IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1110008 B.C. Ltd. v. Chang,*
2023 BCSC 1625

Date: 20230829
Docket: S208878
Registry: Vancouver

Between:

1110008 B.C. Ltd.

Plaintiff

And

Lawrence Bradley Sea Ming Chang and Gritlux LLC

Defendants

Before: Master Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	N. J. Muirhead I. MacDonald
Counsel for the Defendant Lawrence Bradley Sea Ming Chang:	N. Kohan
No other appearances.	
Place and Date of Hearing:	Vancouver, B.C. August 11, 2023
Place and Date of Judgment:	Vancouver, B.C. August 29, 2023

Introduction

[1] **THE COURT:** The plaintiff applies for an order that various portions of the response to civil claim filed by the defendant Mr. Chang on October 29, 2020 be struck, pursuant to Rule 9-5(1)(a) to (d) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 on the basis that they disclose no reasonable defence; are unnecessary, scandalous, frivolous, or vexatious; may prejudice, embarrass, or delay the fair trial of the action; or they are otherwise an abuse of process of the court.

[2] The defendant Mr. Chang opposes the application on the basis that the impugned provisions set out matters which are relevant to the case and his defence. In the event the provisions are found to be inappropriate, he seeks leave to amend his response to civil claim.

Background

[3] The plaintiff claims against the defendants for alleged breach of a tenancy agreement and seeks damages of $180,000, representing rent owed for the term of the agreement.

[4] The plaintiff filed a notice of civil claim on September 9, 2020. An amended notice of civil claim was filed on April 15, 2021. The plaintiff alleges it was "in control of" an apartment located in Vancouver with civic address 4306 - 1011 West Cordova Street, Vancouver, B.C. (the “Apartment”). The Apartment is located in a building known as Fairmont Pacific Rim Residences.

[5] The plaintiff says on or about August 28, 2018, it (as landlord) entered into a residential tenancy agreement (the “Agreement”) with the defendants (as tenants). The terms of the Agreement included:

a) It was for a fixed term starting September 9, 2018 and ending May 30, 2019;

b) The defendants would pay the plaintiff rent of $19,990 on the first day of each month for the duration of the tenancy; and

c) The defendants would provide the plaintiff with a security deposit in the amount of $9,950 by August 28, 2018.

[6] The plaintiff did not receive the rent payment from the defendants by the move-in date, September 9, 2018. As a result, it did not give the defendants keys to the Apartment. It says the defendants' failure to pay rent has caused it to suffer loss and damage, including lost rental income. It also says it is entitled to recover costs of re-renting the Apartment, including advertising costs. It seeks judgment in the amount of $180,000 plus costs. Despite having said it is claiming costs to re-rent the apartment, it has not claimed damages to be assessed over and above the fixed sum indicated.

[7] On October 29, 2020, Mr. Chang filed a response to civil claim. He admits that the defendants executed the Agreement but says afterwards he became concerned. The term of the Agreement was shorter than the one he had requested, so he told the person he was dealing with, a Mr. Wong, the Agreement needed to be revised. Mr. Wong sent him initial wire instructions. Mr. Chang says he wired funds to that account. Subsequently Mr. Wong advised him the account number he had provided was incorrect and provided new wire instructions. This made Mr. Chang suspicious because he had heard about rental scams in the same building. He opted not to transfer any further funds. The plaintiff says he discovered the plaintiff did not own the Apartment, so he asked Mr. Wong who the actual owner was, but did not receive a response.

Applicable Law

[8] The plaintiff relies on Rule 9-5(1)(a) to (d):

> Scandalous, frivolous or vexatious matters
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
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> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,

> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
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> (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[9] Subrule (2) provides that:

> Admissibility of evidence
>
> (2) No evidence is admissible on an application under subrule (1)(a).

9-5(1)(a), Discloses no reasonable claim or defence

[10] The Supreme Court of Canada summarized the approach taken in subrule (a) in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 [*Nevsun*], at paras. 64 and 66:

> [64] A pleading will only be struck for disclosing no reasonable claim under rule 9-5(1)(a) if it is "plain and obvious" that the claim has no reasonable prospect of success (*R. v. Imperial Tobacco Canada Ltd*., 2011 SCC 42 (CanLII), [2011] 3 S.C.R. 45, at para. 17; *Odhavji Estate v. Woodhouse*, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263, at paras. 14-15). When considering an application to strike under this provision, the facts as pleaded are assumed to be true "unless they are manifestly incapable of being proven" (*Imperial Tobacco*, at para. 22, citing *Operation Dismantle v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455).
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> . . .
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> [66] This Court admonished in *Imperial Tobacco* that the motion to strike
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> > is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. . . . Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. [para. 21]

Rule 9-5(1)(b), Unnecessary, scandalous, frivolous or vexatious

[11] In *Willow v. Chong*, 2013 BCSC 1083 [*Willow*], at para. 20, Justice Fisher summarized subrule (b):

> [20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any

> claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (SC); *Skender v Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious. An application under this sub-rule may be supported by evidence.

[12] This is approved in *Nevsun* at para. 65.

[13] Justice Romilly summarized principles applicable to sub-rules (b) and (c) in *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, [1999] B.C.J. No. 2160, at para. 47 [and I would reproduce paragraph 47 at this point if the reasons -- or a transcript is ordered]:

> [47] Irrelevancy and embarrassment are both established when pleadings are so confusing that it is difficult to understand what is being pleaded: *Gittings v. Caneco Audio-Publishers Inc.* (1987), 1987 CanLII 2561 (BC SC), 17 B.C.L.R. (2d) 38 (B.C.S.C.). An "embarrassing" and "scandalous" pleading is one that is so irrelevant that it will involve the parties in useless expense and will prejudice the trial of the action by involving them in a dispute apart from the issues: *Keddie v. Dumas Hotels Ltd.* (1985), 1985 CanLII 417 (BC CA), 62 B.C.L.R. 145 at 147 (B.C.C.A.). An allegation which is scandalous will not be struck if it is relevant to the proceedings. It will only be struck if irrelevant as well as scandalous: *College of Dental Surgeons of B.C. v. Cleland* (1968), 1968 CanLII 1008 (BC CA), 66 W.W.R. 499 (B.C.C.A.). A pleading is "unnecessary" or "vexatious" if it does not go to establishing the plaintiff's cause of action or does not advance any claim known in law: *Strauts v. Harrigan*, 1992 CanLII 595 (BC SC), [1992] B.C.J. No. 86 (Q.L.) (B.C.S.C.). A pleading that is superfluous will not be struck out if it is not necessarily unnecessary or otherwise objectionable: *Lutz v. Canadian Puget Sound Lumber and Timber Co.* (1920), 28 B.C.R 39 (C.A.). A pleading is "frivolous" if it is obviously unsustainable, not in the sense that it lacks an evidentiary basis, but because of the doctrine of estoppel: *Chrisgian v. B.C. Rail Ltd. et al.* (6 July 1992), Prince George Registry 20714 (B.C.S.C.).

Rule 9-5(1)(c), It may prejudice, embarrass or delay the fair trial or hearing of the proceeding

[14] In *Canadian Federation of Students v. Simon Fraser Student Society*, 2010 BCSC 1816, at paras. 40-41, Justice Grauer, as he then was, summarized as follows:

> [40] Rule 9-5(1)(c) and (d) involve a number of considerations. These include whether the pleadings are unintelligible, confusing and difficult to understand, whether they are so irrelevant ("embarrassing" and

> "scandalous") that they will involve the parties in useless expense and prejudice the trial by involving them in a dispute that strays far from the issues, and whether they do not advance any defence known to law ("unnecessary" or "vexatious"). See, for instance, *Moulton Contracting Ltd. v. British Columbia*, 2010 BCSC 506, and the cases cited therein by Hinkson J., as he then was. These considerations also encompass a pleading that is made for an improper purpose, such as to harass and oppress the other parties, as opposed to raising a bona fide defence.
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> [41] Rule 9-5(1)(d) also raises a number of considerations. A pleading is an "abuse of the process of the court" not only if it attempts to re-litigate something already decided, but also if it violates such principles as judicial economy, consistency, finality and the integrity of the administration of justice: see, for instance, *Strata Plan LMS3259 v. Sze Hang Holding Inc.,* 2009 BCSC 473 at para. 47, citing *Toronto (City) v. Canadian Union of Public Employees*, Local 79, [2003] 3 S.C.R. 77 at para. 37.

Rule 9-5(1)(d), Otherwise an abuse of the process of the court

[15] Abuse of process is summarized in *Willow* at para. 21:

> [21] Abuse of process under Rule 9-5(1)(d) or the court's inherent discretion is a flexible doctrine. It allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice. A claim may be struck where it is a collateral attack on an administrative decision that is subject to appeal or judicial review: *Cimaco International Sales Inc. v British Columbia*, 2010 BCCA 342; *Stephen v HMTQ*, 2008 BCSC 1656; *Varzeliotis v British Columbia*, 2007 BCSC 620; *Gemex Developments Corp. v City of Coquitlam*, 2002 BCSC 412; *Berscheid v Ensign*, [1999] B.C.J. No. 1172 (SC). A claim may also be struck as an abuse of process where it is an attempt to re-litigate an issue that has already been decided: *Toronto (City) v Canadian Union of Public Employees (CUPE), Local 79*, 2003 SCC 63.

Analysis

[16] The impugned portions of Mr. Chang's response to civil claim are set out below. I include the surrounding text for context. The impugned portions are underlined.

[17] Part 1, Division 2, "Defendant Chang's Version of Facts", para. 3:

> 3. The plaintiff 1110008 B.C. Ltd.'s director and officer is an individual named Tariq Kassam, ("Kassam"). Kassam acts a property manager, although he is not licensed to do so under the *Real Estate Services Act*, S.B.C. 2004, c. 42. On May 12, 2014, the Real Estate Council of British Columbia found that Kassam had committed professional misconduct within the meaning of the

Real Estate Services Act as he provided real estate services through an unlicensed entity.

[18] Part 1, Division 2, para. 5:

5. A few days later, an individual named Derrick Wong ("Wong") of Canadian National Relocation Ltd. contacted the Defendant Chang. Wong purported to be an agent for the Plaintiff.

[19] Part 1, Division 2, para. 6:

6. Canadian National Relocation Ltd. is a company duly incorporated under the laws of British Columbia. Kassam is listed as the director and officer of Canadian National Relocation Ltd. Canadian National Relocation Ltd. is merely an alter ego for Kassam.

[20] Part 1, Division 2, para. 10:

10. Wong later sent another email to the Defendant Chang advising that the account number he provided earlier was incorrect and provided a new account number. The sudden change of account number made the defendant Chang suspicious as he had heard about rental scams in the same building. One of these rental scams involved a company named Pacific Rim Living. In 2013, the Superintendent of Real Estate made summary orders under sections 46 and 51 of the *Real Estate Act* that Khalil Kassam and Khalil Kassam doing business as Pacific Rim Living cease conducting real estate services, including rental property management services, in British Columbia.

[21] Part 3, para. 7:

7. Further, the Defendant Chang submits that Canadian National Relocation Ltd., the Plaintiff and Kassam are not licensed property managers under the *Real Estate Services Act*.

[22] Part 3, para. 8:

8. Kassam has already been found by the Real Estate Council of BC to have committed professional misconduct for providing real estate services through an unlicensed entity.

[23] The plaintiff argues that all of the underlined portions in the foregoing paragraphs are irrelevant to Mr. Chang's defences. They relate to alleged conduct on the part of non-parties to the action and give rise to disputes which are unrelated to the issues between the plaintiff and the defendants. They relate to alleged matters that are separate from issues raised in the notice of civil claim. They are not material

to answering the plaintiff's claims or advancing the defendants' defences and would not affect the outcome of the action. They are pleaded for the improper purpose of making “loose and convoluted speculations” about the plaintiff's alleged misconduct or bad faith concerning matters unrelated to the issues in the action. They would also involve the parties in useless expense.

[24] Mr. Chang argues the impugned portions are all relevant evidence, misconduct by the plaintiff's director or others holding themselves out as the plaintiff's agent.

[25] I note that Rule 3-7(1) provides that:

> A pleading must not contain the evidence by which the facts alleged in it are to be proved.

[26] In *The Public Guardian and Trustee of British Columbia v. Johnston*, 2016 BCSC 1388, paras. 43-46, Justice Ballance summarized the appropriate approach to drafting pleadings:

> [43] Pleadings are not a vehicle to outline a detailed narrative of the facts and events that may have bearing upon the case. Evidence is not to be included: Sahyoun at para. 29; Rule 3-7(1). Rather, pleadings must be summary in nature, setting out a concise and orderly statement of the material facts that give rise to the claim (or counterclaim), establish a defence, or relate to matters raised by the claim: *Doerksen v. First Open Heart Society of British Columbia*, 2010 BCSC 1291.
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> [44] Material facts are the facts that are essential to formulate each cause of action or defence; no averment crucial to success should be omitted: *Pyke v. Price Waterhouse Ltd.* , 40 C.P.C. (3d) 7, 1995 CarswellBC 907 (S.C.); *Delaney & Friends Cartoon Productions Ltd. v. Radical Entertainment Inc. et al*, 2005 BCSC 371; *Skybridge Investments Ltd. v. Metro Motors Ltd*., 2006 BCCA 500; *Young v. Borzoni et al*, 2007 BCCA 16 at para. 20.
>
> [45] It is the expectation that material facts will be stated succinctly and with precision, and also be organized in a way that informs the Court of the issues of fact and law it is being called upon to decide: *Homalko Indian Band v. British Columbia*, [1998] B.C.J. No. 2703, 25 C.P.C. (4th) 107 (S.C.); *Glenayre Manufacturing v. Pilot Pacific Properties, et al*, 2003 BCSC 303.
>
> [46] Particulars and material facts are different in their character and purpose. Broadly speaking, particulars are intended to limit the generality of the pleadings and the issues to be tried; enable the other side to properly prepare for trial; tie the hands of the party supplying the particulars; and inform the opposing party what the pleader intends to prove, as distinct from

> the mode in which the case is to be proved: *Cansulex Ltd. v. Perry*, 1982 CarswellBC 836 (C.A.). They should follow the material facts and be identified as such. Although particulars must supply sufficient detail of the case to be met, they are not to include the evidence that is anticipated will be adduced at trial to prove the pleaded facts.

[27] As the response to civil claim is currently constituted, I agree that the underlined portions of Part 1, Division 2, para. 3 above appear irrelevant to the contractual issues between the plaintiff and the defendants. If they are intended to support a claim of fraudulent misrepresentation, it is not clear which elements these facts are intended to establish.

[28] It is possible Mr. Chang may intend to suggest the plaintiff is involved in or a vehicle through which Tariq Kassam is improperly continuing to provide unlicensed real estate services, but it is not at all clear how that would be relevant to his defences to the plaintiff's contract claim. If Mr. Chang intends to make such an allegation, he must do so clearly and unambiguously.

[29] If his intention is to smear the plaintiff by virtue of its connection to Tariq Kassam and his professional history, that would qualify as unnecessary, scandalous, frivolous and vexatious. In my view, it is appropriate to strike the underlined portion of para. 3. This is not intended to prevent Mr. Chang from incorporating some of those elements into a properly constituted amended plea as part of a future amendment.

[30] With regard to Part 1, Division 2, para. 5, Mr. Wong is referred to in the response to civil claim as holding himself out as the plaintiff's agent for purposes of forming the Agreement, facilitating payment and as recipient of communications regarding Mr. Chang's concerns about the Agreement. Mr. Wong is referred to as being "of Canadian National Relocation Ltd.” (“CNR Ltd.") It is not clear whether Mr. Chang is alleging CNR Ltd. was the plaintiff's agent and Mr. Wong was CNR Ltd.'s representative, or whether Mr. Wong was the agent in his personal capacity but he also happened to be involved in CNR Ltd. If the former, the underlined portions of para. 5 may be appropriate; if the latter, they are not and should be struck. As Mr.

Chang will be amending his response to civil claim, I direct that he clarify this point as part of the amendment.

[31] With regard to Part 1, Division 2, para. 6, Mr. Chang is alleging that CNR Ltd. via Mr. Wong held itself out as agent for the plaintiff. The first sentence of this paragraph may be appropriate. For the second sentence, it is not clear why Tariq Kassam being a director of CNR Ltd. is relevant. For the third sentence, it is not clear why CNR Ltd. merely being Tariq Kassam's alter ego has any relevance, particularly since neither CNR Ltd. nor Tariq Kassam are alleged to be parties to the Agreement. Subject to the clarification directed in respect to para. 5 above, the first sentence may be appropriate to remain; the second and third sentences appear to be unnecessary, scandalous, frivolous and vexatious and are struck out.

[32] With regard to Part 1, Division 2, para. 10, the underlined portion alleges a previous rental scam perpetrated by, and a regulatory action taken against Khalil Kassam. It is my understanding that he is alleged to be Tariq Kassam’s brother. The nature of the alleged scam is not described and there is no suggestion that Khalil Kassam has any involvement in managing the Apartment or procuring the Agreement. It is not apparent how his regulatory history could possibly be relevant. This appears to be an attempt to argue misconduct by association. I agree that the underlined portions of para. 10 are unnecessary, scandalous, frivolous and vexatious and they are struck out.

[33] With regard to Part 3, para. 7, the underlined portions allege that Tariq Kassam and CNR Ltd. are not licensed property managers under the *Real Estate Services Act*. It is not clear how this could possibly have any bearing on the enforceability of the Agreement as between the plaintiff and the defendants. If the intention is to connect this to a fraudulent misrepresentation defence, it is not clear how this relates. In my view, it is appropriate to strike the underlined portion of para. 7. This is not intended to prevent Mr. Chang from incorporating this issue into a properly constituted amended plea as part of a future amendment.

[34] With regard to Part 3, para. 8, this paragraph references Tariq Kassam's regulatory history. It is not clear what possible bearing this has on Mr. Chang's defence of the breach of contract claim. If it is intended to relate to a fraudulent misrepresentation defence, as noted below this plea is notably deficient. I agree this appears to be unnecessary, scandalous, frivolous and vexatious and should be struck out. Again, this is not intended to prevent Mr. Chang from incorporating this issue into a properly constituted amended plea as part of a future amendment.

[35] Part 3, [Legal Basis], Paras. 1 – 4 [All impugned]:

> 1. The essential elements of a contract include: offer and acceptance, consideration and intention.
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> > *Vancouver Canucks Limited Partnership v. Canon Canada Inc.*, 2013 BCSC 866 at para. 161
>
> 2. The Defendant Chang submits that the elements of a contract are not met.
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> 3. The Defendant Chang pleads fraudulent misrepresentation.
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> 4. As stated in *Wang v. Shao*, 2018 BCSC 377 at paragraph 196, in order to succeed on a claim of fraudulent misrepresentation, the defendant must establish the following elements:
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> > (1) the vendor made a representation of fact to the purchaser;
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> > (2) the representation was false in fact;
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> > (3) the vendor knew the representation was false when it was made, or made a false representation recklessly, not knowing if it was true or false;
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> > (4) the vendor intended the purchaser to act on the representation;
> >
> > (5) the purchaser was induced to enter into contract in reliance upon the false representation and thereby suffered a detriment.

[36] With respect to the allegations of breach of contract in paras. 1 and 2 of Part 3, the plaintiffs say Mr. Chang's denial that there is a contract between the parties is deficient because he has not pled material facts which challenge the existence of the Agreement. He has admitted he executed it. He has not identified which specific elements of the contract were not met. In the circumstances, counsel argues it is plain and obvious that Mr. Chang's denial of the Agreement is bound to fail, so paras. 1 and 2 must be struck out under Rule 9-5(1)(a).

[37] Alternatively, they should be struck pursuant to subrule (b) on the basis that they are unsustainable on the basis of estoppel. The plaintiff argues Mr. Chang is estopped from challenging the existence of the Agreement because the facts pleaded in his response to civil claim confirm the defendants executed the Agreement and took steps to make payments under it. This shows acceptance of the terms of the Agreement and an intention to be contractually bound.

[38] With regard to the claim of fraudulent misrepresentation in paras. 3 and 4, the plaintiff says Mr. Chang has not pled any material facts that establish the elements of fraudulent misrepresentation, including who made the false misrepresentation, what those misrepresentations were, whether the defendants relied on them, and what if any loss the defendants allegedly suffered as a result.

[39] The elements of contract identified in the case reference in Part 3, para. 1, of Mr. Chang's response, *Vancouver Canucks Limited Partnership v. Canon Canada Inc.,* 2013 BCSC 866, at para. 161:

> [161] The parties agree that the relevant fundamental requirements for a contract to exist between the parties are: an offer and acceptance; agreement on all of the essential terms, otherwise termed a meeting of the minds (or *consensus ad idem*); certainty of the agreed terms; consideration; and the intention to be bound (or *animus contrahendi*).

[40] The elements of fraudulent misrepresentation are summarized in *Wang v. Shao*, 2019 BCCA 130, at para. 24. These track the elements identified in the trial level reasons in the same case, identified in Part 3, para. 4 of Mr. Chang's response to civil claim:

> [24] ... It is trite law that fraudulent misrepresentation involves the following elements that must be proven by the claimant:
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> (a) the wrongdoer must make a representation of fact to the victim;
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> (b) the representation must be false in fact;
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> (c) the party making the representation must have known the representation was false at the time it was made;
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> (d) the misrepresentor must have intended the victim act on the representation; and
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> (e) the victim must have been induced to enter into the contract in reliance upon it.

> (*Derry v. Peek* [1889] UKHL1, 14 App. Cas. 337 (H.L.); see also *Islip v. Coldmatic Refrigeration of Canada Ltd.* 2002 BCCA 255 at para. 11.)

[41] I agree that Mr. Chang has not clearly identified which elements of the contract are absent in the present case. He does state that he signed the Agreement and wired or attempted to wire funds according to the wire instructions he received. It is not clear whether any funds were transferred successfully. If he is asserting there was no valid contract between the parties, that is not clearly raised in either Part 1, Division 2 [Mr. Chang's Version of Facts] or Part 3 [Legal Basis].

[42] While there are arguably some factual elements of a possible misrepresentation included in Part 1 of the response to civil claim, Mr. Chang has not clearly pled material facts necessary to establish all of the essential elements of fraudulent misrepresentation identified above. I agree the claim for fraudulent misrepresentation is deficient.

[43] Counsel for Mr. Chang indicated that if the court finds there are deficiencies and is inclined to strike portions of the response to civil claim, he requests an opportunity to amend it to address any shortcomings.

[44] A core principle in considering applications under Rule 9-5(1)(a) is that a claim or defence should not be struck when, if amended, it could disclose a reasonable cause of action (or defence); see *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386, at para. 10; and *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2015 BCCA 163, at para. 133.

[45] I agree it is appropriate to allow Mr. Chang an opportunity to amend his response to civil claim to attempt to address the issues identified in these reasons. The portions I have ordered struck out are not intended to prevent him from incorporating them in whole or in part into a properly constituted amended plea as part of a future amendment.

A Comment Regarding Notice of Civil Claim

[46] During the hearing counsel for Mr. Chang observed that the plaintiff is not the registered owner of the Apartment and it had not pled that it was a tenant with the right to sub-lease. The language in the amended notice of civil claim simply states the plaintiff was "in control" of the Apartment.

[47] Plaintiff's counsel advised they had assumed conduct of the file from previous counsel and had not drafted either the original or amended notice of civil claim, but believed the plaintiff had a tenancy agreement. Upon further inquiry, it became apparent that despite the action having been started on September 9, 2020, neither party had yet exchanged their list of documents. The plaintiff had not yet produced its tenancy agreement or any document through which it says it became entitled to enter into a sub-tenancy agreement with the defendants. The failure to specify the basis on which the plaintiff was renting the Apartment is a clear deficiency in the amended notice of civil claim and ought to be addressed forthwith, and ideally before Mr. Chang files his proposed amended response to civil claim.

Costs

[48] The plaintiff is entitled to costs of the application but not payable forthwith.

"Master Bilawich"