

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yang v. Li*,
2024 BCSC 613

Date: 20240415
Docket: S185245
Registry: Vancouver

Between:

Hong Yang and Yuzhang Wang

Plaintiffs

And

Xue Yun Li

Defendant

Before: The Honourable Justice Wilson

Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.
January 29-31;
February 1, 2, 5–9, 29, 2024

Place and Date of Judgment:

Vancouver, B.C.
April 15, 2024

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[1] This case is about whether a home-made contract made between former friends for the sale of the plaintiffs' home is legally enforceable. If it is, the question is which party breached it.

Background Facts

[2] The plaintiff, Ms. Hong Yang knew the defendant, Ms. Xue Yun Li from a dance class they had taken together. Ms. Yang understood that Ms. Li was in the business of buying and selling properties, and since Ms. Yang and her husband had decided to sell their property at 3311 Blundell Road ("Blundell" or the "Blundell Property"), which is the subject of this litigation, she decided to ask Ms. Li for a recommendation for a realtor.

[3] Ms. Li was familiar with the property and expressed interest in buying it. After she went to view it, Ms. Li and Ms. Yang discussed the terms pursuant to which Ms. Li might buy the property. Ms. Li wanted to have her son, Mr. Jan Zhan see the property, which happened on the evening of May 3, 2017.

[4] The next day, Ms. Yang took a one-page document to Ms. Li. The document was written in Chinese, and was referred to by the parties as the "Chinese Contract", and I will also refer to it as such in these reasons. It was signed by both Ms. Yang and Ms. Li on May 4, 2017.

[5] The Chinese Contract was prepared by Ms. Yang's husband, the plaintiff Mr. Yuzhang Wang. A translation of the Chinese Contract is as follows:

Buyer: Xue Yun Li

Seller: Hong Yang

Real estate property: 3311 Blundell Road, Richmond, BC V7C 1G5

The seller Hong Yang sells the above referenced property to the buyer Xue Yun Li, and the purchase price shall be \$2,888,000 (TWO MILLION EIGHT HUNDRED AND EIGHTY-EIGHT THOUSAND CANADIAN DOLLARS). The method of payment is as follows:

1. Deposit: \$100,000 (ONE HUNDRED THOUSAND CANADIAN DOLLARS);
2. First payment: \$100,000 (ONE HUNDRED THOUSAND CANADIAN DOLLARS), paid in full by the buyer before July 10, 2017;

3. Second payment: \$800,000 (*EIGHT HUNDRED THOUSAND CANADIAN DOLLARS*), paid in full before *December 30, 2017*; and

4. Third payment: *Balance of the sales price to be paid in full after the house is sold.*

5. The seller may assist the buyer in applying for bank loans, the monthly payment of the loan interest and principal shall be paid by the buyer, the loan amount will be counted as the buyer's payment to the seller, which shall be deducted from the total transaction amount of the property.

6. The interest on the balance of the Purchase Price is calculated pursuant to the bank mortgage interest rate, and is added to the balance of the Purchase Price, to be paid off altogether when both parties are handling the Property transfer. The buyer shall pay the relevant fees assessed by the government.

The buyer may move into and reside at the Property after the Deposit is paid. The buyer shall pay the fees related to the Property commencing May 15, 2017, including the property tax, utilities, electricity, gas, phone, cable, home security, home insurance, and house repairs.

The contract shall come into effect immediately after being signed by both parties.

[6] The italicized portions of the above were handwritten by Ms. Li on the original Chinese Contract on May 4, the date the Chinese Contract was signed.

[7] The Chinese Contract provides for an initial deposit of \$100,000, which was paid (the "Deposit"). Once the Deposit was paid, Ms. Li, Mr. Zhan and Mr. Zhan's family moved into the property. The plaintiffs did not cancel the phone, cable, home security or property insurance.

[8] Ms. Li made the first installment payment of \$100,000 in July 2017 by way of personal cheque (the "First Installment"), and also reimbursed the plaintiffs in the sum of \$7,721.72 for the property taxes. In September 2017, Ms. Li reimbursed the plaintiffs the sum of \$4,456.70 in cash for various property expenses.

[9] The Chinese Contract provides that the second installment of \$800,000 was to be paid by December 30, 2017 (the "Second Installment"), and the balance paid when 'the house' sells. It is common ground that the reference to 'the house' refers to Ms. Li's property on West 20th Avenue in Vancouver ("West 20th Avenue"). The plaintiffs' evidence is that the purpose of the various payments was that they were

prepared to wait for the balance of the purchase price, but only if they received \$1 million by the end of 2017.

[10] In late August 2017, Ms. Li advised that she had arranged for a sale of West 20th Avenue. The parties agreed by way of WeChat message on September 29, 2017, that the closing date would November 20, 2017. Many of the parties' communications were by way of WeChat, an instant messaging application that is similar to text messaging and is commonly used by people for whom Chinese is the first language.

[11] Ms. Li wanted to obtain a mortgage in order to buy the property. On September 29 or 30, 2017, Ms. Yang, at Ms. Li's request, provided Ms. Li with an English version of the Chinese Contract (the "English Contract"). The English Contract showed both plaintiffs as sellers and Ms. Li, Mr. Zhan, and Mr. Zhan's wife, Li Li, as purchasers. Ms. Li signed the English Contract for all the buyers.

[12] As set out in the agreed statement of facts, the sole purpose of the English Contract was to assist Ms. Li in obtaining a mortgage. Neither party intended for the English Contract to amend or vary the Chinese Contract, which continued to be the governing document. The English Contract was prepared to include a closing date of November 20, 2017, to coincide with Ms. Li's sale of West 20th Avenue. Ms. Yang emailed the English Contract to a mortgage broker at CIBC at Ms. Li's request on September 30.

[13] On November 14, 2017, Ms. Li told Ms. Yang that she had not been able to obtain a mortgage from CIBC. As a result, Ms. Li did not pay the balance of the purchase price on November 21, 2017, or at any time thereafter. Ms. Li sold West 20th Avenue on November 21, 2017, for \$3,390,000 and received net sale proceeds of \$1,261,039.30.

[14] Over the next few months, Ms. Li and her son, Mr. Zhan, provided information to Ms. Yang about their efforts to obtain mortgage financing. For a time, Ms. Li was

in China on account of her mother's health, and communications were exclusively between Mr. Zhan and Ms. Yang.

[15] Eventually Ms. Yang became concerned as to whether Ms. Li would go through with the purchase. The parties met on April 18, 2018, approximately five months after the original closing date. While they disagree as to what exactly was said at the meeting, Ms. Yang subsequently demanded that Ms. Li, Mr. Zhan and his family vacate the property. They did so by April 29, 2018.

[16] When Ms. Li and Mr. Zhan and his family moved out of the property, they moved into a home at 6831 Camsell Crescent ("Camsell" or "Camsell Property"). Ms. Li had made an offer to purchase the Camsell Property on April 12, 2018, which offer was subject to financing. She waived all subjects approximately four days before she moved out of the Blundell Property. Ms. Li had also purchased another property located at #1308-8180 Granville Avenue in Richmond ("Granville Apartment") in the months between her sale of West 20th Avenue and when she vacated the Blundell Property.

[17] The plaintiffs listed the Blundell Property for sale on May 9, 2018, and eventually sold it for \$408,000 less than the price in the Chinese Contract. The plaintiffs seek damages for this amount, plus the commission they paid to their realtor, in addition to contractual interest and expenses associated with Ms. Li's occupation of the Blundell Property.

[18] Ms. Li denies that she is liable as claimed. First, she says the Chinese Contract is not enforceable. She argues that its terms are uncertain, and in particular as to price based on the interest clause, and that the Chinese Contract was subject to an unwritten clause, namely that it was subject to her obtaining financing. She also argues that the Chinese Contract is not legally enforceable because the property was in the names of both plaintiffs, but the only person identified as a vendor is Ms. Yang.

[19] Even if the Chinese Contract is enforceable, Ms. Li says that although she was not in a position to close on the initial closing date of November 20, 2017, Ms. Yang was also not ready, willing and able to complete. She argues that by terminating the contract in April 2018 without having set a new closing date, the plaintiffs essentially jumped the gun and as a consequence, they were the party in breach.

[20] I commend counsel for presenting this case in a very organized manner. There were document books such that there was no duplication of documents, a document agreement, and certified translations of all the documents. The parties filed an agreed statement of facts, which was most helpful.

[21] For the reasons that follow, I find that the Chinese Contract was a valid and binding contract, and that the plaintiffs were ready, willing and able to complete at the closing date and until April 2018. The plaintiffs were entitled to accept the defendant's breach, which they did, and are entitled to damages.

Credibility

[22] Because the parties disagree as to the interpretation of the Chinese Contract, it is necessary to make findings with regard to the credibility and reliability of the various witnesses. There were significant differences between the parties' versions of events.

[23] In *R. v. H.C.*, 2009 ONCA 56, Justice Watt for the Ontario Court of Appeal addressed the distinction between credibility and reliability:

[41] Credibility and reliability are different. Credibility has to do with a witness's veracity, reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately:

- i. observe;
- ii. recall; and
- iii. recount events in issue.

Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence: *R. v. Morrissey* (1995), 1995 CanLII 3498 (ON CA), 22 O.R. (3d) 514, at 526 (C.A.).

[24] Assessing each parties' 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": *Bradshaw v. Stenner*, 2010 BCSC 1396 at para. 186. The assessment involves examination of the factors related to accuracy, but also the firmness of the witness' memory the ability to resist the influence of interest to modify their recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes their testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether the witness has a motive to lie, and the demeanour of a witness generally: *Bradshaw* at para. 186. Ultimately, the validity of the evidence depends on whether it is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time: *Bradshaw* at para. 186.

[25] In this case, all of the witnesses testified through an interpreter. While I am satisfied that the interpreter accurately interpreted the witnesses' words, I recognize that the assessment of credibility is rendered more difficult, at least to some degree, when the witnesses' words are filtered through the interpreter.

[26] With the exception of the uninterested witness Ms. Ping Zhao, whose evidence was brief, all witnesses appeared to labour under the misconception that credibility and persuasiveness are enhanced by repetition. For each witness, the repetition was with regard to their side's version of events or interpretation of events, consistent with their theory of the case. Each of the witnesses insisted upon repeating prior testimony when answering questions, even when the evidence being repeated was not responsive.

[27] Ms. Yang repeatedly said that she was authorized by her husband to negotiate with Ms. Li, and that Ms. Li had bought the property when she moved into it in May 2017, that the property was Ms. Li's from that day forward, and all that remained was for her to pay the balance of the purchase price. Mr. Wang kept reiterating that he had authorized Ms. Yang to speak for him.

[28] As for the defendant's witnesses, Ms. Li repeatedly asserted that she did not understand English, was generally unsophisticated in matters such as this, that she usually relies on a realtor for all matters including mortgages, and that she trusted that Ms. Yang was going to help her get a mortgage.

[29] Mr. Zhan reiterated on numerous occasions that the Chinese Contract was subject to financing.

[30] I found Ms. Li to be evasive during cross-examination when counsel attempted to elicit specifics and details from her. Rather than answering the questions put to her, she resorted to generalities, repeatedly professing not to understand how real estate transactions and mortgages generally work, and also that she was relying on Ms. Yang.

[31] For example, Ms. Li was questioned about her efforts to obtain a mortgage. It was put to her that she successfully applied for two other mortgages during the time that she professed to be attempting to secure a mortgage to buy the Blundell Property. She saw mortgage brokers on each occasion and completed mortgage applications. During cross-examination, Ms. Li repeatedly stated that she counts on her realtor to arrange for mortgages, but also confirmed that the only step a realtor had ever taken was to give her the contact information for a mortgage broker. In other words, although Ms. Li's stated reason for never having obtained a mortgage to purchase the Blundell Property was that she did not have a realtor to assist her, she conceded that the role of a realtor in obtaining a mortgage was generally limited to providing a referral to a mortgage broker.

[32] There were several aspects of Mr. Zhan's evidence that I do not accept. I find that he was not present at the time Ms. Yang and Ms. Li discussed the terms of the Chinese Contract. Mr. Zhan's involvement was limited to viewing the property on May 3; placing a telephone call to Ms. Yang on the evening of May 3 to try to lower the price; and being physically present when Ms. Li signed the Chinese Contract, even though Mr. Zhan agrees that he did not read it and was not involved in the conversation between Ms. Yang and Ms. Li.

[33] I also do not accept that Mr. Zhan did not know that Ms. Li was going to purchase the Camsell Property when Mr. Zhan and his family moved into that property at the end of April 2018. I do not accept that the first he knew that Ms. Li was purchasing it was in August 2018.

[34] Lastly, I reject Mr. Zhan's contention that he was approved for a mortgage with the Bank of Montreal for \$1.2 million based on an appraisal of the Blundell Property of approximately \$2.7 million, which is what he told Ms. Yang in March 2018. Mr. Zhan, by his own admission, never made a formal application for a mortgage and provided no documents to any prospective mortgage lender. Mr. Zhan's evidence was that he never received a bill for an appraisal. I do not accept that a prospective mortgage lender of Mr. Zhan's ever appraised the property, whether for \$2.7 million or otherwise, and I do not accept that he was ever approved for a mortgage to purchase the Blundell Property.

[35] Mr. Zhan also attempted to explain one of his answers and a telephone conversation with Ms. Li on April 9, 2018, by saying that his mother was in China. However, Ms. Li had been back in Canada since early March, and had viewed the Camsell Property on April 8, 2018. Mr. Zhan admitted during cross-examination that he had seen the Camsell Property before Ms. Li made the offer, which was dated April 9.

[36] In all of the circumstances, I have based my findings of fact upon whether the testimony of the various witnesses is consistent with all of the surrounding evidence, including documentary evidence—both third-party documents and communications between the parties that were predominantly by way of translated text messages on the WeChat application.

[37] While the plaintiffs were also at times nonresponsive and positional with regard to their answers to questions put to them in cross-examination, I found them to be generally more willing to make concessions on straightforward matters, and their evidence was generally consistent with the documents.

[38] Where the evidence of the plaintiffs' witnesses was contrary to the evidence of the defendant's witnesses, I generally found the plaintiffs' evidence to be more consistent with the surrounding circumstances. As such, I prefer the plaintiffs' evidence where the parties' evidence differed.

Findings of Fact

[39] The parties disagree as to whether the terms of the Chinese Contract were discussed on May 3, 2017, the day Ms. Li and Mr. Zhan viewed the property and the day before the Chinese Contract was signed.

[40] Ms. Yang and her husband had decided to sell the Blundell Property and she decided to ask Ms. Li for a recommendation for a realtor. After Ms. Li and Mr. Zhan saw the property, they visited two of Ms. Li's properties, one was an apartment downtown and the other was West 20th Avenue.

[41] Ms. Li was adamant that there was no meeting at West 20th Avenue to discuss contractual terms on May 3. She is sure there was no discussion with regard to terms because she did not take Mr. Zhan to view the property until approximately 5:00 pm on May 3, and she would not have been in a position to discuss terms because she did not decide to purchase it until she had spoken to Mr. Zhan after that viewing. The only time terms were discussed was the following day, on May 4, when Ms. Yang went to West 20th Avenue with the draft contract in hand. Ms. Li does agree that Mr. Zhan called Ms. Yang to try to get a lower price which resulted in the price of \$2.888 million.

[42] I reject Ms. Li's evidence on this point. If I were to accept Ms. Li's evidence, it is not clear when the terms that ended up in the typed Chinese Contract could have been discussed. I find that Ms. Li and Ms. Yang had at least discussed terms on May 3, before Mr. Zhan ever saw the property, even if Ms. Li had not yet decided to buy it. My finding is based on several reasons.

[43] First, Mr. Zhan, at Ms. Li's behest, called Ms. Yang on the evening of May 3 to seek a price reduction of the Blundell Property. The next day, Ms. Yang told

Ms. Li that she had given Mr. Zhan a ‘red pocket’ or ‘red envelope’, meaning she had agreed to a lower price.

[44] Second, it is highly unlikely that Ms. Yang would have suggested that Ms. Li move into the property before paying the full price unless Ms. Li had specifically suggested that she wanted to do so.

[45] Third, I find that Ms. Yang did not know much, if anything, about Ms. Li’s financial circumstances. As such, Ms. Yang would not have known that Ms. Li needed to sell West 20th Avenue before she could buy the Blundell Property unless Ms. Li told her in the course of their discussions.

[46] All of these matters—the reduction in the initial asking price from \$2.9 million to \$2.888 million, the possession upon payment of the Deposit, and the closing delayed until after the sale of West 20th Avenue—were in the Chinese Contract prepared by Mr. Wang and taken by Ms. Yang to Ms. Li for execution on May 4. I find that the details were discussed by Ms. Yang and Ms. Li earlier in the day on May 3, before Mr. Zhan saw the property.

[47] On Ms. Li’s version of events, Ms. Yang would have essentially guessed the terms that might be acceptable to Ms. Li and had Mr. Wang prepare the Chinese Contract on that basis. I cannot accept this to be the case.

[48] The only term of the Chinese Contract that was not discussed between Ms. Li and Ms. Yang on May 3 was the requirement that Ms. Yang receive \$1 million before December 31, 2017. The specifics of the installment payments still needed to be negotiated and agreed upon, which was the reason why the dates for the installment payments were left blank in the typed version of the Chinese Contract.

Is There a Valid and Enforceable Contract?

Legal Principles

[49] The law regarding the interpretation of contracts in Canada has shifted over the years. Contractual interpretation is a question of mixed fact and law. A contract

will be interpreted with regard to the surrounding factual matrix which helps to inform the expectations of the parties. Such is the approach set out in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*], where Justice Rothstein summarized the modern approach as follows:

[46] The shift away from the historical approach in Canada appears to be based on two developments. The first is the adoption of an approach to contractual interpretation which directs courts to have regard for the surrounding circumstances of the contract — often referred to as the factual matrix — when interpreting a written contract (Hall, at pp. 13, 21-25 and 127; and J. D. McCamus, *The Law of Contracts* (2nd ed. 2012), at pp. 749-51). The second is the explanation of the difference between questions of law and questions of mixed fact and law provided in *Canada (Director of Investigation & Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 (S.C.C.), at para. 35, and *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 (S.C.C.), at paras. 26 and 31-36.

[47] Regarding the first development, the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine “the intent of the parties and the scope of their understanding” (*Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21, [2006] 1 S.C.R. 744 (S.C.C.), at para. 27 *per* LeBel J.; see also *Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways)*, 2010 SCC 4, [2010] 1 S.C.R. 69 (S.C.C.), at paras. 64-65 *per* Cromwell J.). To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed.... In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

(*Reardon Smith Line*, at p. 574, *per* Lord Wilberforce)

[50] The Supreme Court of Canada in *Sattva* discussed the extent to which the surrounding circumstances may be considered when interpreting a contract. The Court confirmed that the wording of the contract as chosen by the parties remains of paramount importance and set out as follows:

(b) The Role and Nature of the “Surrounding Circumstances”

[56] I now turn to the role of the surrounding circumstances in contractual interpretation and the nature of the evidence that can be considered. The discussion here is limited to the common law approach to contractual interpretation; it does not seek to apply to or alter the law of contractual interpretation governed by the *Civil Code of Québec*.

[57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement (*Hayes Forest Services*, at para. 14; and Hall, at p. 30). The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. BC Tel Mobility Cellular Inc.* (1997), 101 B.C.A.C. 62 (B.C. C.A.)).

[58] The nature of the evidence that can be relied upon under the rubric of "surrounding circumstances" will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract (*King*, at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man" (*Investors Compensation Scheme*, at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.

[51] The Court then went on to address the parol evidence rule. Historically, the parol evidence rule precluded admission of evidence tendered for the purpose of contradicting or varying a contract that has been wholly reduced to writing. It effectively rendered inadmissible evidence of a party's subjective intentions.

[52] However, the Court held that the parol evidence rule is consistent with the modern approach to contractual interpretation. The rule does not preclude a court relying on evidence of the surrounding circumstances in interpreting a contract. The parol evidence rule functions to achieve finality and certainty by preventing a party from using unreliable evidence to attack a written contract. Evidence of the surrounding circumstances—comprised of facts known to the parties or facts that reasonably ought to have been known at the time of contracting—is not the same as

such potentially unreliable evidence. It is therefore a helpful interpretive aid for courts to similarly determine finality and certainty about the words chosen in the contract: *Sattva*, paras. 59–60.

[53] Courts will try to give legal effect to clauses or to agreements where the parties intended that the clause or document would have legal effect: *Empress Towers Ltd. v. Bank of Nova Scotia* (1990), 50 B.C.L.R. (2d) 126 at 129, 1990 CanLII 2207, cited with approval in *666465 B.C. Ltd. v. Concord International Lands Ltd.*, 2010 BCCA 127 at para. 4.

[54] Even though a court will try to give effect to the parties' agreement, it must be careful not to create an agreement where one does not exist. This is so even if the parties may have thought they had reached an agreement. In *Rafal v. Legaspi*, 2007 BCSC 1944, Justice Fisher (as she then was) wrote:

[24] It is not for this Court to complete the parties' contract for them, particularly where an essential term is missing and it cannot be said that the parties agreed to it. Even if the parties believed and acted as if they had made an enforceable contract, and the court's interpretation of the contract would be fair and calculated to do justice to both parties, the court must be careful not to create an agreement which the parties never had, nor intended: see *Kelly v. Watson* (1921), 61 S.C.R. 482 at ¶13; *First City Investments Ltd. v. Fraser Arms Hotel Ltd.* (1979), 13 B.C.L.R. 107 (C.A.).

Analysis

[55] It is apparent that the parties intended to enter into a contract when they signed the Chinese Contract. Ms. Li paid the Deposit, and Ms. Yang allowed Ms. Li and her family to move into the property. Ms. Li subsequently paid the First Installment, in addition to paying the property taxes, some of the household expenses such as the utilities, and the interest payment in September 2017. The parties' subsequent communications, at least until April 2018, only contemplated the completion of the Chinese Contract.

[56] I will first address the question of whether the Chinese Contract is sufficiently certain so to be enforceable.

Are the Essential Terms Present?

[57] The bare minimum requirements for a binding contract for the purchase and sale of land are the parties, the property and the price: *Eaton Properties Ltd. v. British Columbia* (1990), 53 B.C.L.R. (2d) 272 at 276, 1990 CanLII 786 (C.A.). In this case, the property is readily ascertainable. As for the issue of the parties, the only issue is whether the absence of Mr. Wang as a party to the contract renders it unenforceable. I will address this later in these reasons.

[58] Ms. Li argues that the Chinese Contract is uncertain in two respects. First, the price to be paid is unascertainable because the interest provision at clause six (the “Interest Clause”) of the Chinese Contract is unclear. The Interest Clause provides as follows:

6. The interest on the balance of the Purchase Price is calculated pursuant to the bank mortgage interest rate, and is added to the balance of the Purchase Price, to be paid off altogether when both parties are handling the Property transfer. The buyer shall pay the relevant fees assessed by the government.

[59] Second, Ms. Li says the Chinese Contract is uncertain because the closing date is unknown.

Positions of the Parties

[60] The plaintiffs say that the purchase price under the Chinese Contract is clearly stated to be \$2,888,000. They say that if there is any uncertainty regarding the rate of interest, the interest provision is severable.

[61] The defendant argues that severance is not possible because the Interest Clause makes it clear that interest forms a part of the purchase price.

[62] She points to the plaintiffs’ notice of civil claim which expressly pleads this in paragraph 10(d):

10. The Contract provides for the following key terms.

...

- (d) The interest amount on the balance of the Purchase Price is calculated on the bank mortgage interest, and is added to and forms part of the balance of the Purchase Price. The balance of the Purchase Price is to be paid off when the Property title is transferred to the Buyer. The Buyer shall pay the relevant fees assessed by the government.

[63] The defendant also argues that the interest rate is neither stated nor determinable, and points to the fact that when the plaintiffs charged interest on the First Instalment payment, they used a lower rate than they purport to charge now following Ms. Li's refusal to complete. Mr. Wang's evidence was that they were prepared to charge a lower rate when they understood that Ms. Li was fulfilling her obligations but they were no longer willing to do so afterwards.

[64] In support of her position as to the uncertainty of the price, the defendant refers to *Khela v. Clarke*, 2022 BCCA 71, where the Court of Appeal affirmed the trial court's decision that a price adjustment clause rendered the contract unenforceable because it rendered the final price itself uncertain: para. 32. The Court of Appeal applied the standard of review of palpable and overriding error and found no error of law in the judge's reasoning. Ms. Li argues for a similar conclusion in this case.

Discussion

[65] The Interest Clause must be interpreted in the context of the overall circumstances of the arrangement between the parties. The agreement is somewhat unusual because Ms. Li was permitted to move into the property after paying the Deposit but not the balance of the purchase price. Moreover, the timing for payment of the majority of the purchase price, which was tied to the sale of West 20th Avenue, was unknown. Such is the context that the Interest Clause must be interpreted within.

[66] There are a couple of points to address before turning to whether the Interest Clause renders the contract void for uncertainty. First, Ms. Li refers to the doctrine of *contra proferentem*, which is that if there is more than one possible interpretation of a clause in the contract, it will be given an interpretation that is contrary to the

position advanced by the party who drafted the contract. This is based on the notion that if the drafting party's interpretation was the preferred one, it would have been drafted in a manner that makes it clear: *Litt v. Gill*, 2015 BCSC 491 at para. 23.

[67] I do not agree with Ms. Li's contention that *contra proferentem* should apply. This is because the doctrine applies as but one in the interpretative process, in which a court searches for an interpretation that advances the true intentions of the parties at the time of entry into the contract: *Consolidated-Bathurst Export Ltd. v. Mutual Boiler & Machinery Insurance Co.*, [1980] 1 S.C.R. 888 at para. 26. In my view, and as will be discussed in more detail below, the parties' intentions can be ascertained by interpreting the Interest Clause within the surrounding circumstances. Therefore, I do not need resort to the doctrine of *contra proferentem* to resolve any outstanding ambiguities.

[68] The second consideration pertains to Ms. Li's evidence surrounding the negotiations and, more specifically, her signing the Chinese Contract. Ms. Li's evidence was that she is an unsophisticated purchaser, unaware of legal and real estate matters in Canada, who was relying on her friend Ms. Yang because in all of her prior dealings, she had always had a realtor upon whom she has relied in whole.

[69] While I accept that Ms. Li does not read or write English and that her ability to understand spoken English may be limited, I do not accept that she is as unsophisticated or naïve as she portrays. While she professed to be reliant on Ms. Yang with regard to the negotiations for the property, I am satisfied that Ms. Li has been involved in more real estate transactions in Canada than Ms. Yang. I do not accept that she was unaware of contractual principles generally, or of Canadian real estate transactions more specifically.

[70] The second aspect of Ms. Li's evidence that warrants comment is that she repeatedly stated that she did not read the Chinese Contract closely and just signed it because Ms. Yang told her to do so. The parties signed the Chinese Contract on May 4, when Ms. Yang brought the typed version to Ms. Li's house to review and to sign. I find that Ms. Li was under no pressure to sign the Chinese Contract and

indeed she acknowledged that she was afforded the opportunity to read it in detail if she so wished. Her evidence on this point was confirmed by her son Mr. Zhan.

[71] Ms. Li did not suggest that she could not understand the Chinese Contract. It was written in her first language. A party who signs a contract without taking the time and effort to read it and to ensure that it accords with their understanding cannot be heard to complain that the written version differs from what they might have expected upon closer review and after the fact: *L'Estrange v. F. Graucob Ltd.*, [1934] 2 K.B. 394, cited with approval in *Delaney v. Cascade River Holidays Ltd.* (1983), 44 B.C.L.R. 24 (B.C.C.A.) at paras. 23–25. A party who has not bothered to read the contract cannot argue that they interpreted a particular clause in a particular way at the time of signing because there is no evidentiary foundation for their interpretation.

[72] I return now to the question of whether the Interest Clause renders the contract vague for uncertainty. I find that it does not.

[73] The base price was already determined, but it was uncertain when West 20th Avenue would sell and therefore when the vendors would receive the purchase price. Accordingly, I find that Ms. Yang and Ms. Li likely discussed the payment of interest in their meeting on May 3. The Interest Clause reflects an acknowledgement of the fact that the plaintiff would likely be waiting for the remaining balance.

[74] I accept Ms. Yang's evidence that she kept some notes of her discussions and provided them to Mr. Wang for the purposes of preparing the Chinese Contract. I also accept Ms. Yang's evidence that interest was discussed at the "basic rate" and Mr. Wang's evidence that Ms. Yang provided him with her paper notes to prepare the Chinese Contract. Mr. Wang's evidence was that he knew that the basic rate fluctuated, and this was why he did not include a fixed interest rate in the Chinese Contract. Mr. Wang did not save the paper notes as he had no reason to expect it would be necessary once he prepared the Chinese Contract.

[75] I find that the parties had an understanding as to how interest would be calculated.

[76] In or about July 2017, Ms. Li paid the First Installment. In September 2017, Ms. Yang sent Ms. Li some invoices by way of attachments to a WeChat message. The attachments included expenses related to the property since Ms. Li had moved in, together with a charge for interest. Interest was calculated only on the First Installment. The spreadsheet included calculations based on an interest rate of the bank's prime rate less 0.2%. Ms. Li paid both the property expenses and the interest charge of \$417.81 on September 12, 2017.

[77] While it is not entirely clear why Mr. Wang only prepared a spreadsheet for the payment of interest based upon the First Installment as opposed to on the entire price, it is apparent on the face of the spreadsheet as to how the calculation was made. There is no question that Ms. Yang sent Ms. Li the spreadsheet and that Ms. Li paid the invoices. Ms. Li's evidence was that she did not bother to read the spreadsheet. That may be true; however, it was readily apparent on the face of the spreadsheet that she received as to how the interest was calculated and she made the payment.

[78] In the circumstances, I conclude that the intentions of the parties were made sufficiently clear by the wording of the Interest Clause, and the conduct of the parties suggests they agreed to it.

[79] The circumstances at bar are therefore not like those at issue in *Khela*, where a price adjustment clause in the contract provided that the "final purchase price" would be based on the "developable area" of the property—an undefined term. Here, the parties understood the base price and how interest would be calculated on that price in anticipation of the sale of West 20th Avenue.

[80] I find the contract is not void for uncertainty based on the Interest Clause.

[81] I agree with the defendant that the Interest Clause is not severable from the base contract price, and that interest forms a part of the purchase price. Because the Interest Clause requires that the interest be paid at the same time as the balance of the purchase price, I conclude that it would not have been open to Ms. Li to tender

\$2,688,000—being the remaining balance of the base purchase price, but excluding any interest—and demand a transfer. I find that interest, calculated from the date Ms. Li paid the Deposit and moved in, until the completion date, was to be added to and would form part of the purchase price.

Can the Closing Date be Ascertained?

[82] The defendant argues that the contract also fails for uncertainty because of the lack of a closing date. The Chinese Contract refers to completion after West 20th Avenue is sold but does not provide for how long after.

[83] I do not find that the lack of a definitive closing date is fatal to the Chinese Contract. First, a closing date is not considered to be an essential term of a contract of purchase and sale. Absent a specific date, the closing must be within a reasonable time, having regard to all of the surrounding circumstances. In this case, I am satisfied that the closing date was to be shortly after Ms. Li sold West 20th Avenue.

[84] It was agreed and understood by both parties that Ms. Li would sell her West 20th Avenue property before she bought the Blundell Property. As a matter of common sense, it can be inferred that both parties understood that Ms. Li intended to apply the sale proceeds from the West 20th Avenue property to the purchase of the Blundell Property. Whether the actual closing date in the Chinese Contract was the same day or a couple of days later was not discussed. However, it would not have been 10 years later, for example.

[85] In late August 2017, Ms. Li advised Ms. Yang that she had arranged the sale of West 20th Avenue, with the closing date of November 21, 2017. Thereafter, Ms. Yang retained solicitors to act on her behalf with a view to closing the Blundell Property on November 20, 2017, which date had been proposed by Ms. Li in a subsequent message.

[86] Further, Ms. Li's request to Ms. Yang for an English Contract included the date Ms. Li suggested was the closing date for West 20th Avenue.

[87] I find the parties agreed that Ms. Li would pay for the Blundell Property forthwith upon completion of her sale of West 20th Avenue.

Mr. Wang Was Not a Party to the Chinese Contract

[88] Because Mr. Wang was a joint owner of the Blundell Property but is not a party to the Chinese Contract, the only way the contract is binding against him, and therefore could be enforced by him, is if Ms. Yang's signature would be sufficient. That a disposition of land requires an instrument in writing is trite law.

[89] It is also trite law that a spouse cannot automatically bind the other spouse to an agreement or contract, and therefore it is necessary for the plaintiffs to establish that Ms. Yang was Mr. Wang's agent for the purposes of the Chinese Contract. Section 12 of the *Property Law Act*, R.S.B.C. 1996, c. 377 [PLA] confirms this: “[s]pouses must be treated as 2 persons for the purposes of acquisition of land under a disposition made, or coming into operation, before or after this section comes into force.”

[90] Section 60 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, is of similar effect.

[91] There is nothing on the face of the Chinese Contract that would indicate that Ms. Yang was acting as agent for Mr. Wang. Indeed, there is nothing in the Chinese Contract that discloses that Mr. Wang has any interest in the Blundell Property at all. According to Ms. Li's evidence, the first time she became aware that Mr. Wang was an owner was when she received the notice of civil claim.

[92] For her part, Ms. Yang did not provide any evidence that she informed Ms. Li of Mr. Wang's ownership interest. Mr. Wang did not meet Ms. Li during the relevant time period.

[93] While I accept that the English Contract includes Mr. Wang's name, this is not significant because:

- a) as between the parties, the English Contract had no contractual effect and was not intended to amend, vary or supplement the Chinese Contract;
- b) the English Contract was created solely to assist Ms. Li in obtaining a mortgage; and
- c) Ms. Li's son and daughter-in-law were also included in the English Contract, and there is no suggestion that they were contracting parties either.

[94] The absence of Mr. Wang as a contracting party requires consideration of the common law of agency, and also s. 6 of the *PLA*. I will discuss each.

Agency

Positions of the Parties

[95] The plaintiffs argue that Ms. Yang was Mr. Wang's agent and was authorized to act on Mr. Wang's behalf in dealing with Ms. Li.

[96] The defendant submits that the Court should be wary of allowing the enforceability of the Chinese Contract on public policy grounds, in that doing so may set a dangerous precedent for real estate contracts. She says allowing an unnamed vendor such as Mr. Wang to assert legal rights under a contract of purchase and sale against a purchaser, while still affording him the opportunity, if he so chooses, to suggest that he had never agreed to the sale, is problematic. This is so because the plaintiffs can either enforce the Chinese Contract or escape its consequences, depending on which alternative is to their benefit. The defendant says that allowing what amounts to an option would be contrary to public policy.

Discussion

[97] An agency relationship arises when one person has the ability to affect the legal rights or obligations of another. Agency relationships typically manifest in one of two ways: actual agency or apparent agency: see e.g. *Basyal v. Mac's Convenience Stores Inc.*, 2018 BCCA 235 at para. 65. In the case of actual agency,

the agent's authority to act on behalf of the principal results from a "manifestation of consent", which will often involve a written agreement.

[98] The principal may expressly provide the agent's authority or it may be implied from the circumstances, but the authority must be derived from the principal. Apparent authority arises through representations made by the principal to third parties. In some instances, a principal will be bound even if the agent exceeds their authority. An example may include a lawyer entering into a settlement agreement on behalf of a client.

[99] Many of the authorities address the question of whether the agent had authority to bind the principal in circumstances where the principal seeks to disavow the contract. In *Sign-O-Lite Plastics Ltd. v. Metropolitan Life Insurance Co.* (1990), 49 B.C.L.R. (2d) 183, 1990 CanLII 870 (C.A.), the Court held that an undisclosed principal was not liable for the unauthorized acts of an agent.

[100] By contrast, in *Willoughby Residential Development Corp. v. Bradley*, 2002 BCCA 321, the Court relied on the equitable principle of estoppel to find that an unregistered owner was precluded from arguing that the registered owner had the authority to enter into a contract to dispose of the land: paras. 24–27.

[101] Whether an undisclosed principal will be bound by the actions of an agent may depend on the facts of a particular case. Here, I need to consider whether Mr. Wang is bound by the actions of his wife, Ms. Yang. As part of this analysis, I must consider whether Mr. Wang could have been compelled to convey title to Ms. Li if the circumstances were reversed.

[102] There are particular concerns that arise when the alleged agency arrangement is between spouses. Although spouses are partners, spouses do not have the inherent ability to bind one another in legal matters. In *Swift v. Tomecek Roney Little & Associates*, 2014 ABCA 49, the Alberta Court of Appeal indicated that courts should be cautious in relying on inferences to establish agency relationships between spouses and "must recognize the pitfalls of relying on subjective

assumptions about marital relationships”: para. 35. Rather, an agency relationship should not be implied in the circumstances of a marital relationship absent “some clear and unequivocal evidence to support it”: para. 30. The Court further commented as follows:

36 From a policy perspective, relying on equivocal conduct to impose legal liability in the face of a contract is problematic. Inferences are subjective and lead to uncertain results, all the more so when inferences are used to contradict the express terms of an agreement.

[103] Notwithstanding their testimony to the contrary, I do not accept that Mr. Wang and Ms. Yang had specific discussions where Mr. Wang authorized Ms. Yang to act on his behalf. Mr. Wang's evidence was that he did not deliberately exclude his name in the Chinese Contract, but that it was not an accident either. Rather, he simply did not know it was necessary. If he did not understand that it was necessary, it would seem highly improbable that Mr. Wang and Ms. Yang had a specific conversation in which he authorized her to take steps on his behalf.

[104] I appreciate the concerns about the possible mischief of an undisclosed vendor ostensibly having the choice to either ratify or disavow a contract, and a court will undoubtedly scrutinize the surrounding circumstances closely before making a finding of agency.

[105] However, I find that Mr. Wang was aware of the negotiations between Ms. Yang and Ms. Li, and that he ratified the Chinese Contract by his conduct, as evidenced by the following:

- a) he prepared the Chinese Contract;
- b) he was aware of, and acquiesced in, Ms. Li's taking possession of the property;
- c) he filled the blanks on Ms. Li's cheque for \$100,000 representing the First Installment and deposited the cheque into an account held jointly by himself and Ms. Yang;

- d) he prepared the spreadsheets that detailed both the interest charges and the monthly expenses for the Blundell Property that were sent to and paid by Ms. Li; and
- e) he prepared the English Contract to facilitate Ms. Li's mortgage application, and he included his name as a vendor in that English Contract.

[106] In all of the circumstances, I find that Mr. Wang was fully aware of the Chinese Contract, ratified it, and that he was subsequently bound by it. It follows that Ms. Li would also have been able to compel Mr. Wang to convey title to her had the plaintiffs refused to complete.

Section 6 of the PLA

[107] The defendant argues that the plaintiffs are precluded from bringing this action under s. 6 of the *PLA* because Mr. Wang was not a party to the contract.

Section 6(1) of the *PLA* provides as follows:

6 (1) A person who transfers land, or who makes an agreement, or assignment of an agreement, for the sale of land by which the purchase price is payable by instalments or at a future time, must register the person's own title in order that a person to whom all or part of the land is transferred and a person claiming under the agreement or assignment can register their instrument under the *Land Title Act*.

(2) An action must not be brought on the agreement or assignment referred to in subsection (1) by a person who fails to comply with this section.

[108] In this case, Mr. Wang was on title at all material times, along with Ms. Yang.

[109] The Court of Appeal discussed the legislative purpose of s. 6 in *Taylor v. Aramenko* (1994), 100 B.C.L.R. (2nd) 245 at para. 35, 1994 CanLII 229 (C.A.)

[*Aramenko*]:

A plain reading of s. 6 indicates that it was intended to protect purchasers of land by ensuring that the vendor transferring the land was in a position to convey registerable title and to prevent a vendor who was not in a position to convey registerable title from suing on the agreement. In this case, although the vendor was registered on title to the property, he was not in a position to convey registerable title to all of the property which he had contracted to sell.

The most he could convey was title to an undivided one half interest in the property, which is all that he held. It is evident from his conclusion that the trial judge did not accept that the vendor was the agent of his wife or that he had the power to compel transfer of her one half divided interest to himself or to execute the conveyance on her behalf. In this regard, I note that the vendor's wife did not testify at trial.

[110] The background circumstances in *Aramenko* are similar to those at bar. Although the property was owned in joint title by husband and wife, the contract was signed by only one of the two. The husband, who had signed as the vendor, brought an action on the contract when the purchaser failed to complete. A transfer form was tendered in both names, but the defendant refused to complete. The trial judge held that the plaintiff husband had not registered himself in sole title first, and that the defendant was under no obligation to accept a conveyance from anyone other than the plaintiff alone.

[111] The Court of Appeal upheld the trial judge's decision, stating that not only had the vendor not complied with s. 6, but that he required his wife's cooperation in order to convey title: para. 36.

[112] However, the circumstances in *Aramenko* can be distinguished from those in the case at bar in some material respects. First, the plaintiff's wife was not a plaintiff, did not testify, and as the Court of Appeal confirmed, there was no evidence that she could be compelled to complete or that she had authorized the plaintiff to act as her agent.

[113] Second, and more crucially, unlike in *Aramenko*, neither party tendered transfer documents because Ms. Li advised Ms. Yang on November 14 that she would be unable to complete on the closing date of November 20. As a result, the hypothetical situation of Ms. Li's entitlement to refuse to accept a transfer from Mr. Wang never arose.

[114] The plaintiffs would have had every opportunity to transfer Mr. Wang's title to Ms. Yang had Ms. Li been in a position to close on the anticipated closing date. I am not willing to assume that the plaintiffs' solicitors would not have been aware of the

law and principles in *Aramenko*, such that the defendant could have been in a position to refuse to complete.

[115] I find the plaintiffs are not precluded from bringing this claim by operation of s. 6 of the *PLA*.

Were There Any Conditions Precedent?

[116] The defendant argues that the Chinese Contract was subject to two conditions:

- a) that Ms. Li sell West 20th Avenue; and
- b) that Ms. Li obtain mortgage financing.

[117] As for the former, the relevant part of the Chinese Contract is clause four, which provides as follows:

- 4. Third payment: Balance of the sales price to be paid in full after the house is sold.

[118] Whether sale of West 20th Avenue was a condition precedent such that Ms. Li had no obligation to buy if it did not sell—or whether it simply established the closing date—is not something that needs to be decided because West 20th Avenue did in fact sell and the parties established a closing date based on the timing of the sale. As such, questions such as what might have happened if West 20th Avenue did not sell, and the extent of Ms. Li’s obligations to take steps to try to sell it are not relevant to the matters in dispute.

[119] I will turn now to the question of whether the Chinese Contract was subject to Ms. Li obtaining financing, which occupied a significant portion of the trial.

Was the Chinese Contract Subject to Financing?

Positions of the Parties

[120] The defendant argues that the Chinese Contract was also subject to an unwritten term, being that it was subject to the defendant obtaining financing. She

says this was an express term arising from her discussions with Ms. Yang. As I found above, the parties discussed the terms of the Chinese Contract on May 3, 2017.

[121] The plaintiffs say there was no such discussion, and that it was never agreed that the Chinese Contract was subject to Ms. Li obtaining financing. In the alternative, Ms. Li did not make reasonable efforts to obtain a mortgage for the property, even though she successfully applied for mortgages to buy both the Granville Apartment and Camsell.

[122] Ms. Li argues that if the Chinese Contract was subject to financing, the oral term itself renders the contract unenforceable because the oral condition is too vague to be enforceable.

Discussion

[123] I do not accept that the Chinese Contract was subject to an unwritten requirement that Ms. Li obtain financing. I do not accept Ms. Li's evidence that her obtaining a mortgage was a prerequisite to a binding contract. I find that no such discussion ever took place. Ms. Li's sole requirement was that she needed to sell West 20th Avenue, which is reflected the Chinese Contract.

[124] I accept that Ms. Li always intended to finance her purchase of the Blundell Property in part by way of mortgage; however, it was not a condition precedent for the Chinese Contract and was never discussed with Ms. Yang.

[125] There is no evidence that Ms. Yang had any particular understanding of Ms. Li's finances, and Ms. Yang would have no reason to know whether or not Ms. Li had a mortgage on West 20th Avenue that would need to be paid. Mr. Zhan's evidence is of no value because he was not present when the Chinese Contract was negotiated on May 3. It may have been his understanding, but the only source of that understanding would have been what he was told by his mother.

[126] Ms. Li argues that the proper interpretation of clause five of the Chinese Contract is that Ms. Yang was obligated to assist Ms. Li in her obtaining the financing needed to complete the transaction. She submits that clause five is consistent with her position that the Chinese Contract was subject to financing. Clause five reads as follows:

5. The seller may assist the buyer in applying for bank loans, the monthly payment of the loan interest and principal shall be paid by the buyer, the loan amount will be counted as the buyer's payment to the seller, which shall be deducted from the total transaction amount of the property.

[127] At trial, it was suggested to Ms. Yang that the reference to bank loans in clause five of the Chinese Contract confirms that the requirement for a mortgage was discussed. She disagreed, and said there was no discussion about that between her and Ms. Li. Rather, her evidence was that it was put into the Chinese Contract because when she discussed matters with Mr. Wang, they decided that they wanted to receive \$1 million for the Blundell Property by the end of 2017.

[128] Ms. Yang's evidence was that she and Mr. Wang were agreeing to cooperate with Ms. Li to ensure that they would get the \$1 million by the end of the year as required under the Chinese Contract. Ms. Yang testified that if Ms. Li needed to borrow funds in order to make the two instalment payments by the end of 2017, they were prepared to facilitate her doing so by way of a mortgage on the property.

[129] Ms. Li says the plaintiffs always knew she needed a mortgage in order to complete the purchase, and that the reference to her paying a mortgage was because she was agreeing to pay Ms. Yang's mortgage payments as she was going to be living in the property.

[130] However, aside from the fact that Ms. Li's interpretation does not inform the question of whether the parties agreed that the Chinese Contract was subject to financing, there are three difficulties with Ms. Li's position, and I conclude that the plaintiffs' interpretation is the more reasonable one:

- a) The plaintiffs did not have a mortgage on the Blundell Property and, as such, there were no mortgage payments to be reimbursed;
- b) If Ms. Li needed a mortgage in order to complete the purchase, there would be no role for the plaintiffs to play. Whether Ms. Li obtained a mortgage would be a matter as between Ms. Li and a prospective lender, and Ms. Li was familiar with making applications for mortgages through brokers. I do not accept the suggestion that clause five was intended to obligate Ms. Yang to somehow walk Ms. Li through the mortgage application process; and
- c) The fact that the principal payments would be applied against Ms. Li's debt, but that Ms. Li would be responsible for all of the payments only makes sense in the context of the plaintiffs' interpretation. Namely, that Ms. Li might borrow funds for some portion of the installment payments and secure it by way of a mortgage, but while the plaintiffs still owned the Blundell Property.

[131] To a large degree, the question of whether or not there was a condition precedent regarding mortgage financing is largely irrelevant given the circumstances of this case.

[132] Ms. Li did not provide evidence of any mortgage applications regarding the Blundell Property, and therefore no evidence that she was unsuccessful in obtaining a mortgage. A party who makes an offer that is subject to financing must make effort to satisfy the condition. Ms. Li's own evidence is that she made no effort after December 2017, even though she allowed Ms. Yang to believe that efforts were being made. While I do accept that Ms. Li may have believed that her son Mr. Zhan was making some efforts on her behalf—or even perhaps on his own behalf—the contractual obligation was nonetheless Ms. Li's and hers alone.

[133] In the circumstances, even if there had been a condition precedent to the Chinese Contract, there is no evidence that Ms. Li made any efforts, or at least reasonable efforts, to satisfy it.

[134] Although the parties did not tender evidence of Ms. Li ever having made a written application for a mortgage for the Blundell Property, Ms. Li provided the Court with evidence of two other mortgage applications she made. First, she purchased the Granville Apartment with mortgage financing. Second, she applied for and was subsequently granted a mortgage on the Camsell Property. This evidence suggests she was capable of securing mortgage financing on her own accord and could have made the same efforts regarding the Blundell Property.

Conclusion

[135] I find that the Chinese Contract was an enforceable contract.

What Was the Breach of Contract?

[136] Having concluded that there was a valid and binding contract between the parties, the question turns to the breach and, in particular, whether Ms. Li was in breach such that the plaintiffs are entitled to a remedy.

Positions of the Parties

[137] The defendant argues that although she acknowledges that she could not complete on or about November 20, 2017, the plaintiffs were also not ready, willing and able to complete. As a result, the plaintiffs could not rely on the defendant's refusal to close in order to cancel the contract, without re-establishing time to be of the essence. She relies on *Shaw Industries Ltd. v. Greenland Enterprises Ltd.* (1991), 54 B.C.L.R. (2d) 264, 1991 CanLII 3955 (C.A.), where the Court found that both parties were in breach because neither was in a position to complete, and therefore the vendor was not entitled to rely on the buyer's repudiation without resetting a completion date.

[138] Alternatively, the defendant argues that by April 2018, it was no longer open to the plaintiffs to rely on the defendant's failure to close as a basis to terminate the contract.

[139] Ms. Li argues that the plaintiffs, by failing to set a new completion date, were themselves in breach of the Chinese Contract when Ms. Yang demanded they give up possession in April. The defendant says that she therefore should be entitled to the return of the \$200,000 she paid on account of the Chinese Contract.

[140] The defendant also says that Ms. Li's communication that she did not yet have a mortgage was not an express communication that she did not intend to complete the Contract and therefore it was never open to the plaintiffs to accept such as an anticipatory breach. Moreover, the plaintiffs were obligated to make an election within a reasonable time and that their conduct should be seen as affirming rather than disavowing the contract.

[141] The plaintiffs say they were ready, willing and able to complete on the initial closing date of November 20, and at all times thereafter. They say it was open to them to accept the defendant's breach at that time, albeit they continued to be prepared to complete and afforded the defendant time to arrange for a mortgage, despite it not being a condition precedent for completion of the contract.

Failure to Complete in November 2017

[142] The defendant's argument that the plaintiffs were not in a position to close on November 20, 2017, rests in part on their submission that the plaintiffs were not in a position to close because they had the obligation to prepare closing documents but had not done so.

[143] Ms. Li submits the obligation to prepare the transfer documents, as a matter of common law, rests with the vendor. In *Grewal v. Lal*, 2021 BCSC 844 at para. 127, citing *Shaw*, the Court confirmed that the common law was that the vendors prepare the documentation unless the contract specifies that the purchaser

is to bear the costs of the conveyance. There is nothing in the Chinese Contract that determines who is to prepare the Form A transfer.

[144] I do not accept the defendant's argument that the plaintiffs were not in a position to complete.

[145] On November 14, Ms. Li called Ms. Yang. Ms. Li told her that CIBC had denied her mortgage, but that she would keep trying to get a mortgage elsewhere to complete her purchase of the Blundell Property. This fact is agreed to by the parties in the agreed statement of facts.

[146] Upon receipt of this information, Ms. Yang contacted her solicitors to advise that the transaction would not close. According to her testimony at trial, Ms. Yang told the solicitors to pause the transaction. The solicitors' timesheet indicates a 'cancellation' of the sale. Ms. Yang swore an affidavit earlier in these proceedings that used a similar term. In my view, nothing turns on the term used. Ms. Li did not hire a lawyer or notary to represent her.

[147] Although I accept that the common law applies and therefore it was the plaintiffs' obligation to prepare transfer documents, there is no obligation to tender transfer documents if it is clear that the contract will not complete. The defendant concedes this to be true.

[148] The significance of whether the plaintiffs were ready, willing and able to complete is that if they were not, both parties would have been in breach of their contractual obligations as of November 20, and therefore neither would have been in a position to rely on the other party's breach to terminate the contract.

[149] Ms. Li's argument that the plaintiffs were not ready, willing and able to complete rests solely on the fact that they had told the solicitors that the sale would not close.

[150] Even though the retainer letter provided by the plaintiffs' solicitors refers to a review of the defendant's documents, I cannot assume that the solicitors would not have known the law.

[151] The plaintiffs had no mortgage on title and as such, owned the property free and clear of encumbrances. Because there was no need to tender the transfer documents, it follows that it was unnecessary for the plaintiffs' solicitors to prepare the Form A transfer. Essentially, the defendant argues a hypothetical proposition: had Ms. Li been able to obtain financing on or before November 20 but after November 14, the plaintiffs would not have been able to compile the closing documents on time. This is not an inference I am willing to draw.

[152] Further, despite the use of the word "cancellation", the plaintiffs' solicitors remained retained, as evidenced by the fact that Ms. Yang did not instruct them to close their file until April 2018.

[153] I therefore find that the plaintiffs were ready, willing and able to complete, but it was not necessary to prepare the Form A transfer because tender was not required in the circumstances.

[154] Following the initial completion date on November 20, Ms. Li was in breach of the Chinese Contract because she failed to complete forthwith upon sale of West 20th Avenue.

[155] As a result of Ms. Li's failure to complete, the plaintiffs had the option to accept Ms. Li's breach and to take the position that the Chinese Contract was at an end. However, they did not do so. Instead, the plaintiffs afforded Ms. Li more time to obtain a mortgage, even though the defendant's obtaining of a mortgage was not a condition of the Chinese Contract.

Events After the Closing Date of November 20

[156] The closing date for the sale of West 20th Avenue was November 21, 2017. Ms. Li received \$1,261,039.30 in net sale proceeds on a sale price of \$3,895,350.30, after adjustments.

[157] On January 13, 2018, Ms. Li purchased the Granville Apartment. Even though she subsequently applied for and obtained a mortgage to buy the Granville Apartment, her offer was made without conditions or subjects. Ms. Li said she bought it because her mortgage for the Blundell Property had not been approved and she had already sold West 20th Avenue. She therefore wanted to buy another home in case the mortgage was never approved—the Granville Apartment was her backup plan.

[158] The purchase price of the Granville Apartment was \$699,000. The amount of cash required to complete the sale was \$329,077.02, as she had already paid a deposit of \$34,800. The mortgage proceeds for the Granville Apartment were \$349,000. Ms. Li completed her purchase of the Granville Apartment on March 5, 2018. According to Ms. Li, she did not tell Ms. Yang about her purchase of the Granville Apartment because she did not want Ms. Yang to get concerned about her intentions to purchase the Blundell Property, which intention remained.

[159] On January 13—the same day as she signed her subject-free offer to purchase the Granville Apartment—Ms. Li sent a WeChat message to Ms. Yang as follows:

Hong Yang, Happy Weekend. I saw you detailed list of expenses. There is a total of 1482,47 Canadian dollars. Now I want to discuss with you if can you offset it with the property tax and the loan interest (more than 4,000 dollar) that I have paid? Until we complete the conveyancing, these bills need to be paid by you. After all, the house is still yours at this time. My loan application has been submitted to RBC and pending.

Besides, can you suspend the home security (more than 300 dollar each month)? After all, we are not using it right now.

[160] This was the first communication from Ms. Li that would suggest that the parties may differ as to the interpretation of the Chinese Contract pertaining to the

ongoing expenses. Although Ms. Li had not paid any of the ongoing expenses since September 2017, she had done so without protest at that time. She had also paid the property taxes in full in June or July 2017.

[161] It is significant that Ms. Li continued to advise Ms. Yang of her efforts to get a mortgage, telling her that she applied to RBC for her loan.

[162] Around the same time, Ms. Yang was going on vacation to Cuba. Ms. Yang inquired as to whether there was anything she could do to assist with the mortgage application process. Their WeChat conversation continued as follows:

Ms. Yang: I'll go to Cuba for one week next Monday

Ms. Li: We are in The Burnaby now.

Ms. Yang: Xue Yun, do you need to re-do a house purchasing contract specifying that you have actually paid \$200,000 for your loan application at RBC?

Ms. Li: I have stated that I have already paid \$200,000.

Ms. Yang: But it was written in the contract that only \$100,000 was paid as at that time, a photocopy of the cheque was required.

Since I'm going to Cuba next Monday, I don't want to delay your loan.

If you need any help for your loan, I'll try my best to help.

Ms. Li: These are not that important.

You just go. I'll see what I can do to get the loan.

[163] In mid-January, Ms. Li went to Beijing because her mother was ill. She sent Ms. Yang the following WeChat message on January 20:

Hello, Hong Yang! As my mother is ill, I need to leave Vancouver and go back to Beijing tomorrow. The documents have been submitted to the Royal Bank, awaiting approval.

[164] Ms. Li was out of Canada until early March. In the intervening time, Ms. Yang's communications were all with Mr. Zhan. Ms. Yang understood from Ms. Li that Mr. Zhan had assumed the mantle of applying for a mortgage in order to be able to purchase the Blundell Property.

[165] On March 12, Ms. Yang had a telephone conversation with Mr. Zhan. A translated transcript of the call was tendered as evidence. Ms. Yang asked Mr. Zhan if he and his wife have applied for financing. The conversation was as follows:

Ms. Yang: Have you started or not?

Mr. Zhan: We now already, I've, because, just given that document a few days ago, a couple of days ago, you know, he needs that, that certificate from China. I've just had that issued, issued. And then the bank, BMO, said that they would take a look to see how much money could be lent against this house based on our circumstances. He said that he would let me know in a couple of days.

Ms. Yang: Oh, will let you know in a couple days, right?

Mr. Zhan: Yes.

Ms. Yang: If ---

Mr. Zhan: Because he, yes. Because I, because at that time my mother and I, we also these days, last week also talked about this issue. I mean, it'd be great if we could borrow more. I mean, we're now worried too because I've asked BMO approximately how much money could be borrowed based on the price of the house and he said that he was not sure at that moment. He said that if, because the appraisal has just been done. I mean, the house was appraised for about over \$2.7 million. And he said that if the paperwork was complete, it would be \$1.2 or \$1.1 million, at the most. Yeah. Now he said, the specific, I've handed over the documents to him and he said that they would take a look to see how much money could be lent.

Ms. Yang: Okay.

...

Mr. Zhan: I understand that. I know. Because my mom and I, we also talked about this issue, also talked about the problem. I said that it can't be delayed any longer. I said that it has to be done quickly. I said that otherwise it won't be good for anyone if it's delayed for long time.

Ms. Yang: Yes.

Mr. Zhan: Right? If the bank let me know in a day or two, I will contact you to see how we deal with the rest.

Ms. Yang: Okay.

Mr. Zhan: Okay?

Ms. Yang: Okay.

Mr. Zhan: It should, he said to let me know probably around Wednesday

Ms. Yang: Okay.

Mr. Zhan: Yes, Because I just had the certificate issued from China last week and just gave it to the bank Friday. He said that they would take a look.

Ms. Yang: Okay. Thanks.

Mr. Zhan: Okay. Once I have the news, I'll contact you right way. Okay?
Ms. Yang: Okay. Bye.
Mr. Zhan: Okay, Bye bye.

[166] Ms. Yang followed up with Mr. Zhan about his mortgage application by WeChat message on March 15. The exchange was as follows:

Ms. Yang: Yang Zhan, how is the mortgage thing going? You said Wednesday, it's Wednesday today. How's it going?

Mr. Zhan: Hello, aunt, I am at work, and I'm sorry that I missed your call. The bank has replied that we can get a loan of only 1,200,000 dollars. With the available funds we have, it is still a lot short. My mother and I are discussing this matter, and we want to discuss with you about it as well. My mother didn't think it through over this matter. Because of your house, my mother and I have very different opinions. Now we want to sit down with you and talk with you. If we cannot figure something out, then maybe we can rent a house and move out then. We can't drag you down.

[167] On March 23, Mr. Zhan sent the following message to Ms. Yang:

Mr. Zhan: Hi, aunt, I have discussed with my mother several times, and now we have decided to find a house and move out for now because we don't have so much month at present. I'm so sorry for the mess. I'm truly very sorry about it and I'm so embarrassed to tell you this!

[168] Mr. Zhan and Ms. Yang then discussed sources of rental properties and the possibility of Mr. Zhan moving out by the end of March.

[169] In late March and early April, the plaintiffs were increasingly concerned that the sale was not going to complete. In a telephone conversation on April 8, Ms. Yang offered to assist Ms. Li in completing the purchase, and made two alternative offers:

- a) she would provide Ms. Li with a private loan if the mortgage proceeds that Ms. Li could obtain were insufficient; or
- b) she would reduce the purchase price by \$50,000.

[170] Ms. Li did not accept either offer. According to Ms. Yang, Ms. Li told her that she would not purchase such an expensive property because she did not have

enough money. At that time, Ms. Yang said she contacted her solicitors to advise the sale was not going to proceed, had a consultation with regard to her legal position, and subsequently received a refund of the remainder of her retainer.

[171] According to Ms. Li, in early April, Ms. Yang notified them to move out of the property so they started to look for a place to rent. While they were looking for a place to rent, they saw an open house at the Camsell Property. On April 12, she made an offer on Camsell. Her offer, which was subject to financing, was for a purchase price of \$2,720,000. The subject removal date was April 23, 2018, which was subsequently extended for two days, to April 25.

[172] According to Ms. Li, she had not decided whether she wanted to purchase the Blundell Property or the Camsell Property, and only decided to proceed with the purchase of Camsell after Ms. Yang demanded that Ms. Li move out of the Blundell Property.

[173] Ms. Li disagreed with the proposition put to her that purchasing the Camsell Property with a mortgage would impact on her ability to acquire a mortgage for the Blundell Property. Rather, she says she made the offer on the Camsell Property in case her purchase of the Blundell Property fell through. She agreed that she could not purchase both, however.

[174] On April 18, Ms. Yang, Ms. Li, Mr. Zhan and a friend of Ms. Yang's, Ms. Zhao, met at the Blundell Property. Ms. Zhao was an independent witness who was asked to attend the meeting by Ms. Yang. Ms. Zhao knew both Ms. Yang and Ms. Li because they were all members of the same dance troupe. Ms. Zhao's evidence was that Ms. Yang was very angry, and was repeating the two offers she had made earlier.

[175] According to Ms. Zhao, Ms. Li said that she was not going to purchase the Blundell Property and she was not going to pay Ms. Yang any more than the \$200,000 that she had already paid.

[176] Ms. Li's version of what transpired at the meeting is slightly different. She confirmed that Ms. Yang once again referred to her two offers, but says that she did not tell Ms. Yang that she was not going to purchase. Rather, she said that she simply had not been able to get a mortgage to that point.

[177] Ms. Li's evidence was that although she had made her conditional offer to buy the Camsell Property, she did not consider herself bound to go through with it due to the subject clauses. She said she had not decided whether she wanted to buy Camsell or Blundell. However, she elected to proceed with her purchase of Camsell because she qualified for a mortgage and Ms. Yang told her to move out of Blundell.

[178] I do not accept Ms. Li's explanation. First, while her offer on Camsell included subjects, she was nonetheless subject to the obligation to make reasonable efforts to satisfy those conditions.

[179] Second, and more significantly, she applied promptly for mortgage financing to buy the Camsell Property when her offer was accepted, but Ms. Li did nothing to try to get a mortgage to buy the Blundell Property.

[180] Ms. Li's evidence at trial, consistent with her communications with Ms. Yang, was that she had not yet been able to obtain a mortgage during the first four months of 2018. However, her statement is somewhat misleading because it suggests that she was making efforts to obtain financing. In fact, Ms. Li conceded that she had done nothing to seek a mortgage to purchase the property since at least December 2017, some four months earlier, and that inquiry was nothing more than a telephone call to an unidentified person at HSBC. As such, the statements in her WeChat messages in January 2018 about submitting documents in support of a pending application with RBC were untrue.

[181] Although Ms. Li had indicated that Mr. Zhan was going to apply for a mortgage, he had not. I do not accept that he applied to Bank of Montreal for a mortgage. It follows that I do not believe that the bank ordered an appraisal, nor do I

accept that Mr. Zhan was approved for a mortgage on the Blundell Property for \$1,200,000.

[182] Ms. Li did not tender any documentary evidence that would corroborate her or Mr. Zhan's assertions that they made attempts to obtain financing for Blundell.

[183] Notwithstanding her evidence, it cannot fairly be said that Ms. Li still was waiting in April 2018 to see if she could get a mortgage for the purchase of the Blundell Property when in fact she had made no effort in months to try to secure one.

[184] As for the April 18 meeting at Blundell, I prefer Ms. Zhao's version of what transpired. I find that Ms. Li said that she was not going to purchase the Blundell Property, and she was not going to pay Ms. Yang any more than the \$200,000 she had already paid her.

[185] On April 19, Ms. Li texted Ms. Yang on WeChat as follows:

Ms. Li: Hong Yang, before I move out, we can sign a paper to terminate the contract, and each party shall bear her own losses. In this case, we can move out on April 25.

[186] Implicit in the above is that if Ms. Yang disagreed with the proposed plan, Ms. Li would perhaps continue to stay at the Blundell Property.

[187] I find that Ms. Li, by confirming that she was going to be moving out, was aware that Ms. Yang had terminated the Chinese Contract. Ms. Li's message was a proposal to resolve what had obviously evolved into a dispute between the parties, a proposal that Ms. Yang did not accept, because her response was as follows:

Ms. Yang: Xue Yun Li and Yang Zhan, please move out of my house on April 25, 2018. Before you move out, please clean the house completely, including the carpet. I will ask a house inspector to check the house in real time. All damages will be determined after. Here is the notice in English:

From:

Hong Yang,

Owner of 3311 Blundell Road, Richmond, BC V7C 1G5

[188] The plaintiffs submit that if Ms. Li's April 19 text message was vague about her intention, the surrounding circumstances when considered objectively support a finding of Ms. Li's intended repudiation.

[189] I conclude that Ms. Li had no intention of purchasing the Blundell Property at any time during 2018. I reach this conclusion because I find that neither she nor Mr. Zhan made any efforts to obtain mortgage financing while Ms. Li made offers on at least two other properties that she ultimately purchased, obtaining a mortgage on each occasion.

Failure to Complete in April 2018

[190] After the initial closing date passed, the plaintiffs were in a position to accept Ms. Li's repudiation, but they did not do so. Instead, they kept waiting for Ms. Li to get her mortgage and to buy the property.

[191] Ms. Li argues that even if Ms. Yang had been entitled to rely on her failure to close to terminate the contract, that she did not do so within a reasonable time and that by April 2018, it was no longer open to her do so. She relies on a number of authorities for the proposition that four to five months is too late.

[192] A repudiation will only result in the termination of the contract if the innocent party accepts it, and is prepared to treat the contract as ended. The innocent party has the onus to establish that it has accepted a repudiation and it has communicated its acceptance to the repudiating party within a reasonable period of time: *Kaur v. Bajwa*, 2020 BCCA 310 at paras. 26–30.

[193] The innocent party must communicate its acceptance of a repudiation within a reasonable time so that the party in breach knows whether it must continue to work towards getting to a position of being ready, willing and able to complete. What constitutes a reasonable time to communicate acceptance of a repudiation will depend on the circumstances of the case. As a matter of fairness, the innocent party cannot allow the other party to continue to expend time, effort and resources to become ready, willing and able to complete, only for the innocent party to then

purport to rely on the earlier breach: *Kaur* at para. 28. In other words, a party is not permitted to adopt a ‘wait and see’ approach: *A & G Investment Inc. v. 0915630 B.C. Ltd.*, 2014 BCCA 425 at para. 38 [*A & G Investment*].

[194] In *A & G Investment*, the purchaser contracted to buy 31 lots in a 34-lot subdivision. The lots were to be in a “ready-to-build” state on the closing date, but they were not ready. The purchaser attempted to find buyers for the lots as the vendor completed the subdivision, but eventually attempted to rely on the earlier missed completion date to avoid the contract. The Court of Appeal concluded that four months was too late for the innocent party to rely on that earlier breach: para. 40.

[195] In our case, the defendant argues that five months elapsed between the initial failure to complete and the plaintiffs’ termination of the contract—one month longer than in *A & G Investment*.

[196] The plaintiffs continued to believe that Ms. Li was continuing to work towards completion of the Chinese Contract by seeking a mortgage. However, I have found that Ms. Li was making no such efforts. This raises the question of whether Ms. Li’s conduct can constitute a repudiation that the plaintiffs could accept, even though the plaintiffs were not aware of the breach at the time.

[197] If the party who terminated the contract subsequently discovers an additional basis to have terminated for cause, they may rely on that ‘after-discovered’ cause at any time up until trial, unless it would be unreasonable or unfair to do so: *Zhao v. Purewal*, 2023 BCSC 1750 at para. 97. In other words, if a contracting party gives an improper reason to terminate the contract when communicating its election, it does not lose the right to rely on a correct justification later. Examples of when it would be unfair or unreasonable include if the defaulting party would have had an opportunity to remedy the default, where the contract expressly provides for a remedy that is inconsistent with the common law remedies for anticipatory breach, and what is referred to as detrimental reliance: *Purewal* at paras. 99–105.

[198] While the Chinese Contract was not subject to Ms. Li obtaining a mortgage, the plaintiffs were prepared to delay the closing date to allow Ms. Li the opportunity to obtain a mortgage. Throughout her evidence at trial, Ms. Li continually asserted that she still intended to complete on the purchase of the Blundell Property but that she was still waiting to see if she would get a mortgage. Her evidence in this regard is consistent with what both she and Mr. Zhan told Ms. Yang, but it was not true because she never attempted to get a mortgage to purchase the Blundell Property.

[199] Accordingly, the plaintiffs were in a position to terminate the contract when the defendant was unable to close on November 20, 2017. However, because Ms. Li advised the plaintiffs that she was continuing to seek a mortgage, the plaintiffs did not terminate. If the plaintiffs had known that Ms. Li was not going to seek a mortgage, their decision would undoubtedly have been different. I can see no unfairness in allowing the plaintiffs to rely on the earlier breach in the circumstances.

[200] Even if I am wrong about the plaintiffs' reliance on the defendant's failure to close in November, the outcome would not change. I find that Ms. Li also repudiated the contract when she advised Ms. Yang at the April 18 meeting that she was not going to purchase the Blundell Property, and would not give Ms. Yang more than the \$200,000 she had already paid her. It was open to Ms. Yang to accept that repudiation, and she did so by requiring that Ms. Li move out by the end of April and confirming that she would make a claim for damages. At that point, the Chinese Contract was clearly at an end.

[201] The exchange of WeChat messages over the next two days as set out above is similarly consistent with this conclusion.

Damages

[202] The parties agree that the law is that damages are normally assessed as of the date of the breach, but in the case of a falling market, a seller may be entitled to the difference between the contract price and the resale price: *Greenberg v. Shanghai Real Estate Limited*, 2010 BCSC 1837 at para. 23, citing *642947 Ontario Ltd. v. Fleischer* (2001), 56 O.R. (3d) 417 at para. 41, 2001 CanLII 8623 (C.A.). The

rationale for this is that assessing damages at the date of closing may result in unfairness to an innocent vendor who makes reasonable efforts to resell in a falling market.

[203] The defendant does not take issue with the steps taken by the plaintiffs to sell the Blundell Property. They listed it for sale on May 9, 2018, and eventually were able to sell it for \$2,480,000. Their damages are therefore the difference between the sale price and the contract price, which is \$408,000, plus the real estate commissions paid, since no commissions were payable under the Chinese Contract.

[204] The plaintiffs are also entitled to the expenses associated with the Blundell Property, such as the utilities, home insurance, internet and similar expenses, up to the end of April 2018. According to Mr. Wang's spreadsheet, the unpaid amounts total \$3,339.95.

[205] Finally, the plaintiffs are entitled to interest under the Chinese Contract. I have already concluded that the parties agreed that interest would be payable, and that the plaintiffs were of a mind to charge at the Bank of Canada prime rate, minus 0.2%, which rate was paid by Ms. Li before the breach of contract. The plaintiffs are not entitled to interest at the higher rate claimed by Mr. Wang because there is no evidence that Ms. Li agreed to pay at the rate asserted by Mr. Wang.

[206] The defendant's obligation to pay interest under the Chinese Contract ceased when she gave up possession to the plaintiffs. The plaintiffs are therefore entitled to interest at that rate from May 15, 2017 until April 29, 2018. I trust the parties will be able to agree on the calculations, and the defendant is entitled to credit for the interest paid in September 2017.

[207] The defendant is entitled to credit for the \$200,000 paid on account of the Chinese Contract.

[208] I do not accept the plaintiffs are entitled to any additional compensation in the nature of occupational rent. The interest constituted the compensation the defendant was to pay to the plaintiffs to account for what amounted to a long closing date while

the defendant was already in possession. It follows that the defendant's counterclaim is dismissed.

Costs

[209] The plaintiffs have been successful and are entitled to their costs at Scale B. However, if either party wishes to speak to the issue, they may arrange to do so by contacting Supreme Court Scheduling within 28 days of the date of these reasons.

“Wilson J.”