland Purchase Contract was completed. Hu became the registered owner in fee simple of the Surrey Bareland. Hu and Zhang each contributed \$809,261.51 initially towards the purchase of the Surrey Bareland.

By August 31, 2015, assisted by a mortgage broker recommended by Lin, Hu had applied for and been granted a loan from Antrim Balanced Mortgage Fund Ltd., secured by a first mortgage registered against the title to the Surrey Bareland, of approximately \$1,410,000 (the "Antrim Mortgage") to partially fund the purchase of the Surrey Bareland.

On December 26, 2015, Hu, Lin and Zhang entered into a first written Cooperation Agreement respecting their joint investment in the Surrey Bareland, a true copy and an agreed English translation of which is included on Trial Exhibit #4 at Tab 2 at pages 2 to 4.

On May 9, 2016, Lin, Hu and Zhang entered into a second written Cooperation Agreement respecting their joint investment in the Surrey Bareland, a true copy and an agreed English translation of which is included on Trial Exhibit #4 at pages 5 to 8.

In both the first and second written Cooperation Agreements, it was provided, without limitation, that the Zhang and Hu's payments of the costs for purchasing the Surrey Bareland were their investment, while Lin's monthly mortgage interest payments for the Antrim Mortgage would be his investment.

On or about June 23, 2016, Lin presented a draft third written Cooperation Agreement respecting their joint investment in the Surrey Bareland, a true copy and an agreed English translation of which is included on Trial Exhibit #4 at pages 12 to 15. In the said draft, Lin included a provision that the principal of the Antrim Mortgage be regarded as Lin's investment.

Zhang did not sign the draft third written Cooperation Agreement, neither did Lin or Hu.

With respect to the initial contribution of Zhang and Hu by way of down payment to the Surrey Bareland in the amount of \$809,261.51 respectively, their individual contribution amount was recorded in error as \$8,092,615,100 in the original 1st and 2nd Chinese Cooperation Agreements recorded, and the English translations carried the exact mistaken amounts so that in both 1st and 2nd English and Chinese Cooperation Agreements, Zhang and Hu each contributed \$8,092,615,100. Lin corrected this numeric error in the 3rd Chinese Agreement so its English translation also correctly recorded the initial contribution of Zhang and Hu.

Notwithstanding that numeric error in the 2nd Cooperation Agreement, Zhang, Lin and Hu all agree that Zhang and Hu each made an initial down payment of \$809,261.51, and the 2nd Cooperation Agreement is still valid binding, enforceable.

On June 29, 2016, G. Wang emailed to Lin, refusing to regard the principal of the Antrim Mortgage as Lin's investment.

On May 17, 2016, Hu and Shawn Smith entered into an exclusive listing contract regarding the Surrey Bareland for the period from May 20, 2016 to November 20, 2016 (Trial Exhibit #5 at Tab 83). No offer to purchase the Surrey Bareland had been received during the term of listing.

On March 22, 2018, Hu accepted an offer from Canadian Horizons Acquisition Corp. regarding the Surrey Bareland (Trial Exhibit #3 at Tab 130). The accepted offer in paragraph 2 of Schedule A includes a condition that no purchase price (deposits included) would be payable until the Seller has caused the certificate of pending litigation registered in the Action to be removed.



On February 7, 2019, Hu entered into a multiple listing contract with a different realtor regarding the Surrey Bareland (Trial Exhibit #5 at Tab 84).

On September 18, 2020, Hu further accepted an offer from Dawnvale Farms Ltd. regarding the Surrey Bareland (Trial Exhibit #37). The accepted offer includes a subject of due diligence of, amongst other things, the title to the property. That subject was never removed.

Hu remains the registered owner in fee simple of the Surrey Bareland.

[54] Mr. Lin and Mr. Hu pleaded, and took the position, consistent with the draft Third Cooperation Agreement, that the principal amount of the Antrim Mortgage should also be credited as a contribution by Mr. Lin that gives rise to an interest for him in the Surrey Bareland. By the time of July 2022 closing arguments, Mr. Lin and Mr. Hu had withdrawn their position that Mr. Lin should be credited an interest in the Surrey Bareland based on the principal amount of the Antrim Mortgage.

[55] In sum, Mr. Lin and Mr. Hu now say that Mr. Hu was to hold the Surrey Bareland in trust with an unregistered interest equal to his interest for Ms. Zhang (initially 50%). Mr. Lin was to receive an interest in the Surrey Bareland to the extent he paid the interest on the Antrim Mortgage. Mr. Lin, upon the sale of the Surrey Bareland, would also receive “10% of the pre-tax profit”.

[56] By the end of June 2016, controversy among the parties had arisen. Mr. G. Wang (and Ms. Zhang) were refusing to recognize Mr. Lin’s assertion that he should have an interest in the Surrey Bareland that was calculated, in significant part, based on the principal amount of the Antrim Mortgage.

## **8. RE-OPENING OF THE JULY 2022 CLOSING ARGUMENTS**

[57] For reasons set forth further below, on December 28, 2022, Ms. Zhang brought an application for the production of further documents related to the sale of the Surrey Development Lands. The application was opposed. Ms. Zhang was successful and further documents were produced which, in turn, led to further evidence and closing submissions in July of this year.

## 9. THE SURREY DEVELOPMENT LANDS

[58] As noted, the Surrey Development Lands are financially related to this action as a result of Mr. Lin and Mr. Hu causing two further mortgages to be placed on the Surrey Bareland to help fund their respective investments in Hold Co and, in turn, Hold Co's purchase of the Surrey Development Lands.

[59] The Agreed Statement of Facts again sets forth many of the relevant facts:

In or before October 2015, Lin started to look into two pieces of adjacent lands in Surrey with civic address of 2289 and 2317 176<sup>th</sup> Street, Surrey, British Columbia (the "Surrey Development Lands" or "SDL") as an investment project (the "Surrey Development Project" or "SDP").

On May 8, 2016, Lin entered into two Contracts of Purchase and Sale (collectively, the "SDL Purchase Contract") to purchase the SDL for a purchase price of \$5,350,000 for each piece of land and a total purchase price of \$10,700,000.

On August 18, 2016, Lin and Hu were involved in incorporating L23172289 Holdings Ltd. (the "Hold Co") as the project company to purchase the SDL and to conduct the SDP.

Since the incorporation of Hold Co on August 18, 2016, Lin, Hu, or companies in their control, have been shareholders of Hold Co.

Lin holds a percentage of the shares of the Hold Co. under his name in trust for some other people (individually a "Small Investor"), whose names do not appear on the Central Securities Register of Hold Co. but have made investments in the Hold Co through Lin pursuant to the Investment Agreements that each Small Investor has entered into with Lin.

On August 16 and 22, 2016 respectively, Hu signed two loan documents from Kabak Ventures Ltd. (the "Kabak Mortgages") and the net loan proceeds (the "Kabak Funds") were applied towards the down payment for purchasing the SDL on completion of the SDL Purchase Contract on August 25, 2016, as Hu and/or Lin's investment in SDP. The particulars of the two loans are as follows:

- a. A 1<sup>st</sup> loan with a principal of \$1,000,000 secured by a second mortgage registered against the title to the Surrey Bareland;
- b. A 2<sup>nd</sup> loan with a principal of \$425,000 secured *inter alia* by:
  - i. A 3<sup>rd</sup> mortgage on the Surrey Bareland (the 2<sup>nd</sup> and 3<sup>rd</sup> mortgages on the Surrey Bareland are collectively referred to as the "Kabak Mortgages") and
  - ii. A 2<sup>nd</sup> mortgage on a property with a civic address of 2715 - 164A Street, Surrey, British Columbia, Hu's residence.

On August 25, 2016, the SDL Purchase Contract was completed, with the title to the SDL registered under the name of the Hold Co.

Part of the purchasing costs for the SDL was funded by a loan from iMor Capital Corp., represented by InstaFund Financial Services (2000) Ltd., secured by a loan with a principal amount of \$4,350,000 as the 1st mortgage registered against the title to the SDL (the “InstaFund Mortgage”).

On or about February 25, 2019, Hold Co paid off the InstaFund Mortgage with proceeds of a loan that it borrowed from Golden Top Financial Services Inc. with a principal amount of \$6,000,000 and secured by a 1st mortgage registered against the title to the SDL for the benefit of the lender (the “Golden Top Mortgage”).

In April 2021, Hold Co paid off the Golden Top Mortgage with proceeds of a loan that it borrowed from CareVest Capital Inc. with a principal amount of \$8,000,000 and secured by a 1<sup>st</sup> mortgage registered against the title to the SDL for the benefit of the lender (the “CareVest Mortgage”). As of this date, the CareVest Mortgage remains on the title to the SDL.

Lin claimed he had, directly or indirectly, paid all the costs or expenses in relation to the Antrim Mortgage, including but not limited to the monthly mortgage payment, and other expenses for or in relation to maintaining the title to the Surrey Bareland, such as the annual property tax, since the completion of the Surrey Bareland Purchase Contract on August 31, 2015.

As of this date the Antrim Mortgage has never been in default.

The \$1,000,000 Kabak Mortgage #1 (CA5429977) was paid off and cancelled on January 13, 2021, before which the Kabak Mortgage #1 had never been in default.

The \$425,000 Kabak Mortgage #2 (CA5441701) was modified and discharged from the Surrey Bareland on December 16, 2020. The balance of the Kabak Mortgage #2 of \$325,000 remains registered against Hu’s residence. Kabak Mortgage #2 had never been in default before December 16, 2020.

Hold Co still holds the title to SDL, both legally and beneficially, as of this date.

[60] The Agreed Statement of Facts states that, as of July 19, 2022, the CareVest Mortgage was still registered on the Surrey Development Lands and that Hold Co still held title to the Surrey Development Lands. Startlingly, each of these stated facts is not true. Moreover, Mr. Lin and Mr. Hu knew such not to be true. The July 2022 closing submissions had proceeded on the basis that these facts were true.

[61] In truth, on March 30, 2022, Hold Co had completed the sale of the Surrey Development Lands (with the CareVest Mortgage discharged) to Canadian Horizons Acquisition Corp. (“Canadian Horizons”), an arm’s length purchaser.

[62] On May 26, 2021, Canadian Horizons had entered into a contract of purchase and sale with Hold Co.

[63] On August 27, 2021, Canadian Horizons had waived a 90-day due diligence condition that was part of the May 26, 2021 contract of purchase and was for Canadian Horizons' sole benefit.

[64] I wish to emphasize that Mr. Xue—then counsel for Mr. Lin—and Mr. Ng—counsel for Mr. Hu—were wholly unaware of the true facts. I am satisfied that neither counsel would have had a basis to suspect otherwise. Mr. Lin simply did not tell Mr. Xue. Similarly, Mr. Hu did not tell Mr. Ng that Hold Co had sold the Surrey Development Lands and that the CareVest Mortgage had been discharged some months before counsel executed the Agreed Statement of Facts on behalf of their respective clients.

**10. THE SURREY BARELAND – COOPERATION AGREEMENTS**

[65] Stepping back, on August 31, 2015, the purchase of the Surrey Bareland closed. Mr. Hu was shown as the registered owner. Mr. Hu and Ms. Zhang had each contributed \$809,261.51 towards the purchase.

[66] The \$2.82 million purchase price and related taxes and costs for the Surrey Bareland totalled \$3,028,523.02. The \$1.41 million Antrim Mortgage and the \$1,618,523.02 (\$809,261.51 x 2) from Ms. Zhang and Mr. Hu funded the \$3,028,523.02.

[67] With respect to the Surrey Bareland, Mr. Lin drafted three agreements, styled as “cooperation agreements” to document the parties’ oral agreements (the “Cooperation Agreements”). These Cooperation Agreements are those to which the Agreed Statement of Facts refers.

[68] The parties signed the first two of the Cooperation Agreements. The second Cooperation Agreement dated May 9, 2016 (the “Second Cooperation Agreement”) replaced the first Cooperation Agreement dated December 26, 2015 (the “First

Cooperation Agreement”). The Second Cooperation Agreement served to refine the total purchase price of the Surrey Development Lands based on further detail with respect to taxes, fees, and expenses related to the acquisition of the Surrey Development Lands.

[69] A copy of the Second Cooperation Agreement is attached as Schedule “A”. Before me, the parties agreed to the handwritten corrections to the English translation, including the further comma at paragraph 3.

[70] Ms. Zhang did not agree to the terms of the third Cooperation Agreement dated June 23, 2016 (the “Third Cooperation Agreement”).

[71] Paragraphs 3 and 4 of the Second Cooperation Agreement are of particular importance. For ease of reference, these paragraphs read:

3. The [Antrim Mortgage] amount is CAD 1.41 million, and monthly interest is CAD 7,100, to be paid by [Mr. Lin], as [Mr. Lin’s] investment.
4. Equity ratio and profit and loss allocation: The equity ratio is calculated according to the actual financial contribution of each party of [Mr. Lin], [Ms. Zhang] and [Mr. Hu] at the time of selling the land. Profit and loss distribution: [Ms. Zhang] and [Mr. Hu] agree that after the project is sold and the costs are deducted, 10% of pre-tax profit will be paid to [Mr. Lin] as his operating management fee and the remaining profit will be distributed according to the actual contribution in proportion of each of the three parties at the time of selling the land. The three parties shall file and pay their personal income tax with respect to their individual profit received from the project according to the provisions of the Canadian tax department.

[72] With respect to the Second Cooperation Agreement, in her third amended notice of civil claim (the “Third ANOCC”), Ms. Zhang pleads:

12. The parties agreed that Hu and Zhang would share equally the deposit and down payment including the properly transfer tax, legal fees, adjustments, and other costs and expenses.
13. The parties agreed that Lin would be paid contingent 10% of the net pretax profit of the sale proceeds after the [Surrey Bareland] was sold for his operation and management fees. The balance of the net sale proceeds would be distributed in proportion to each party’s actual financial contribution at the time of sale of the [Surrey Bareland].
14. The parties further agreed that Lin would pay the monthly mortgage interest (not principal) in the sum of \$7,100.00, and his aggregate

mortgage interest payments until the [Surrey Bareland] was sold would be counted as his financial contribution that would entitle him to proportional profit sharing of the net pretax sale proceeds of the [Surrey Bareland].

15. Because Hu was the only mortgagor, the title of the [Surrey Bareland] would be registered in his name exclusively.

[73] In their Amended Response to the Third ANOCC, Mr. Lin and Mr. Hu deny the facts alleged at paragraphs 12 to 15 of the Third ANOCC. In this regard, they pleaded (in part):

4. [...]
  - a. the parties agreed that the principal of the [Antrim Mortgage], specifically \$1,410,000.00, is Lin's financial contribution and initial investment in the [Surrey Bareland].
  - b. Lin is to pay the interest for the [Antrim Mortgage] without contribution from Zhang or Hu.
  - c. Zhang has not given any consideration for the [Antrim Mortgage]. She has not paid any monies toward the interest or the principal of the Mortgage.
  - d. Zhang also did not make any contribution toward the approval of Mortgage. Hu[']s and Zhang's personal assets were disclosed, appraised, and evaluated during the application process for the Mortgage in order to obtain the mortgage approval.
  - e. It was clear understanding and intention of the parties that Lin's initial financial contribution is the principal of the [Antrim Mortgage] and Lin was to pay the interest of the [Antrim Mortgage] on his own. [...]

[74] In their October 4, 2019 trial brief, Mr. Lin and Mr. Hu took the position that "[t]he [S]econd [Cooperation Agreement] is not a valid agreement as the parties agreed to sign a third agreement to replace the [S]econd [Cooperation] agreement".

[75] The key terms of the Third Cooperation Agreement drafted by Mr. Lin read:

3. The [Antrim Mortgage] amount is CAD 1,410,000.00, secured by [Mr. Hu's] property – with the interest to be paid by [Mr. Lin], as [Mr. Lin's] investment.
4. Equity ratio and profit and loss allocation: The equity ratio is calculated according to the actual financial contribution of each party of [Mr. Lin], [Ms. Zhang] and [Mr. Hu] at the time of selling the land. The profit and loss will be distributed according to the above proportion. The three parties shall file and pay their personal income tax with respect to their

individual profit received from the project according to the provisions of the Canadian tax department.

[76] As noted, Ms. Zhang did not agree to sign the Third Cooperation Agreement and Mr. G. Wang expressly rejected it. It is also readily apparent that Ms. Zhang's interpretation of the Second Cooperation Agreement, that Mr. Lin would not enjoy an interest in the Surrey Bareland based in large part on the principal amount of the Antrim Mortgage, made good business sense.

[77] Explicitly clear wording would be required for a party's financial contribution to be viewed as that of the principal amount of a mortgage secured by the subject property as constituting part of that party's financial contribution. A numerical example will serve to illustrate.

[78] Suppose A, B, and C agree that Blackacre will be purchased for \$1,000 with \$400 funded by way of a mortgage. B and C each provide \$300 in funding to cover the \$600 balance (\$1,000 - \$400). A does not contribute to the purchase other than agreeing to pay the interest on the \$400 mortgage.

[79] If, say, two years later, Blackacre is sold for \$2,000. The net proceeds will be \$1,600 (the \$2,000 sale proceeds minus the \$400 mortgage). B and C will each receive \$800 ( $\$1,600 \div 2$ ). In other words, with the leverage provided by the \$400 mortgage, B and C will each have made a gain of \$500 on their respective \$300 investments ( $\$800 - \$300$ ). A's interest payments would not be materially significant.

[80] If, instead, A's financial contribution is viewed as the principal of the mortgage, then the returns for B and C are far less.

[81] The calculations are as follows. The net proceeds from Blackacre's sale are \$1,600 (the \$2,000 sale proceeds minus the \$400 mortgage).

[82] B and C had each contributed to \$300 (or 30%) to Blackacre's purchase. A's contribution is viewed as the principal amount of the mortgage, that is \$400 (or 40%).

[83] The result is that B and C are each entitled to 30% of the \$1,600, or \$480 of the sale proceeds, with each realizing a \$180 profit (\$480 - \$300). A is entitled to 40% of the sale proceeds. A's 40% share is \$640 (\$1,600 x 40%). A's profit is equal to his share of the sale proceeds (\$640). Again, A's interest payments would not be materially significant. In sum, B and C each enjoy a \$180 profit. A enjoys a \$640 profit.

[84] It makes little business sense for A to enjoy a greater financial return than either B or C when A had little or no financial risk. A's \$400 financial "contribution" was only from arranging for a loan from a third party secured by a mortgage placed on Blackacre.

[85] The wording of the Third Cooperation Agreement drafted by Mr. Lin arguably would entitle him to claim the principal of the mortgage as part of his financial contribution. The wording of the Second Cooperation Agreement does not.

[86] Insofar as there was any ambiguity in the Second Cooperation Agreement, the principle of commercial efficacy would apply to resolve the matter in Ms. Zhang's favour. In G.R. Hall, *Canadian Contractual Interpretation Law*, 4th ed., (Canada: LexisNexis, 2020) at 63, it is stated:

It is fundamental precept of the law of contractual interpretation that commercial contracts must be interpreted in accordance with sound commercial principles and good business sense. Thus, "where one possible interpretation will allow the contract to function and meet the commercial objective in view, and the other scarcely will, the former is to be chosen".

[Footnotes omitted.]

[87] In their opening statement at trial, Mr. Lin and Mr. Hu agreed that "the fully executed Second [Cooperation] Agreement is a valid, binding and enforceable contract". However, they also continued to take the position that the principal amount of the \$1.41 million Antrim Mortgage should be treated as Mr. Lin's initial investment.

[88] Only after Ms. Zhang had closed her case and Mr. Lin and Mr. Hu were presenting their defence did Mr. Lin concede that the principal of the first mortgage (the Antrim Mortgage) should not be viewed as part of his initial investment.



**11. MR. LIN'S CREDIBILITY**

[89] I found Mr. Lin not to be a credible witness. In this regard, under cross-examination on day 14 of the trial, Mr. Lin provided the reason he had asserted that the principal amount of the first mortgage (the Antrim Mortgage) on the Surrey Bareland was part of his initial investment. He testified:

Q Sir, you agree that the time when you opened your case here, that is when you opened what the issues were in this case through your lawyer, one of the issues that you were still putting forward to this court was that the - whether the first mortgage, that is the Antrim [M]ortgage, was part of your initial investment.

That was one of the issues you were putting forward at that time.

A It's really -- it's really irrelevant that -- if I agree or not. It's just that this issue has been talked about at a later stage and at an earlier stage.

They -- they're all the same -- same question. You keep repeating the same question. At the time we -- we were just upset and we just wanted to make her upset; didn't want her to have an easy time either.

Q And that was your reason for advancing, insofar as even up to the opening statement, the position that the first mortgage principal was your actual investment, because she had upset you and you wanted to upset her.

A Mainly that -- that's the reason.

[90] Where a party prepares pleadings not for the purpose of setting forth material facts but for the sole purpose of upsetting the opposing party, it does not redound to the credibility of the party advancing that false position.

[91] Mr. Lin's deceptive silence as to the March 30, 2022 sale of the Surrey Development Lands (and the discharge of the CareVest Mortgage) also does not accord with truthfulness.

[92] As noted, the July 2022 closing submissions had proceeded on the basis that Hold Co still owned the Surrey Development Lands as of that time, which Mr. Lin and Mr. Hu knew not to be true.

[93] During the July 2022 closing submissions, Mr. Xue, then acting for Mr. Lin, made a detailed and well-crafted argument that was based on his then understood

value of the Surrey Development Lands (although I would not have adopted all of his views of the law). He submitted that if the Court were to find in Ms. Zhang's favour and order a disgorgement of profits, the actual profits to be disgorged based on the then appraised value of the Surrey Development Lands was approximately \$50,000.

[94] Mr. Xue's calculations were based on a July 16, 2021 retroactive appraisal prepared by Mr. Steven Caldecott, B. Comm, AACI, P. App. for an effective date of valuation as of January 13, 2021. Mr. Caldecott was qualified to provide opinion evidence with respect to the appraisal of the fair market value of real estate properties in British Columbia.

[95] As noted, January 13, 2021 was the date the Kabak Mortgage #1 was paid off and cancelled (Kabak Mortgage #2 had been previously discharged as against the Surrey Development Lands on December 16, 2020).

[96] In his July 16, 2021 report, which was submitted to Mr. Xue's firm, Mr. Caldecott stated the following with respect to the property history of the Surrey Development Lands:

According to BC Assessment Records, 2289 176 Street & 2317 176 Street were both purchased by the current owners in August 2016 for \$5,350,000 each, for a combined total of \$10,700,000. To the best of our knowledge, the subject property was not under contract, nor was it listed for sale as of the effective date of valuation. I am unaware of any other market activity involving the subject property during or around the effective date of valuation.

[My emphasis.]

[97] Mr. Caldecott valued the Surrey Development Lands to be \$16,920,000 as of January 13, 2021.

[98] In my September 26, 2023 ruling on the production of further documents (*Zhang v. Lin*, 2023 BCSC 1679), I wrote:

[6] During the hearing of evidence and legal argument, all counsel and the Court understood that Holdco then owned the Surrey Development Land. Upon this basis, Mr. Xue tendered evidence and made detailed submissions involving financial calculations.

[7] In early October 2022, Mr. Han Biao Wang, Ms. Zhang's son, discovered that the Surrey Development Land had been sold on March 30,

2022, which was several months before closing submissions and the Joint Statement of Agreed Facts was signed.

[8] The records of the Land Title Office show that the Surrey Development Land was sold for \$28,924,000 on March 30, 2022. The records of the BC Assessment Authority show an apparent subject removal date of May 26, 2021.

[9] On October 6, 2022, Ms. Zhang's counsel wrote to Mr. Xue and Mr. Ng and informed them of the fact that the Surrey Development Land had been sold.

[10] Shortly after, on October 11, 2022, Mr. Xue withdrew as counsel of record for Mr. Lin.

[99] The subject removal date of May 26, 2021 for the sale of the Surrey Development Lands precedes Mr. Caldecott's July 16, 2021 report (for a January 13, 2021 effective date of valuation). As noted, on August 27, 2021, Canadian Horizons waived the 90-day due diligence condition.

[100] Mr. Caldecott's estimate of the fair market value of the Surrey Development Lands of \$16,920,000 is approximately 40% less than the final \$28,924,000 sale price (May 26, 2021 removal of subjects; August 27, 2021 waiver of the 90-day due diligence condition; March 30, 2022 closing).

[101] Although Mr. Lin knew the true facts, he allowed his counsel to unknowingly represent to the Court that the Surrey Development Lands were still owned by Hold Co as of the July 2022 closing submissions.

[102] Mr. Xue's calculation of the potential profits to be disgorged would have increased significantly, with the doubtless assumption that the dramatically higher values would have affected Mr. Caldecott's analysis. The May 26, 2021 removal of subjects relating to Hold Co's sale of the Surrey Development Lands would have been relevant to Mr. Caldecott's analysis. As noted in his report, Mr. Caldecott did not believe the subject property was "under contract" and that he was "unaware of any other market activity involving the subject property during or around the effective date of valuation". May 26, 2021 was after the January 13, 2021 effective date of valuation, but before Mr. Caldecott's report dated July 16, 2021.

[103] In sum, Mr. Lin prevented his own expert, Mr. Caldecott, from undertaking his assigned task correctly.

[104] Knowingly withholding key, relevant facts from one's own expert and counsel also does not redound to one's credibility, especially where one's own counsel is used to mislead opposing counsel and the Court.

[105] For the foregoing reasons, I find Mr. Lin to not be a credible witness. In addition, Mr. Lin was particularly argumentative with plaintiff's counsel. His testimony at trial also varied from his testimony at his examination for discovery, without reasonable basis (e.g., Transcript (Day 15) at p. 23, line 3 to p. 27, line 23).

**12. MR. HU'S CREDIBILITY**

[106] I also find Mr. Hu to not be credible. As with Mr. Lin, he took the position in the amended response to the Third ANOCC that with respect to the Surrey Development Lands, "Lin's financial contribution and initial investment" in the Surrey Bareland was "the principal of the [Antrim Mortgage]". In this regard, Mr. Hu testified:

Q So are you saying that this position of the principal of the first mortgage being alleged or being suggested to be part of Mr. Lin's initial contribution was advanced because people, that is you or Mr. Lin, were angry because Ms. Zhang took over the Langley farm?

A Yes, because she appropriated our property, our investment; right?

Q Right. And it took until the middle of December and the middle of this trial to change that position?

THE INTERPRETER: I'm sorry, counsel.

CNSL K. LEARN:

Q It took until the middle of December and the middle of this trial to change that position?

A Because over that period of time Zhang Shu Rong did not call me or Mr. Lin saying that like we acknowledge that your investment in it and your shares in it, and then saying that -- or, you know, how much your investment were and we will -- you know, this much is your investment and we will repay it to you, that kind of thing. So there were no communications over that period of time.

[107] Further, in the defendants' October 4, 2019 trial brief, Mr. Hu took the position that the parties had agreed to sign the Third Cooperation Agreement to replace the

Second Cooperation Agreement. As with Mr. Lin, Mr. Hu took this position until their opening statement at trial.

[108] On March 6, 2017, the date Ms. Zhang filed her Notice of Civil Claim (“NOCC”), Mr. Hu granted a \$4.2 million, *inter alia*, mortgage in favour of his mother over the Surrey Bareland and other properties where Mr. Hu was a registered owner. In this regard, Mr. Hu testified:

- Q All right. Sir, the protection you were trying to get, was that protection against your wife trying to say that you have all this property? That was the protection that was being sought, as against your wife; correct?
- A Yes, yes, yes.
- Q And that’s why there was this initial discussion on a trust agreement, the idea being to say that this land would be listed as held in trust for your parents, so it wasn’t really your property?
- A Yes.

[109] As noted, Mr. Hu and his wife (Mr. Lin’s daughter) separated in or around early 2017 and were subsequently divorced.

[110] Neither of Mr. Hu’s parents were called to testify with respect to whether they had loaned Mr. Hu \$4.2 million and the details of such.

[111] Mr. J. Wang testified that prior to the litigation, Mr. Hu had never told him that his investment funds were not his funds. Ms. Zhang gave similar testimony that neither Mr. Hu nor his mother told her that Mr. Hu’s funds were not actually his funds.

[112] In cross-examination, Mr. Hu testified that he never told Ms. Zhang that the funds he was investing were not his funds. He said that it was “my personal private thing”.

[113] The \$4.2 million mortgage was removed as over the Surrey Bareland on November 1, 2017.

[114] I also do not accept Mr. Hu's testimony that he was not attentive to the subject real estate matters because his "focus at the time was all on cars" and that he was not particularly concerned with the "older generation's" financial discussions because he "wasn't much involved".

[115] As noted, Mr. Hu has a Bachelor of Business Administration. Even if I were to accept that he was more interested in investing in expensive cars and owning a car dealership rather than real estate, I find that he would be sufficiently interested in real estate and in his real estate holdings so that he could finance his interest in cars and financing his ownership of a car dealership.

[116] If there were funds of \$4.2 million that his mother had loaned to him, Mr. Hu would be financially motivated to manage and protect these funds as a possible future source of funds. Virtually all businesses require funds for investment purposes and for day-to-day operations. He had the financial training to realize the importance of careful financial management. He sought financial "protection against" his wife with respect to their separation and divorce. I do not accept Mr. Hu's feigned nonchalance.

[117] Finally, as with Mr. Lin, Mr. Hu did not disclose to his counsel that the Surrey Development Lands had been sold some months before the July 2022 closing submissions.

[118] As with Mr. Lin, I do not find Mr. Hu to be a credible witness.

### **13. MS. ZHANG'S CREDIBILITY**

[119] I found Ms. Zhang, on the whole, to be a credible and reliable witness. Her evidence was "consistent with the probabilities affecting the case", including her background and education.

[120] The one significant reservation I had was whether Mr. Lin promised to pay her \$3,000 per month to work on a farm owned by Mr. Hu's mother. In the context of the wealth Ms. Zhang and Mr. G. Wang enjoy and the fact that Ms. Zhang knew

Mr. Hu's mother at least as an acquaintance, I do not find, on a balance of probabilities, that there was such a promise. Further, Ms. Zhang did not plead the material facts to support such a claim.

[121] I do accept that Ms. Zhang worked hard on the farm owned by Mr. Hu's mother and undertook many chores. Such is consistent with her character. In the Agreed Statement of Facts, it is agreed that Ms. Zhang, after immigrating to Canada, "had worked as a helper in the kitchen of a sushi restaurant". I note that this would have been despite the considerable wealth she and her husband enjoy.

**a) When did Ms. Zhang Learn of the Kabak Mortgages?**

[122] As set forth in the Agreed Statement of Facts, in August 2016, Mr. Hu caused the two Kabak Mortgages to be secured as against the Surrey Bareland. The total principal amount of the Kabak Mortgages was \$1.425 million. The net proceeds were applied towards the down payment for Hold Co's purchase of the Surrey Development Lands. On August 25, 2016, Hold Co's purchase of the Surrey Development Lands completed.

[123] The defendants pleaded that Mr. Lin told Ms. Zhang in advance that Mr. Hu would be obtaining the Kabak Mortgages. Ms. Zhang pleaded that she became aware of the Kabak Mortgages through her litigation counsel after she had decided to proceed with litigation.

[124] Mr. Lin testified that one of Hold Co's anticipated sources of funds for its acquisition of the Surrey Development Lands were two friends who had agreed to invest \$1.1 million. However, as the completion date approached, they encountered difficulties in getting the requisite funds out of China and, accordingly, that source of funds "fell through".

[125] The Kabak Mortgages provided the necessary further funding.

[126] In his June 4, 2018 affidavit, Mr. Lin swears:

22. Zhang's investment in the [Surrey Bareland] was less than one-third of the total investment. The major portion of the investment in the [Surrey Bareland] came from Hu and I.

23. Hu and I informed Zhang that we were obtaining additional mortgages using [Surrey Bareland]. We told Zhang that the additional mortgage would only be based on Hu and I's portion of investment and our portion of the increase in equity of the [Surrey Bareland].

24. Zhang did not object to our additional mortgages on the [Surrey Bareland].

[127] As noted, Ms. Zhang says that she did not become aware of the Kabak Mortgages until after she retained counsel for this matter and her counsel "found it out".

[128] With respect to Mr. Lin's June 4, 2018 affidavit, before addressing his assertion that "Ms. Zhang did not object to our additional mortgages", I will address the first two paragraphs of his affidavit quoted above.

[129] As may be seen above, Mr. Lin at trial resiled from his pleadings and position that he was entitled to an interest in the Surrey Bareland based on the fact that he had arranged for the \$1.41 million Antrim Mortgage with its principal amount credited to him as if it were an actual contribution by him. Only if the \$1.41 million Antrim Mortgage were so credited would Ms. Zhang's interest be less than one-third. In short, paragraph 22 of Mr. Lin's June 4, 2018 affidavit is a lie laid upon another lie.

[130] In paragraph 23 of his June 4, 2018 affidavit, Mr. Lin swears that he and Mr. Hu told Ms. Zhang that they were obtaining the Kabak Mortgages. In this respect, Mr. Hu testified:

Q You agree with me, sir, that you did receive the \$1 million from the second mortgage and the \$425,000 from the third mortgage?

A Those two amounts were used to purchase other properties. It's not put into my personal account.

Q No. But, sir, the other properties were properties that you and Mr. Lin had an interest in and Ms. Zhang had no interest whatsoever in.

A That's right, because that property is a piece of land Mr. Lin found. So Mr. Lin has a right to decide.

Q Okay. And you never told Ms. Zhang that you were going to obtain a second mortgage against the Surrey bare land; is that correct?



- A I did not have her contact information and at that time our relationship was bad.
- Q So the answer is you agree with me, you never told her?
- A Yes, that's right.
- Q And the same applies for the third mortgage in the amount of \$425,000, you never told her about that either, did you?
- A Yes, that's right.

[131] Mr. Hu's testimony is in direct conflict with Mr. Lin's sworn assertion that both he and Mr. Hu told Ms. Zhang of the Kabak Mortgages in advance. As described above, I found neither Mr. Lin nor Mr. Hu to be credible witnesses. On this particular aspect, I favour Mr. Hu's testimony that he did not tell Ms. Zhang of the Kabak Mortgages and, accordingly, Mr. Lin's sworn assertion that he and Mr. Hu told Ms. Zhang of additional mortgages over the Surrey Bareland is false.

[132] In context, Mr. Lin also had a financial motive to not tell Ms. Zhang of the Kabak Mortgages for two reasons.

[133] First, if Ms. Zhang did not consent, she may have brought legal proceedings that may have frustrated the granting of the Kabak Mortgages, in which case, Mr. Lin may not have been able to close the purchase of the Surrey Development Lands with the closing date fast approaching and \$300,000 in deposits at risk. As set forth in the Second Cooperation Agreement, the parties viewed the Surrey Bareland as a joint investment. Such would give a legal basis (among others) for Ms. Zhang to bring legal proceedings.

[134] Second, if Mr. Lin had told Ms. Zhang of his plan to raise further funds through the Kabak Mortgages in order to acquire the Surrey Development Lands, there was the risk that Ms. Zhang would insist that she also be able to invest in the Surrey Development Lands on the very favourable terms, as described further below, that Mr. Lin knew he was to have relative to most of the other Investment participants (which, in turn, would affect Mr. Lin's potential return).

[135] With his stated real estate experience, I would also expect that if Mr. Lin had told Ms. Zhang of the Kabak Mortgages and had received her approval, he would have documented her approval through a note to her, such as an email or text.

[136] I further note Mr. Hu's testimony that at the time he viewed his relationship with Ms. Zhang as "bad". Similarly, on June 29, 2016, Mr. G. Wang had emailed Mr. Lin refusing to regard the principal amount of the Antrim Mortgage as part of Mr. Lin's investment. This was prior to the August 2016 Kabak Mortgages. In other words, as noted, controversy had arisen among the parties by the end of June 2016 as to Mr. Lin's position that he should be credited with the principal amount of the Antrim Mortgage as part of his contribution to the purchase of the Surrey Bareland.

[137] The controversy was not resolved with respect to the principal amount of the Antrim Mortgage until Mr. Lin's testimony at trial conceding Mr. G. Wang's (and Ms. Zhang's) position.

[138] At trial, Mr. Lin also acknowledged that he had not told Ms. Zhang of the \$425,000 Kabak Mortgage #2. He testified:

[...] Haven't I said that why I didn't inform her of the 425,000 because we were made to register that by -- by the broker company and we used our own property to -- to take that mortgage over. And -- also it can be cancelled anytime you want to.

[139] The \$425,000 Kabak Mortgage #2 also used Mr. Hu's principal residence as security.

[140] With respect to paragraph 24 of Mr. Lin's June 4, 2018 affidavit, I find that the reason that Ms. Zhang did not object to the Kabak Mortgages at the time they were registered against the Surrey Development Lands was because she was not told of them at the time.

**b) The July 21, 2017 Lunch Meeting**

[141] On July 21, 2017, approximately two months after Ms. Zhang had filed her NOCC and had received the defendants' May 2, 2017 response, Ms. Zhang met with

Ms. Shuang Wu over lunch. Mr. G. Wang was also present. Mr. J. Wang was also present, at least for part of the time.

[142] Ms. Zhang paid for the lunch.

[143] I found Ms. Wu to be an unreliable witness. In particular, with respect to any statement made by Ms. Wu that Ms. Zhang knew of the Kabak Mortgages at or around the time they were obtained in August 2016 or, otherwise, prior to Ms. Zhang becoming aware of these mortgages through her counsel.

[144] In the context of the timing of the filing of the NOCC and the first response, I am satisfied that Ms. Zhang wished to resolve matters with Mr. Lin (and Mr. Hu) and in July 2017 contacted Ms. Wu for this purpose.

[145] By way of background, Mr. Lin had selected Ms. Wu to be the second tenant of the Langley Farmland.

[146] In this regard, the Agreed Statement of Facts reads:

In late 2016, Lin had rented the Langley Farmland to a tenant and paid part of the rental income from the Langley Farmland to Zhang.

The said tenant left the Langley Farmland in or before January 2017, after which Lin intended to rent the Langley Farmland to a new tenant, Shuang Wu, and her husband, in February 2017, who expected to rent the Langley Farmland. There as no lease agreement signed or deposit paid.

On or about February 17, 2017, after Lin informed Zhang that he found a new tenant. Zhang and Wang attended the Langley Farmland and met with Shuang Wu, after which Shuang Wu and her husband moved out of the Langley Farmland without making any rental payment.

[147] Ms. Zhang had been unhappy with Mr. Lin over the management of the Langley Farmland (including the fact that Mr. Lin had not given her keys to the Langley Farmland). Since June 2016, Ms. Zhang had also viewed her relationship with Mr. Lin as bad as a result of their disagreement over the draft Third Cooperation Agreement for the Surrey Bareland which Mr. Lin had presented to her.

[148] Although it would not be the usual approach for an experienced businessperson, I am satisfied that Ms. Zhang viewed Ms. Wu as a possible mediator for resolving her litigation with Mr. Lin (and Mr. Hu).

[149] With respect to the timing of the July 21, 2017 lunch, Ms. Wu testified:

MR. JIANG:

Q So, Ms. Wu, the text message shows that the meeting with you was on July 21st, 2017. Do you agree?

A Well, if I did not see this piece of paper, then based on my recollection then I said it was 2018/19.

THE INTERPRETER: I'm sorry, My Lord. The witness seemed to correct the interpretation.

THE COURT: Okay.

THE INTERPRETER: But the interpreter heard "2018/19." But if the witness wants to correct, would you give the opportunity to correct?

THE COURT: Yes.

THE WITNESS: What I said was that based on my recollection, it would have been 2018/19. But my recollection may not be accurate and if – and that I would have not made an error about the location -- the address of the farm.

If you are to ask me to remember these things, it's too difficult.

[150] At the conclusion of proceedings on January 18, 2021, there was a discussion about Ms. Wu obtaining the address of a possible witness the parties were seeking, having regard to the usual direction (warning) given to witnesses under cross-examination not to discuss their testimony or anything about the case until they return to the witness box. In this regard, the transcript reads (in part):

MR. LIU: That was my question. She can do that task and she can send that address to me so that I can forward it to my friends.

THE COURT: Okay. If you do find it, send it to Mr. Jiang.

THE WITNESS: Yes.

THE COURT: And if you have any trouble sending it to him, just bring it tomorrow with you; okay? Are you clear on that?

And if your husband -- and this is quite normal-- and if your husband says oh; you can tell me. You know, just say blame it on the judge. Say the judge said this is the rule, so --

THE WITNESS: Please explain to him that my memory – a lot of the memories are incorrect especially about time --

THE COURT: Yes.

THE WITNESS: -- including address. I would make an error. I'm 50 already.  
I'm not young.

[151] In short, based on Ms. Wu's own description of her fallibility, I do not find her to be reliable with respect to conversations over a lunch that occurred more than three years before her testimony and, specifically, to support any assertion by Mr. Lin and Mr. Hu that they (or either of them) had told Ms. Zhang of the Kabak Mortgages at or around the time they were obtained.

[152] Ms. Wu did not make notes or otherwise have a diary that would have reflected the July 21, 2017 lunch meeting.

[153] Having regard to the "probabilities affecting the case", I find that Ms. Zhang was aware that Mr. Lin and Mr. Hu were looking to acquire other property and were seeking further financing in the months prior to their acquisition of the Surrey Development Lands through Hold Co. I find that Ms. Zhang was not told by either Mr. Lin or Mr. Hu, or was otherwise aware, that some of their financing would come from placing further mortgages on the Surrey Bareland.

[154] Mr. Lin was cross-examined as to whether Ms. Zhang had consented to the Kabak Mortgages. Of particular note, Mr. Lin does not mention Ms. Wu or make any reference to a lunch meeting between Ms. Wu and Ms. Zhang (and Mr. G. Wang and Mr. J. Wang) after which Ms. Wu spoke to him.

[155] In his cross-examination, Mr. Lin obfuscated:

Q Sir, the dates that I put to you were the dates of the second and third mortgage; that is, August 16th, 2016 and August 22nd, 2016, not 2018.

A You have been talking about these two questions all throughout this day. All day you keep asking that. I can keep answering that, too. I can answer you, but other people probably is fed up by repeatedly hearing this. So ask whatever questions you have.

Q Well, I asked my question, sir.

THE WITNESS: Okay.

Q And my -- my question was this. I suggested to you that it makes no sense at all to suggest to this court that Ms. Zhang consented to two mortgages in August of 2016 when she knew that the mortgages were going to be used for a project that she couldn't be part of and when your relationship had deteriorated.

A What he said is incorrect. Well, what I just said that I -- I found that the relationship deteriorated because of the investment matter, that was how I felt now, how I figured it out now. The other thing I am upset about right now is -- is that this family does not -- does not know how to be grateful. It's just that they have made use of me without -- made use of me for free and then once that there's no value, I have no value to them anymore, then they just kick me away. You -- you can see that, that I did all the prep work for that project. It was put under her husband's name. And she sold it in only six months' time and made 280,000. Was that a bit of -- it was thanks to my work in those few months trying to locate this -- this place. You can ask her did she give me even one penny. Even there's -- before the completion there was an inspection fee of \$505. I paid that. She did not repay even that 'til today. I have a receipt to show.

And, also, the offer regarding this property at the earliest -- earlier stage was all in my name and the bank mortgage was also done by me as well. So the documents that were from her husband, it was not just the two of them they have. Because for the mortgage, matter of the mortgage, I have to ask them to pass around the documents. So I have a lot of documents with her husband's name. And one of the emails was that they have put a link in it unintentionally, which was a conversation between Ms. Zhang and Guifeng Wang. And that I have provided and you can go back and take a look and see what was said in it.

CNSL K. LEARN: My Lord, I note the time. It is past four o'clock.

[156] In his re-examination, Mr. Lin testified:

CNSL D. CHEN:

Q So during Mr. Learn's cross-examination Mr. Learn suggested to you that it makes no sense by saying the plaintiff will consent to two mortgages in August 2016, even though your relationship with Ms. Zhang deteriorated before August 2016. So it made no sense that she would agree to two mortgages in August of 2016 even when your relationship with her deteriorated before that.

A Regarding that, I will explain further.

Q Well, let me -- I just want to clarify your answer at that time and not to repeat your answer.

A Okay.

Q So when did you talk to Ms. Zhang about putting the second mortgage on the Surrey bare land?

- A About May or June of 2016. Because I remember the one time she came to my home she wanted to be involved in our new investment project.
- Q Okay. And when was the second mortgage for the 2680 actually obtained?
- A May 2000 -- May 14th of 2016 that was offered.
- Q We're talking about the second mortgage for 2680.
- A The second mortgage was one or two weeks after that our offer's accepted where we have to go and finance it or find the funds for it. Because at the time the funds for purchasing the place is almost in place. Because there were two investors at the time, their funds cannot be moved over here. So they -- initially we did not consider actually taking a second mortgage out on the 2680 property.

[157] Mr. Lin's re-examination testimony continues to not make business sense. In *arguendo*, if Ms. Zhang were told of the Kabak Mortgages she would have had no economic reason to consent. As noted, the Kabak Mortgages exposed her investment in the Surrey Bareland to greater financial risk.

[158] If Ms. Zhang wished to be involved in the "new investment project", the Surrey Development Lands, then Mr. Lin could have obtained the financing from Ms. Zhang without resorting to the Kabak Mortgages. As described further below, Mr. Lin was unlikely to risk sharing the very favourable terms he was to have relative to the other Investment participants.

[159] Again, Mr. Lin made no reference to Ms. Wu telling him of the lunch she had with Ms. Zhang (and Mr. G. Wang and Mr. J. Wang). The lunch meeting occurred after the commencement of the litigation.

[160] If Ms. Wu had told Mr. Lin of any admission by Ms. Zhang that she knew of the Kabak Mortgages from the onset, then I find that Mr. Lin would have testified to such in either his cross-examination or re-examination (or both).

[161] In sum, I find that Ms. Zhang was not aware of the Kabak Mortgages until she was told of them by her counsel. I accept Ms. Zhang's testimony.

#### 14. SMALL INVESTORS

[162] As may be seen above, Mr. Lin held shares in the capital of Hold Co for some “Small Investors”. For ease of reference, the Agreed Statement of Facts reads:

Lin holds a percentage of the shares of the Hold Co. under his name in trust for some other people (individually a “Small Investor”), whose names do not appear on the Central Securities Register of Hold Co. but have made investments in the Hold Co through Lin pursuant to the Investment Agreements that each Small Investor has entered into with Lin.

[163] With respect to the Small Investors and their respective Investment Agreements, I have attached as Schedule “B” to these reasons a copy of one of the Investment Agreements with the name of the particular investor removed.

[164] I have difficulty understanding how the Investment Agreements and related offering undertaken by Mr. Lin would comply with our province’s securities laws.

[165] Generally speaking, our securities laws require a disclosure document (e.g., a prospectus or an offering memorandum) where funds are being raised from the public, subject to certain exemptions.

[166] Reading the Investment Agreement at Schedule "B", I have various concerns.

[167] First, the Investment Agreements were in both English and Mandarin Chinese. The investment project was apparently marketed to the general public (including foreign investors). In this regard, the Investment Agreement (in English) states:

1. Canada Westcoast has a prospering real estate market, especially in Greater Vancouver Area, so we are both interested in the potential in south Surrey residential areas.

[168] With Mr. Lin raising money (the "Investment initiator") from members of the public generally (an “Investment participant”), an Investment participant would not necessarily appear to fall within a "friends and family or business associate" or "accredited investor" exemption. The significant majority of Investment participants were Small Investors.



[169] Second, an Investment participant is investing passively. It is not contemplated that a Small Investor would be engaged as a consultant, independent contractor, or some other active role that may have fallen within one of those exemptions.

[170] Third, the Investment Agreements refer to the fact that there is a wish to avoid Hold Co having “too many registered shareholders”. For those investors who would not be legally registered shareholders, Hold Co was to provide “an [I]nvestment Receipt and Share of Certificate that [is] formally witnessed and signed by lawyers”. With respect, I see no legal need for such an arrangement.

[171] Many corporations have thousands of shareholders. Our province’s company legislation provides rules and related procedures for the smooth-running of corporations while affording protection for a corporation’s shareholders. In my view, the phrase “Share of Certificate” is confusing and would need to be particularly well-described in any disclosure document to comply with our province’s securities legislation.

[172] Fourth, the Investment Agreements do not include a tax summary, in particular, whether an “[I]nvestment Receipt and Share of Certificate” would constitute “taxable Canadian property” under the *Income Tax Act (Canada)*, R.S.C. 1985, c. 1 (5th Supp.). An actual share in the capital of Hold Co would be taxable Canadian property (a 5% Investment participant is to be a registered shareholder). Taxable Canadian property could be of particular concern for a non-resident Investment participant (in my view, whether or not a registered shareholder).

[173] Fifth, the Investment Agreements do not disclose that some of Hold Co’s funds were to be used to pay some of the interest on the Kabak Mortgages (placed on the Surrey Bareland). In his October 23, 2020 affidavit, Mr. Lin attached “certain cheques written by me to the Defendant Hu or Mingo Investments Ltd. [(“Mingo”)] for the purpose of making contributions to the [Surrey Bareland]”.

[174] Several of these cheques are Hold Co cheques for \$12,437.49 that were signed by Mr. Lin on behalf of Hold Co. Of particular note, the May 25, 2019 cheque refers to “Pay Mortgage of June”. In examination-in-chief, Mr. Lin confirmed that the payment was for the Kabak Mortgages.

[175] Sixth, an Investment participant who invests \$110,000 is to receive a 1% share. The total purchase price of the investment—the Surrey Development Lands—is almost \$11 million (\$10,988,639.10). With this description, an Investment participant may have reasonably concluded that \$11 million was to be raised from the Investment participants. That is, an Investment participant could readily surmise that \$110,000 x 100 (or \$11 million) would be the funds actually raised from the Investment participants. Such would be a mistaken assumption, however, as I will now describe.

[176] With respect to Hold Co’s sale of the Surrey Development Lands, Mr. Lin disclosed a “Profit Distribution Form”, which is attached as Schedule “C” to these reasons (with Social Insurance and Business Numbers redacted). The disclosure resulted from the Court’s September 26, 2023 ruling for the production of further documents.

[177] The “Remarks” to Schedule “C” refer to Ms. Sylvia Mok.

[178] Ms. Mok is in her twenties and is a university student in Toronto. Her mother, Ms. Cally Lai, holds power of attorney over Ms. Mok.

[179] On August 25, 2016, Ms. Lai invested in Hold Co on behalf of Ms. Mok. Ms. Mok’s Cooperative Investment Agreement has terms that differ from those of the Investment Agreements for other investors.

[180] During her testimony, Ms. Lai described the investment in Hold Co as a family investment. She used a separate corporation, 1355109 B.C. Ltd., for the investment.

[181] As reflected in Schedule “C”, Ms. Mok invested \$1,007,224.20 in Hold Co, and she assumed responsibility for paying for 15% of financing charges related to the \$4.35 million InstaFund loan (the “InstaFund Mortgage”).

[182] With respect to the InstaFund Mortgage, Ms. Mok’s Cooperative Investment Agreement subsequently documented and dated April 1, 2019 (Exh #116), reads:

5. About the project of purchasing two residential reserves, Party A, in its own name, gets a loan of CAD4.35 million from the private financial company Insta Fund Financial Services (2000) Ltd. at an annual interest of 6.99% in the form of project financing, and the financing charges are 2.5% of the loan. Based on the credit and private property appraisal of Party A, Party B holds 15% shares, that is, CAD642,571.66 financing amount: Party B shall pay CAD3,800.81 interests every month to Party A.

[183] In short, Mr. Lin (Party A) was to obtain a \$4.35 million loan secured by a mortgage on the Surrey Development Lands to be owned by Hold Co. Ms. Mok (Party B) would be responsible for 15% of the financing costs related to the InstaFund Mortgage.

[184] In calculating Ms. Mok’s percentage interest in Hold Co for the purposes of profit distribution, she was nominally credited with \$642,571.66 (15% of the \$4.35 million InstaFund Mortgage).

[185] A simple investment of \$1,007,224.20 would have otherwise resulted in a 9.157% interest ( $\$1,007,224.20 \div \$110,000$ ) as opposed to the 15% interest Ms. Mok received. As noted, Ms. Mok agreed to pay 15% of the financing charges related to the InstaFund Mortgage.

[186] Under her Cooperative Investment Agreement, Ms. Mok was also granted a mortgage over the Surrey Development Lands to secure a “nominal loan” of \$1 million. Ms. Lai explained that she wished to secure her daughter’s investment by having priority over general creditors.

[187] In the first instance, Ms. Mok paid 15% of the interest on the \$4.35 million InstaFund Mortgage.

[188] Ms. Mok was then repaid the interest (that she had paid) upon the refinancing of that loan through subsequent re-financings. In this regard, in her examination-in-chief, Ms. Lai testified:

- Q Okay. It appears to be a bank draft written by -- or on behalf of the Hold Co to Ms. Sylvia Mok?
- A Yeah.
- Q Dated April 26, 2021, in the amount of \$64,276.03?
- A Mm-hmm.
- Q Do you remember receiving that -- your family or Ms. Mok receiving that amount?
- A Yes.
- Q Okay. What -- what was that one about?
- A Again, we do another mortgage for eight million dollars.
- Q Yeah.
- A Yeah, and it comes up, the company can repay the interest that we pay before.

[189] The Golden Top Mortgage and CareVest Mortgage funded the requisite interest by way of interest-reserve accounts.

[190] The Investment Agreements with other Investment participants do not refer to the special arrangements for Ms. Mok with respect to her investment or provide similar or other advantages. I recognize the possibility that Mr. Lin had “thorough discussions” with each Investment participant, as contemplated in the Investment Agreements, and had described Ms. Mok’s different financial arrangements during these discussions.

[191] As a witness, Ms. Lai was sly, certainly on one aspect. In her cross-examination on July 4, 2022 (legal argument started later that day), she was asked whether she was aware of any plans to sell Hold Co and then similarly asked whether there were any such plan with respect to the Surrey Development Lands. She answered “no” to both questions.

[192] Ms. Lai's answers were technically correct. The Surrey Development Lands had been sold by July 4, 2022, some months before on March 30, 2022 and, therefore, there were no plans to sell.

[193] As may be seen from Schedule "C", Ms. Mok's (1355109 B.C. Ltd.'s) profit was \$1,454,979.41. On May 27, 2022, a statement of settlement calculations was signed by Mr. Lin (for Hold Co) and Ms. Lai (for Ms. Mok). In sum, about six weeks prior to Ms. Lai's July 4, 2022 testimony, the profit from the sale of the Surrey Bareland for Ms. Mok had been agreed upon by Mr. Lin and Ms. Lai.

[194] Seventh, the Investment Agreements also did not disclose that Mr. Lin's interest would, in part, be based on the \$4.35 million InstaFund Mortgage to be placed on the Surrey Development Lands to help fund the purchase of the Surrey Development Lands. Mr. Lin was nominally credited with 85% of the principal amount of the \$4.35 million InstaFund Mortgage for the purposes of profit distribution.

[195] With respect to the foregoing observations, I am not making findings as to breaches of the law. Mr. Lin's and Hold Co's compliance with securities and income tax laws are not the subject of the current action. That said, the Court, in fashioning a remedy, does not wish to be viewed as acquiescing in the breach of the law or unfairly benefitting a party (in this case, Ms. Zhang) at the expense of *bona fide* purchasers for value and without notice (Small Investors). In this case, one or more of the Small Investors may, in the future, claim that they were financially harmed by Mr. Lin's or Hold Co's potential non-compliance with securities law.

[196] Without making findings, on a balance of probabilities that securities or tax laws were breached, I am satisfied that the evidence is sufficiently disquieting that the Court should not risk crafting an equitable remedy that could unfairly prejudice one or more of the Small Investors.

**15. THE SURREY BARELAND – FINDINGS AND REMEDY**

[197] Starkly stated, Mr. Hu, as trustee, together with Mr. Lin, used the unsecured value of the Surrey Bareland to borrow \$1.425 million, secured by the Kabak Mortgages. They then invested the \$1.425 million through Hold Co to fund the purchase of the Surrey Development Lands.

[198] Mr. Hu and Mr. Lin therefore had an upside potential for both the Surrey Bareland and the Surrey Development Lands (through Hold Co). In doing so, they financially exposed Ms. Zhang to greater downside risk if the market turned.

[199] The financial vulnerability may be shown with a short example.

[200] Assume X and Y buy Blackacre for \$3 million. They fund the purchase with a \$1.4 million mortgage with each contributing \$800,000 to the purchase.

[201] X and Y agree that Blackacre will be registered in the Land Title Office in Y's name only with Y holding, in trust, the legal title over a 50% beneficial interest for X.

[202] Now assume that within, say, two years, the fair market value increases to \$5 million. Further assume that Y has a further business opportunity to buy Silveracre for \$1 million.

[203] Y then, without telling X, borrows \$1 million with a mortgage charged against Blackacre. Y rationalizes that the \$1 million mortgage represents his unrealized gain in Blackacre.

[204] All is well if the market continues to rise. But, if the market falls, X may suffer greater financially than otherwise.

[205] Suppose Blackacre's value falls back to say, 75% of its original purchase price, or \$2.25 million (\$3 million x .75). The Blackacre investment is now underwater. The two mortgages total \$2.4 million (\$1.4 million for the first mortgage and \$1 million for the second mortgage).

[206] If the interest on the two mortgages is not paid and the mortgagees foreclose, X will lose his or her total investment.

[207] If Y had not placed the further \$1 million mortgage on Blackacre, then X would still lose a good portion of his or her investment, but not all of it.

[208] Without the second \$1 million mortgage placed by Y, X would realize, upon foreclosure based on the \$1.4 million mortgage, \$425,000 ( $(\$2.25 \text{ million} - \$1.4 \text{ million}) \div 2$ ).

[209] In short, Y has exposed X to greater financial risk, if the market turns, by placing a further mortgage on Blackacre to fund his or her purchase of Silveracre.

[210] This is the case even though the principal amount of the mortgage is not greater than Y's unrealized gain associated with Y's 50% interest in Blackacre at the time Y borrows the further funds secured by the \$1 million mortgage on Blackacre. Fundamentally, Y placed his or her financial interests ahead of his or her duties as a trustee—a clear conflict of financial interest.

[211] Mr. Hu was also in breach of the terms of the Antrim Mortgage. The terms associated with the Antrim Mortgage and filed in the Land Title Office provide (in part):

The Mortgagor agrees that it will in no way further encumber the Mortgaged Land without the prior consent in writing of the Mortgagee.

[212] There was no evidence that Mr. Hu complied with the foregoing term, and, in particular, Antrim's written consent. As a result, Antrim could have sought legal recourse, which, in turn, may have financially harmed Ms. Zhang. In short, for his own self-interest, Mr. Hu created a financial risk for Ms. Zhang. I reject Mr. Hu's testimony in cross-examination that Antrim was notified. A document showing Antrim's written consent was not produced. An Antrim representative was also not called by Mr. Hu (or Mr. Lin) to establish Antrim's consent. With Mr. Hu's general lack of credibility, I do not find that, on a balance of probabilities, Antrim's written consent was obtained.

[213] Both Mr. Hu's and Mr. Lin's actions were also in breach of the Second Cooperation Agreement addressing their investment in Surrey Bareland, under which they, along with Ms. Zhang, had agreed to "voluntarily cooperate and jointly invest in real estate in Greater Vancouver". Mr. Hu's and Mr. Lin's use of the unsecured value of the Surrey Bareland is contrary to cooperating to "jointly invest".

[214] In cross-examination, Mr. Hu testified:

Q What I'm suggesting to you, Mr. Hu, is this. It was never contemplated that any profit would be taken out of this project before the land was sold. The time for taking out the profits was to be after the land was sold.

A I understand that, yeah. It's written here.

Q You agree with what I've said; is that correct?

A Should be probably. Because at the time when I signed the document, I did not read it closely, this document.

Q All right. But you've had the benefit now of reading it here on the witness stand. Do you agree with me -- with what I said about the time to take the profit out was only after the sale of the land?

A Well, that's -- if it's written like that then that's how it's going to be; right? Because this is not drafted by me.

Q Okay. So you're saying yes, I agree; correct?

A Yes.

Q And what you did, therefore, in pulling out the \$1 million second mortgage and the \$425,000 mortgage was contrary to the terms of this agreement; correct?

A Because at the time to take that mortgage out was -- it was Mr. Lin who asked me to do that and this agreement was also drafted by Mr. Lin as well, yes. Because at the time Mr. Lin had his own way of cal -- methods of calculating -- making calculations. And also because at the time of my focus, my mind was not focussed on this piece of land because it was just registered under my name, that's all.

And also at the time we were one family; right? So I just do whatever he says we would [indiscernible]. Because at the time we all relatively trusting each other much because we're all, like, family; right?

Q Right. But, sir, today's a different time. You're no longer, as I understand it, a family. You've split up with your wife, Mr. Lin's daughter.

A Correct. Correct.



Q So I'm just asking you here in front of His Lordship, do you acknowledge that the taking out of the million dollar mortgage, second mortgage, and the \$425,000 third mortgage, which you did in August of 2016, was contrary to the terms of this agreement, the second cooperation agreement?

A Yes, correct.

Q Now, sir, you spoke about the duty to -- or the relationship that existed between you and Mr. Lin and being family. But I just want to come back for a minute to the relationship that existed between you and Ms. Zhang and Mr. Lin pursuant to the terms of this agreement, the second cooperation agreement.

A When this agreement was signed, at that time our relationship -- well, Mr. Lin and I, we were still one family; right? Because I have not divorced yet. Because as [indiscernible] Ms. Zhang, I had no contact with her since the trip back from Beijing because we found that her son had told us lies. So eventually I start to distant -- sorry, so eventually I start to distant him, James.

Q All right. But the agreement did require certain things. If you go to the first paragraph, for instance, you needed to voluntarily cooperate. So it required cooperation, did it not?

A Because this project -- the project of this land was -- at the time was mainly Mr. Lin who was managing it or organizing things around it. So at the time he asked me to invest in this land so I put money in it.

As to what kind of relationship he has with Zhang Shu Rong, it's not necessary for me to look into it. Because my focus at the time was, as I had said yesterday, not on this.

Q But, sir, just to go back to that first sentence in the second cooperation agreement it says the three parties voluntarily cooperate. Do you see that?

A I see it.

Q So what I'm suggesting to you, sir, is that the duty to voluntarily cooperate applied to you, Ms. Zhang, and Mr. Lin; it simply wasn't Mr. Lin who had this duty.

A Well, voluntarily cooperate means that you voluntarily, like, taking money out; right? If you had -- if you didn't want to cooperate, you would not take money out; right?

[215] More fundamentally, Mr. Hu, as trustee, was in clear breach of his fiduciary duties that he owed to Ms. Zhang. He knew that he held in trust Ms. Zhang's interest in the Surrey Bareland. Moreover, Mr. Lin knew that Mr. Hu was a trustee for Ms. Zhang and would know that Mr. Hu owed fiduciary obligations to Ms. Zhang.

[216] In the case at bar, we have an express trust: *Aura Ventures Corp. v. Vancouver (City)*, 2023 BCCA 209 at para. 45, leave to appeal to SCC ref'd, 40866 (15 February 2024). The three elements of an express trust are met: a) certainty of intention; b) subject; and c) object (Ms. Zhang).

[217] Donovan W.M. Waters, Mark R. Gillen & Lionel D. Smith, *Waters' Law of Trusts in Canada*, 5<sup>th</sup> ed. (Toronto: Thomson Reuters, 2021) at 42 states:

The hallmark of a trust is the fiduciary relationship which the trust creates between the trustee and the beneficiary. The whole purpose of a trustee's existence is to administer property on behalf of another, to hold it exclusively for the other's enjoyment. The express trustee is expected to put the interests of the trust and the beneficiaries first in his or her thinking whenever the trustee is exercising the powers, or performing the duties of his or her office. The trustee's duty is one of selfless service.

[218] The Second Cooperation Agreement recognizes that each of Mr. Hu and Ms. Zhang had contributed \$809,261.51 towards the purchase of the Surrey Bareland: "Now, registered under the name of Party C" (my emphasis). Party C is Mr. Hu.

[219] Mr. Hu did not put the trust and Ms. Zhang "first in his [...] thinking". Instead, he used the trust (Ms. Zhang's interest in the Surrey Bareland) to serve his own (and Mr. Lin's) financial interests. The value of Ms. Zhang's interest would have facilitated in the obtaining of the Kabak Mortgages and their amount. Mr. Lin knew what Mr. Hu was doing and acted in concert with him against Ms. Zhang's interests.

[220] With respect to crafting an equitable remedy, in *Garcha v. 690174 B.C. Ltd.*, 2023 BCCA 376, our Court of Appeal stated:

[85] In our view, the judge's remedial resolution of the Garchas' civil claim was open to him. He retained the discretion to select the equitable remedy that he considered most appropriate in the context of the case, as a whole, and to limit the Garchas' recovery.

[86] In *Strother v. 3464920 Canada Inc.*, 2007 SCC 24, the Supreme Court of Canada described an "accounting of profits and disgorgement" as "equitable remedies" (at para. 50), and reaffirmed that equitable remedies are always subject to the discretion of the court: at para. 74. In *Wang v. Wang*, 2020 BCCA 15 at para. 59, this Court described the discretion to select a suitable equitable remedy as "large". In *Kerr v. Baranow*, 2011 SCC 10,

Justice Cromwell, writing on behalf of the Supreme Court of Canada, held that:

[70] Maintaining a strict remedial dichotomy is inconsistent with the Court's approach to equitable remedies in general, and to its development of remedies for unjust enrichment in particular.

[71] The Court has often emphasized the flexibility of equitable remedies and the need to fashion remedies that respond to various situations in principled and realistic ways. So, for example, when speaking of equitable compensation for breach of confidence, Binnie J. affirmed that "the Court has ample jurisdiction to fashion appropriate relief out of the full gamut of available remedies, including appropriate financial compensation": *Cadbury Schweppes Inc. v. FBI Foods Ltd.*, [1999] 1 S.C.R. 142, at para. 61. At para. 24, he noted the broad approach to equitable remedies for breach of confidence taken by the Court in *Lac Minerals [Ltd. v. International Corona Resources Ltd.]*, [1989] 2 S.C.R. 574]. In doing so, he cited this statement with approval: ". . . the remedy that follows [once liability is established] should be the one that is most appropriate on the facts of the case rather than one derived from history or over-categorization" (from J. D. Davies, "Duties of Confidence and Loyalty", [1990] L.M.C.L.Q. 4, at p. 5). Similarly, in the context of the constructive trust, McLachlin J. (as she then was) noted that "[e]quitable remedies are flexible; their award is based on what is just in all the circumstances of the case": *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217, at para. 34.

[Emphasis added by the Court of Appeal.]

[87] The authority of a judge to flexibly and fairly fashion an equitable remedy in a manner responsive to the individualized circumstances of the case, resonates here, especially in the context of a limited pool for distribution and countervailing claims.

[88] In determining the Garchas' award for deprivation of their proprietary interests as 2007 Joint Venturers, the judge looked to *Foskett v. McKeown*, [2000] 3 All E.R. 97.

[89] Similar to this case, funds provided for the purchase of lots of land in *Foskett* were wrongly used by the party who held those funds in trust. A portion of the funds was used to pay the premiums of a life insurance policy to the benefit of the wrongdoer's children. Ultimately, the court held that the insurance proceeds should be distributed on a pro rata basis, proportionate to the respective contributions of the parties who claimed an interest. This included the land purchasers, who had an equitable proprietary interest that could be traced into the proceeds. Although *Foskett* involved a different factual matrix, we do not consider it unreasonable for the judge to have taken guidance from its analytical approach.

[221] In many circumstances, the common remedy is to disgorge the profits that the trustee enjoyed: *Waters'* at 522.

[222] Disgorgement should be distinguished from restitution for unjust enrichment. In *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, Justice Brown, writing for the majority, stated:

[24] In sum, then, restitution for unjust enrichment and disgorgement for wrongdoing are two types of gain-based remedies (McInnes (2014), at pp. 144-49; L. D. Smith, “Disgorgement of the Profits of Breach of Contract: Property, Contract, and ‘Efficient Breach’” (1995), 24 *Can. Bus. L. J.* 121, at pp. 121-23; G. Virgo, *The Principles of the Law of Restitution* (3rd ed. 2015), at pp. 415-17; Burrows, at pp. 9-12). Each is distinct from the other: *disgorgement* requires only that the defendant gained a benefit (with no proof of deprivation to the plaintiff required), while *restitution* is awarded in response to the causative event of unjust enrichment (most recently discussed by this Court in *Moore v. Sweet*, 2018 SCC 52), where there is correspondence between the defendant’s gain and the plaintiff’s deprivation (Edelman, at pp. 80-86).

[Emphasis in original.]

[223] In *Strother v. 3464920 Canada Inc.*, 2007 SCC 24, Justice Binnie, writing for the majority, stated:

[75] Monarch seeks “disgorgement” of profit earned by Strother and Davis. Such a remedy may be directed to either or both of two equitable purposes. Firstly, is a *prophylactic* purpose, aptly described as appropriating for the benefit of the person to whom the fiduciary duty is owed any benefit or gain obtained or received by the fiduciary in circumstances where there existed a conflict of personal interest and fiduciary duty or a significant possibility of such conflict: the objective is to preclude the fiduciary from being swayed by considerations of personal interest. (*Chan v. Zacharia* (1984), 154 C.L.R. 178, per Deane J., at p. 198)

[76] The second potential purpose is *restitutionary*, i.e. to restore to the beneficiary profit which properly belongs to the beneficiary, but which has been wrongly appropriated by the fiduciary in breach of its duty. This rationale is applicable, for example, to the wrongful acquisition by a fiduciary of assets that should have been acquired for a beneficiary, or wrongful exploitation by the defendant of the plaintiff’s intellectual property. The restitutionary purpose is not at issue in the case of Strother’s profit. The trial judge rejected Monarch’s claim that Darc usurped a corporate opportunity belonging to Monarch (paras. 128, 179 and 187). This finding was upheld on appeal (para. 73).

[77] The concept of the *prophylactic* purpose is well summarized in the Davis factum as follows:

[W]here a conflict or significant possibility of conflict existed between the fiduciary’s duty and his or her personal interest in the pursuit or receipt of such profits . . . equity requires disgorgement of any profits

received even where the beneficiary has suffered no loss because of the need to deter fiduciary faithlessness and preserve the integrity of the fiduciary relationship. [Emphasis omitted; para. 152.]

Where, as here, disgorgement is imposed to serve a prophylactic purpose, the relevant causation is the breach of a fiduciary duty and the defendant's gain (not the plaintiff's loss). Denying Strother profit generated by the financial interest that constituted his conflict teaches faithless fiduciaries that conflicts of interest do not pay. The *prophylactic* purpose thereby advances the policy of equity, even at the expense of a windfall to the wronged beneficiary.

[Emphasis in original]

### a) Disgorgement

[224] In the case at bar, a typical order for disgorgement is not appropriate. As noted, Mr. Lin (and Mr. Hu) may not have complied with the law in raising funds from the Investment participants under the Investment Agreements for Hold Co's purchase of the Surrey Development Lands. If the Court were to make a typical disgorgement order, the Court could be seen as not caring about such non-compliance with the law or the possible prejudice to one or more of the Investment participants. The Court will not make an order that could, in any manner, taint its reputation or operate to prejudice an Investment participant who is otherwise unaware of the facts relating to the Kabak Mortgages.

[225] Through her counsel, Ms. Zhang recognizes the difficulties presented by a typical disgorgement order in the circumstances. Accordingly, she only seeks remedies limited to the Surrey Bareland.

[226] As noted, Mr. Hu is the registered owner of the Surrey Bareland, under the Second Cooperation Agreement. Ms. Zhang seeks to have the Surrey Bareland registered solely in her name upon her funding the discharge of the Antrim Mortgage and paying Mr. Hu \$809,261.51.

[227] In the Profit Distribution Form of Schedule "C", Mr. Lin shows the profit for him and his two related corporations—Lingo Construction Ltd. ("Lingo") and Qinran Enterprises Ltd. ("Qinran")—to be \$1,712,619.

[228] For Mr. Hu's company, Mingo shows a profit of \$1,562,054.

[229] Remark 2 of the Profit Distribution Form shows that the \$3.641 million investment that was credited to Mr. Lin as part of the basis of his investment comes from 85% of the \$4.35 million InstaFund Mortgage that he had arranged.

[230] Mingo's \$1.43 million investment is very close to the \$1.425 million raised through the Kabak Mortgages.

[231] As may be seen from Schedule "C", Mr. Lin's and Mr. Hu's total profit is \$3,238,673 (\$1,526,054 + \$1,712,619).

[232] Hold Co's 2022 T2 Corporation Income Tax Return (Schedule 2, GIF1 Balance Sheet) shows \$8 million in mortgages for the prior year. For the 2022 taxation year (June 30 year end), no mortgages are shown.

[233] The foregoing T2 Tax Return entries accord with the \$8 million CareVest Mortgage being discharged in conjunction with the March 30, 2022 closing of Hold Co's sale of the Surrey Development Lands.

[234] As may be seen from the Agreed Statement of Facts, Hold Co paid off the \$4.35 million InstaFund Mortgage using the \$6 million Golden Top Mortgage on or about February 25, 2019. In April 2021, Hold Co in turn paid off the Golden Top Mortgage using the \$8 million CareVest Mortgage.

[235] In short, Mr. Lin was not responsible for paying the principal of the CareVest Mortgage. Hold Co was the borrower. Mr. Lin recorded 85% of the principal (15% for Ms. Mok) of the \$4.35 million InstaFund Mortgage registered against the Surrey Development Lands as part of his credited investment.

[236] A Small Investor who paid \$110,000 for his or her investment received back \$110,000 plus \$120,158 for a total of \$230,158 or 2.09 times that invested.

[237] Mr. Lin invested \$354,200 and received \$354,200 back plus \$1,712,619 for a total of \$2,066,819 or 5.835 times that invested.

[238] As set forth in the Agreed Statement of Facts, on September 18, 2020, Mr. Hu accepted an offer from Dawnvale Farms Ltd. (“Dawnvale”) to buy the Surrey Bareland.

[239] The September 18, 2020 contract of purchase and sale shows the agreed completion date as June 28, 2021. The sale was subject to Mr. Hu receiving the “approval of the Supreme Court of British Columbia confirming [Mr. Hu’s] ability to perform the terms and conditions of this Contract of Purchase and Sale on or before November 12, 2020”.

[240] An application for the Court’s approval was brought before me. I denied the application for several reasons, including the fact that the Second Cooperation Agreement provided that the Surrey Bareland could only be sold with the unanimous consent of all three parties.

[241] For our current purposes, the significance of Mr. Hu’s contract with Dawnvale is that the sale price of \$5.9 million was an amount that he had negotiated and one that both he and Mr. Lin were willing to accept (with a June 28, 2021 completion date).

[242] The June 28, 2021 completion date is roughly contemporaneous with the May 26, 2021 subject removal date; the August 27, 2021 waiver of due diligence; and the March 30, 2022 completion date of Hold Co’s sale of the Surrey Development Lands.

[243] As noted, Ms. Zhang seeks to become the sole registered owner of the Surrey Bareland upon her causing the discharge of the Antrim Mortgage and paying Mr. Hu \$809,261.51.

[244] Using the \$5.9 million Dawnvale sale price, the following is an estimate that Ms. Zhang would realize if the Antrim Mortgage were discharged and Mr. Hu was repaid his \$809,261.51.

Sale price:	\$5,900,000
Transaction costs (3%):	(\$177,000)
Discharge of Antrim Mortgage:	(\$1,410,000)
Income tax – 35% of gain (\$5,713,000 - \$3,028,523), rounded (((\$5,700,000 - \$3,000,000) X 0.35) = \$945,000	(\$945,000)
Repayment to Mr. Hu (rounded)	<u>(\$809,000)</u>
	<u>\$2,559,000</u>

[245] The transaction costs for the sale of the Surrey Development Lands were approximately 3%. Accordingly, I have used 3% in the above calculation.

[246] I also realize that the “35% of gain” may be low. On the other hand, there may also be some capitalized interest (and other expenses which may be capitalized) which may serve to reduce the gain that would otherwise arise.

[247] \$809,261.51 was also Ms. Zhang’s initial cost for her investment in the Surrey Bareland. After deducting Ms. Zhang’s cost, her profit is \$1,750,000 (\$2,559,000 - \$809,000 (rounded)).

[248] As noted, in connection with the Surrey Development Lands, the total profit (after tax) for Mr. Hu and Mr. Lin totaled \$3,238,673.

[249] In sum, having regard to the Dawnvale contract and Hold Co’s completed sale of the Surrey Development Lands, I do not find Ms. Zhang’s claim to be opportunistic or overstated. I also find that registering (and vesting) the Surrey Bareland solely in Ms. Zhang’s name will not unfairly prejudice the Investment participants. The relief Ms. Zhang seeks is independent of whether Mr. Lin and Mr. Hu complied with the law in relation to the Surrey Development Lands.

[250] I realize that since March 30, 2022 (the date of Hold Co’s sale of the Surrey Development Lands), the Surrey Bareland may have further increased in value. On the other hand, Mr. Lin and Mr. Hu may have enjoyed gains (realized or unrealized) from the possible further investments each of them may have made using the funds



realized from the proceeds they each received from their respective investments in the Surrey Development Lands.

[251] In sum, it is equitable that neither Mr. Lin nor Mr. Hu share in any further appreciation in the value of the Surrey Bareland.

**b) No Interest Based on the Payment of the Interest on the Antrim Mortgage**

[252] Under the Second Cooperation Agreement, Mr. Lin was to accrue an interest in the Surrey Bareland based on paying the monthly interest on the Antrim Mortgage (\$7,100 per month).

[253] With respect to the monthly interest payments, I am not satisfied, on a balance of probabilities, that Mr. Lin personally “paid” the interest. As discussed above, Mr. Lin wrote Hold Co cheques to pay interest on the Kabak Mortgages.

[254] From Mr. Lin’s use of Hold Co funds to pay Mingo in relation to the interest on the Kabak Mortgages, I find that he was willing to use Hold Co’s corporate funds in relation to his (and Mr. Hu’s) personal interests, that is, funding the interest on the Kabak Mortgages which served to finance his (and Mr. Hu’s) personal investment in Hold Co (which owned the Surrey Development Lands).

[255] In the Investment Agreements, Mr. Lin represents that:

9. This investment project will hire professional accountants to handle all finances. All accounts and its transactions can be viewed by all shareholders.

[256] Mr. Lin did not cause professional accountants to be hired to handle all finances and to prepare the relevant accounts. Such accounts would have shown whether or not the interest on the Antrim Mortgage (or other expenses related to the Surrey Bareland) was paid by Hold Co. For example, as noted, a May 25, 2019 Hold Co cheque was written by Mr. Lin to Mingo in relation to the Kabak Mortgages.

[257] Absent such accounts, matters are financially opaque.

[258] Hold Co's first financial statements for its first period ending June 30, 2017 were not prepared until July 2020. The financial statements do not have the detail contemplated under paragraph 9 of the Investment Agreement.

[259] On a balance of probabilities, I do not find that Mr. Lin personally "paid" the interest on the Antrim Mortgage, or on the Kabak Mortgages (or other expenses related to the Surrey Bareland), or that such were otherwise borne by him as contemplated in paragraph 3 of the Second Cooperation Agreement. Especially with his general lack of credibility, Mr. Lin has not presented the Court with "sufficiently clear, convincing and cogent" evidence.

[260] Further, given Mr. Lin's knowing assistance in the breach of Mr. Hu's fiduciary duties as a trustee, Equity will bar any claim by Mr. Lin, including any claim based on any "payment" by him of the interest on the Antrim Mortgage (and other expenses related to the Surrey Bareland) as giving rise to an interest in the Surrey Bareland.

[261] With respect to knowing assistance and disgorgement, Mitchell McInnes, *The Canadian Law of Unjust Enrichment and Restitution*, 2<sup>nd</sup> ed. (Toronto: LexisNexis Canada Inc., 2022) states at 401:

The second head of liability is knowing assistance. It is a species of equitable wrongdoing. The gist of the claim is that the defendant, as a stranger to an equitable relationship, knowingly participated in a breach of that relationship. In a typical case, a trust beneficiary complains that the defendant participated in a trustee's breach of trust. The Supreme Court of Canada has controversially held that the beneficiary must prove that the defendant acted with actual knowledge of a trustee's fraudulent breach. Assuming those elements are established, a court will award compensation of the beneficiary's loss or, exceptionally, disgorgement of the defendant's gain.

[Footnote omitted.]

[262] Technically, a gain by Mr. Lin is not being disgorged because he has not yet realized a gain. A gain would only be realized on the sale of the Surrey Bareland. In such circumstances, I have no difficulty in holding that Equity applies to bar any anticipated gain that Mr. Lin could claim in relation to the Surrey Bareland.

[263] As noted, Mr. Lin has also not established that he “paid” any interest expense (or other expenses related to the Surrey Bareland) which could arguably justify a repayment of such.

[264] I will add that if Mr. Lin had “paid” the interest on the Antrim Mortgage (or other expenses related to the Surrey Bareland), his knowing assistance in Mr. Hu’s breach of his fiduciary duties towards Ms. Zhang will bar any claim by Mr. Lin to be repaid.

[265] Mr. Lin knowingly assisted Mr. Hu, a faithless fiduciary, in his breach of trust from which both Mr. Hu and Mr. Lin benefited. Any payment of the Antrim interest (or other expenses related to the Surrey Bareland) borne by Mr. Lin, Equity will bar from recovery.

[266] As discussed above, Mr. Hu and Mr. Lin knowingly increased Ms. Zhang’s financial risk with respect to her investment in the Surrey Bareland. The continued monthly payment of the Antrim interest (or other expenses related to the Surrey Bareland) was essential to Mr. Hu’s and Mr. Lin’s overall design of seeking profit from both the Surrey Bareland and the Surrey Development Lands.

[267] If Antrim had not received interest payments as required, Antrim, like any commercial mortgagee, would have commenced legal action, which, in turn, would have affected the Kabak Mortgages.

[268] As well, both of the Kabak Mortgages would fall into default. The “Additional or Modified Terms” for each of the Kabak Mortgages as registered in the Land Title Office contained the following provision:

9. The prescribed standard mortgage terms are amended by adding after subsection 7(1) the following:  
“(1.1) A default also occurs under this mortgage if a default occurs under any charge or encumbrance having priority over this mortgage, or if a default occurs under any of the Borrower’s Agreements.”

[269] The registration documents for each of the Kabak Mortgages records the Antrim Mortgage as a “prior encumbrance”.

[270] In other words, the payment of the Antrim interest (or other expenses related to the Surrey Bareland, such as property taxes) became intertwined with Mr. Hu’s actions as a faithless fiduciary, which Mr. Lin knowingly assisted, with the object of financially benefitting each of them, while exposing Ms. Zhang to greater financial risk.

[271] In these circumstances, Equity bars the return of funds, advanced by either a faithless fiduciary or one who knowingly assisted, that were used in connection with the breach of trust. Equity’s prophylactic purpose of teaching faithless fiduciaries, and those who knowingly assist, that conflicts of financial interests do not pay is served.

[272] For completeness, if Mr. Hu paid the interest on the Antrim Mortgage (or other expenses related to the Surrey Bareland), Equity would also similarly bar any claim by him for the return of the funds he may have paid. He needed the Antrim Mortgage to be in good standing, in order that Antrim did not commence legal action, which could have affected the Kabak Mortgages.

**c) No Entitlement Based on “10% of Pre-Tax Profit”**

[273] Under the Second Cooperation Agreement, Mr. Lin was also to receive “10% of pre-tax profit” on the sale of the Surrey Bareland “as his operating management fee”. Mr. Lin is also not entitled to such.

[274] With respect to any claim by Mr. Lin “10% of pre-tax profit” related to the Surrey Bareland, such a claim is defeated on either of two grounds.

[275] First, the “10% of pre-tax profit” amount is tied to Mr. Lin’s operating management fee. Clearly, Mr. Lin breached his management duties when he worked with Mr. Hu to place the Kabak Mortgages on the Surrey Bareland without

Ms. Zhang's knowledge. Further, throughout the relevant period, the Surrey Bareland remained as bare land with little management required.

[276] Second, as with the interest payments on the Antrim Mortgage, Equity applies to bar any anticipated profit (*i.e.*, gain) that Mr. Lin could claim in relation to the Surrey Bareland.

**d) No Unfair Prejudice to Other Investment Participants**

[277] Finally, I must also consider that Mr. Lin and Mr. Hu may have used Hold Co's funds to pay the interest on the Antrim Mortgage, which could be seen as benefitting Ms. Zhang to the detriment of the Investment participants.

[278] For several reasons, the weighing of the equitable considerations does not favour the Investment participants.

[279] First, Ms. Zhang was unaware, and had no reason to suspect, that Mr. Lin and Mr. Hu were using the Surrey Development Lands to help fund the interest on the Antrim Mortgage.

[280] Second, as noted, the Investment Agreements provided that professional accountants would be hired to handle all finances and all accounts and transactions could be viewed by all shareholders. In other words, an Investment participant was told by Mr. Lin that he or she could monitor Hold Co's financial activities with the relevant accounts and transactions. For example, the accounts would have shown if there was the payment of interest for the Antrim Mortgage or similar expenditures (*e.g.*, Hold Co's cheques signed by Mr. Lin for interest payments on the Kabak Mortgages) for the benefit of Mr. Lin or Mr. Hu. If the requisite financial accounts were not prepared, as was the case, an Investment participant could have required such.

[281] Finally, Mr. Lin and Mr. Hu realized significant profits from the sale of the Surrey Development Lands. An Investment participant may therefore recover from Mr. Hu or Mr. Lin if there is a basis for doing so.

## 16. PUNITIVE DAMAGES

[282] Ms. Zhang seeks \$50,000 in punitive damages as against Mr. Lin and Mr. Hu.

[283] With respect to punitive damages in the context of the unjust enrichment, Waters' states (in part) at 1377:

Historically, there was no jurisdiction in a court of Equity to award punitive damages for a breach of trust or a breach of fiduciary obligations. The law relating to such damages was recently restated in *Whiten v. Pilot Insurance Co.* The Supreme Court affirmed the availability of such damages, holding that they may be available even in a contractual context so long as there was an 'actionable wrong' in addition to the breach of contract. The Court rejected the approach of attempting to define, in advance, which wrongs could give rise to such damages, and which could not. Such damages can be awarded where there has been malicious or high-handed behaviour, and this misconduct would otherwise go unpunished. The Court accepted that such damages are available for a breach of fiduciary duty. They have been awarded by a number of lower courts.

[Footnotes omitted.]

[284] In a defamation action, Justice Horsman, writing for our Court of Appeal, in *Pineau v. KMI Publishing and Events Ltd.*, 2022 BCCA 426, stated:

[56] Punitive damages may be awarded where the defendant's conduct is so malicious and high-handed that it offends the court's sense of decency. Punitive damages are not compensatory, but rather are in the nature of a fine that is meant to deter the defendant and others from engaging in similar conduct: *Hill [v. Church of Scientology of Toronto]*, [1985] 2 S.C.R. 1130] at para. 196. Punitive damages are only awarded where the amount of general and aggravated damages is insufficient to achieve the objectives of punishment and deterrence: *Nazerli [v. Mitchell]*, 2018 BCCA 104] at para. 91.

[285] I do not find that Mr. Lin's and Mr. Hu's conduct was "so malicious and high-handed" that it offended the Court's sense of decency justifying an award in the nature of a fine.

[286] Ms. Zhang was not especially vulnerable. Mr. Lin's and Mr. Hu's conduct was avaricious. As in other parts of life, avarice is not unknown in business. This is one reason many businesspeople retain solicitors to contemporaneously document and finalize their commercial arrangements. Accordingly, I will not award an amount as punitive damages.

**17. CONCLUSION**

[287] As noted, the parties settled their dispute with respect to the Langley Farmland.

[288] The Court orders that funds (including interest) realized on the sale of the Langley Farmland currently held in trust by counsel for Ms. Zhang be divided as follows: 50% for Ms. Zhang and 25% for each of Mr. Lin and Mr. Hu.

[289] The Court also orders that the Surrey Bareland be solely vested and registered in Ms. Zhang's name upon her funding the discharge of the Antrim Mortgage and paying Mr. Hu \$809,261.51. The parties are ordered to take all reasonable steps to ensure the timely implementation of the foregoing.

[290] Any further relief or claims by any of the parties are dismissed.

**18. COSTS**

[291] Within 30 days of these reasons, if either party wishes to address costs, I ask that they contact Supreme Court Scheduling to schedule a 55-minute 9 a.m. hearing before me.

“Funt J.”

Schedule "A"

(English translation)

Cooperation Agreement

Party A: Cui Guo Lin  
Party B: Shu Rong Zhang  
Party C: Ming Hu

The three parties voluntarily cooperate and jointly invest in real estate of Greater Vancouver through project cooperation under the leadership of Party A, and have reached agreement below on the investment of the city land future development project of 2680 168 Street, Surrey BC.

1. The above land with the area of 3.03 acres is the future residential reserve of Surrey, which is located in a better location. Both Party B and Party C agree to jointly invest in the purchase of the land of the project, and engage in development and operation in the future, led by Party A.
2. The total price is CAD 3,019,722.03, including land transaction price of CAD 2,820,000.00, plus property transfer tax of CAD 54,400.00 and land sales GST of CAD 141,000.00, legal fees of CAD 1,075.80, document registration fees of CAD 443.46, and allocated property tax of CAD 2,802.77 for 2015. The total price reaches CAD 3,021,559.53 with the addition of CAD 1,837.50 of the land assessment fee; minus the actual mortgage of CAD 1,387,036.51 and the realtor's refund of 16,000. Party B and Party C actually need to invest CAD 1,618,523.02. Now, it is registered under the name of Party C. Party B invested CAD ~~8,092,615.100~~ **809,261.51** and Party C invested CAD ~~8,092,615.100~~ **809,261.51**
3. The mortgage amount is CAD 1.41 million, and monthly interest is CAD 7,100, to be paid by Party A as Party A's investment.
4. Equity ratio and profit and loss allocation: The equity ratio is calculated according to the actual financial contribution of each party of Party A, Party B and Party C at the time of selling the land. Profit and loss distribution: Party B and Party C agree that after the project is sold and the costs are deducted, 10% of pre-tax profit will be paid to Party A as his operating management fee and the remaining profit will be distributed according to the actual contribution in proportion of each of the three parties at the time of selling the land. The three parties shall file and pay their personal income tax with respect to their individual profit received from the project according to the provisions of the Canadian tax department.
5. Party B and Party C agree with Party A's opinion that all parties should strive to achieve maximum profit of the land project in case of the fund being sufficient, that is, after the City Phase-II Planning (NCP) is in place, the professional land planning consultant company will be employed to design, apply to the government for the approval of Rezoning, and sell homestead after completing three connections and one leveling.
6. It costs additional CAD 300,000 to 400,000 per acre to apply for Rezoning approval, and complete the three connections and one leveling (i.e. roads in communities, water pipelines and



electrical grid, landscaping, etc.) after Rezoning is approved, which shall be paid up by the three parties according to each party's proportional contribution in the first phase.

7. It shall be agreed by all three parties whether the project is sold as the bare land or the homestead, and its sale price.
8. The above unsettled matters shall be resolved through negotiations. Any changes or supplements if agreed by the three parties shall have the equal effect.
9. This agreement is in triplicate, with three parties each holding one.
10. The agreement will take effect after the signing of the three parties. It will expire after the project land is sold and accounts are settled.

Party A: Cui guo Lin (signature)

Party B: Shu Rong Zhang (signature)

Party C: Ming Hu (signature)

May 9, 2016

Schedule "B"

合作投资协议  
Investment Agreement

甲方：（投资发起方）LIN (LI GUO) 林国  
Party A (Investment initiator)  
乙方：（投资参与方）Redacted  
Party B (Investment participant)

经协议双方充分协商，现就合作投资向素里城市住宅保留地 2317 176 Street 和 2289 176 St Surrey (两块合计 10 英亩，详见见附件 1、2) 项目达成如下一致意见和协议：  
After thorough discussion between both parties, we have reached the following agreement regarding investment project in potential residential areas at 2317 176 Street and 2289 176 Street, Surrey, British Columbia (the total area is 10 acres, please see appendices 1 and 2 for details)

1. 加拿大西海岸，雄厚的地理和人文环境，造就了大温地区独一无二的宜居氛围。源源不断的全球移民，使得大温地区房地产需求持续不断，为北双方未来看好向素里城市住宅保留地发展潜力。  
1. Canada Westcoast has a prospering real estate market, especially in Greater Vancouver Area, so we are both interested in the potential in south Surrey residential areas.

2. 2016 年 5 月 6 日以甲方名义签下的购买上述两块地的 Offer (见附件 1、2)，8 月 25 日已由 L23172289 Holdings Ltd. 公司成交过户。公司名义购买的上述两块未来住宅保留地，土地面积是 216,320 + 219,680 = 436,000 平方英尺，土地成交价是 1070 万加币，加上过户交易税 \$277,000.00，文件注册和律师费用 \$11,961.56，以及 2016 年 8 月 25 日以后的应缴地税 \$9,677.53 等，总成交费用 \$10,998,639.10 加元。  
2. The property buying offer for the above two future potential residential areas which was signature on May 6, 2016 that are under the name of Party A, with final transactions completed by the company (L23172289 Holdings Ltd). The total land areas are 216,320 + 219,680 = 436,000 square feet; the purchasing price is CAD\$10.7 million; adding on property transaction fees \$277,000.00, document registration fees and legal fees \$11,961.53 and the after August 25, 2016 the property tax \$9,677.53 is payable, total price is \$10,998,639.10.

3. 乙方投资 \$110,000.00，已于 2016 年 8 月 20 日以本票形式付到甲方账户。  
3. Party B has invested \$110,000. It was paid to Party A by bank draft on August 10, 2016  
4. 乙方投入的股份，甲方投资 \$110,000.00 占本项目 1% 股份。  
4. Calculation of share percentage of Party B investment:  
The percentage share of Party B investment is 1 percentage.

5. 甲乙双方同意利润共享，风险共担。项目土地出售后如有利润，将按加拿大税务局规定的条例进行交税后分配。  
5. Both parties aware of the profit and risk of loss will be assume under holding shares each party. If the program has some profit it will obey the provision of CRA.

6. 本项目交易和经营，甲方已经成立一个公司进行。本项目 2 块土地总成本费用按 \$1100 万计算，每股 \$11 万，为避免一个公司注册太多股东，同意持有 5 股以上的合伙投资者，请律师注册进入合伙企业成为合伙股东，少于 5 股的乙方，公司出具收款收据，以及由律师见证的投资凭证，乙方委托甲方在公司里代表乙方权益。  
6. For the transaction and management of this investment project, Party A has registered a company. The current near total purchasing price for the two lands are CAD\$11 million, the value of each share (1%) will be CAD\$110,000. To avoid having too many registered shareholders in the company, any investment participants (Party B) holding 5 shares (5% of CAD\$550,000) or more will be legally registered shareholders in the company; for other investment (Party B) holding less than 5 shares (5% of CAD\$550,000), the company will provide an investment Receipt and Share of Certificate that formally witnessed and signed by lawyers. Party B will ask Party A to represent its interest in the company.

2024 BCSC 1591 (CanLII)

7. 可以预计，一旦本项目土地所在区域政府 NCP 规划三读通过，土地价格将会轻天上升，所以，没有特殊情况，计划本项目土地至少持有到索里政府 NCP 三读通过时挂牌出售。何时出售以及售价多少需经大部分（70%以上）股东同意。

7. It is anticipated that once the hearing of three for the No. 5 zone of Neighbourhood Concept Plans (NCP) has been passed by the Surrey city, the land marketing price will increase significantly. Therefore, barring extreme circumstances at least the two residential reserve lands held under this project will be sold after it has been passed the Neighbourhood Concept Plans (NCP) of the government of Surrey. The timing of sale and sale price should be decided by the majority of shareholders (greater than 70% of total shares in the company)

8. 如乙方急需资金，土地持有中想退出投资，股东之间有优先转让权，转让价双方协商解决。股东外转让的必须通知甲方，并经甲方同意，未来受让方必须在充分了解本项目情况以及同意本项目协议规定的义务和责任后办理相关转让手续。

8. When the two lands are holding, if party B or any shareholder need their money back and want to withdraw investment, the other shareholders have priority in purchasing their shares. The transfer price of shares will be negotiated between the involved parties, if shares are to be sold outside of current shareholders. Party A needs to be notified of such transaction and has the right to approve/disapprove. Potential shareholders need to be fully informed about this investment project and need to agree with the duties and responsibilities coming along with this investment project, before share transfer can be completed.

9. 本投资项目财务拟聘请专业会计师立帐，帐目对所有股东公开。

9. This investment project will hire professional accountants to handle all finances. All accounts and its transaction can be viewed by all shareholders

10. 本协议未尽事宜双方协商解决。

10. Anything not covered by this agreement will be negotiated between both parties

11. 本协议双方签字后生效，至项目土地出售结清帐目时失效。

11. This agreement will take effect as soon as signed by both parties. The agreement will expire once the areas are sold and all accounts cleared.

12. 本协议一式两份，双方各执一份为凭。

12. This agreement will be held in two copies by both Party A and Party B

甲方:  Party A       Party B      

2016年8月29日  
Date:

- 附件 Appendices:  
1. CONTRACT OF PURCHASE AND SALE FOR 2317 176 St. Surrey: BC  
2. CONTRACT OF PURCHASE AND SALE FOR 2289 176 St. Surrey: BC

Schedule "C"

L 23172289 Holding Ltd. 2022 Profit Distribution Form

Name of individual or company	Investment amount	Percentage	2022 already distributed profit	2022 undistributed profit	Personal SIN or company B.N		
Mingo Investments Ltd.	1430000	13	1,562,054.00	0	↑	1	
1355109 BC Ltd.	1007224.20 + *642572.66 = 1649796.86	15	1454979.41	0		2	
SUNNY LUC	55000	0.5	60079	0		3	
JENNY NHAT VU	55000	0.5	60079	0		4	
Herbal Treasure Health Products Inc.	550000	5	600790	0		5	
TANG, JINGYING	110000	1	60000	60158		6	
HAI ZHOU LIANG AND MENG JIA YIN	330000	3	360474	0		7	
Metta Enterprise Inc.	500000	4.55	546118	0		Redacted	8
LUO, CHUN XI AND LUOM HUA JIONG	400000	3.63	436894	0		9	
CHENG, SHU MEI	220000	2	60000	180336		10	
Fresh Investment Inc,	220000	2	240336	0		11	
WANG, KE	110000	1	0	120158		12	
CHEN, RONG	110000	1	0	120158		13	
HUANG, YAQIAN	110000	1	60000	60158		14	
MAO, FU ZHEN AND PENG, YUAN	55000	0.5	60079	0		15	
ZHAO, LIN JUAN	55000	0.5	30000	\$ 30079		16	
CHEN, MEI YU	55000	0.5	60079	0		17	
ZHOU, HUA	55000	0.5	60079	0		18	
HUANG, YUE FANG	550000	5	600790	0		↓	19

WANG, LING LING, TAN, WEI	55000	0.5	60079	0		20
JIANG, WEI RONG	330000	3	360474	0		21
Sub total	7004796.86	63.68	6733383.41	571047		
Lin Cui Guo Lingo Construction Ltd.	354200 + **3641000 = 3995200	36.32	1712619.91	0		
Qinran Enterprise Ltd.					Redacted	
Total	10999996.86	100	8446003.32	571047		

Remarks:

- \* The capital amount of 642572.66 comes from 15% of the 4.35 million loan obtained by Sylvia Mok for the project.
- \*\* The capital of 3641000 comes from 85% of the 4.35 million loan obtained by shareholder Cuiguo Lin and shareholder Zeying Zhang.
- The shareholders invested 10,999,996.86 in August 2016 when the two properties were purchased for development.
- Shareholders received a distributed after-tax profit of 8,446,003.32 + 571,047 = 9,017,050.32