IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lee v. UpMeals Technologies Inc.,*
2024 BCSC 888

Date: 20240523
Docket: S236434
Registry: Vancouver

Between:

Glenn Lim Lee

Plaintiff

And

UpMeals Technologies Inc.

Defendant

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Plaintiff:	D. Sue-A-Quan
Counsel for the Defendant:	D. Frenette A. Alimadad
Place and Date of Hearing:	Vancouver, B.C. April 23, 2024
Place and Date of Judgment:	Vancouver, B.C. May 23, 2024

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I. Introduction

[1] There are two applications before the court. The first is brought by the plaintiff seeking a summary trial judgment respecting funds advanced to the defendant that have not been repaid. The second is an application by the defendant to have this and four other actions tried together pursuant to Rule 22-5(8) of the *Supreme Court Civil Rules*. Notice of this second application has been given to all parties in the four other actions and counsel are the same in all actions.

II. Background

A. The Parties

[2] The defendant, UpMeals Technologies, is a start-up company engaged in the business of fresh food vending machines, corporate catering services, and ready-to-eat meal production for retail. Andrew Munro is its Chief Executive Officer and a co-founder. At present, the business is operating with some 50 employees but it is short of cash and its revenues to this point have not permitted it to meet all its financial obligations.

[3] The plaintiff, Glenn Lee, was introduced to UpMeals in 2020 and, in January 2021, he accepted an offer from Mr. Munro to work on contract for UpMeals in investor relations. Mr. Lee's work essentially involved pursuing investors and raising capital for the company. As an independent contractor, he billed UpMeals for his services through his own company, Mana Advisory Inc. ("Mana Advisory"). He was paid a base rate of $5,000 per month plus a commission on any funds he raised. The parties dispute the amount of commission that was to be paid. From January 2021 to June 2022, Mr. Lee, through Mana Advisory, invoiced UpMeals for Mr. Lee's investor relations work on a monthly basis and UpMeals paid the invoices as issued until June 2022.

[4] In September 2021, Mr. Lee was offered the position of chief operating officer (COO) for Upmeals and a position on the board of directors, both effective January 2022. Mr. Lee accepted this offer and took on these additional roles while continuing his investor relations work. As I discuss below, Mr. Lee claims Mr. Munro offered him

two million of his own shares in UpMeals as an incentive to take on these new positions with no additional pay. Mr. Munro denies this. That claim is the subject of one of the actions (the "Share Transfer Action") that UpMeals now seeks to have tried with the others.

[5] In June 2022, UpMeals asked Mr. Lee to agree to a deferral of payments on invoices for his investor relations work until UpMeals was in a better financial position. Mr. Lee and Mana Advisory agreed to do so. Mr. Lee claims this agreement was based on a commitment by Mr. Munro, on behalf of UpMeals, to pay him (or Mana Advisory) interest at 3% monthly (36% per annum) on any outstanding invoices. Mr. Munro and UpMeals acknowledge that payments to Mr. Lee were deferred but they deny any agreement to pay interest or interest in the amount Mr. Lee claims. This dispute is the subject of another of the actions (the "Investor Relations Action") that UpMeals seeks to have tried together.

B. The Lease Deposit Funding Agreement

[6] In December 2021, UpMeals was concluding a lease agreement for new premises but lacked funds to pay the deposit on the lease. Mr. Lee agreed to loan UpMeals the money which he could draw from his own home equity line of credit with HSBC Canada on a floating interest rate. There was no term by which Mr. Lee was required to repay the principal on the HSBC line of credit so as long as he paid the interest on a monthly basis. Mr. Lee simply passed on these same terms to UpMeals when he loaned it the money. UpMeals borrowed a total of $256,300 from Mr. Lee at a floating interest rate of prime plus 5%.

[7] The agreement between Mr. Lee and UpMeals was not reduced to writing but it was agreed that UpMeals would pay at least the interest on a monthly basis. Mr. Munro maintains the funds advanced were a capital investment, albeit one that had to be repaid once UpMeals' financial circumstances allowed it to do so. Mr. Lee maintains it was a loan and is repayable on demand. To date, UpMeals has paid the interest as required but has not yet repaid any principal. UpMeals does not dispute its indebtedness to Mr. Lee or the amount that is owing but says the repayment

obligation has not yet been triggered because UpMeals has not yet achieved a level of financial stability that enables it to repay the loan.

[8] Mr. Lee has purported to recall the loan and demanded payment of the principal. In February 2024 he commenced an action for judgment on the debt (the "Lease Deposit Action") and that is the subject of the summary trial application now before the Court.

C. The Bridge Loan

[9] In October 2021, Mr. Munro approached Mr. Lee to discuss UpMeals' need for a $500,000 bridge loan for period of three months while the company awaited financing from a financial services company. Mr. Lee spoke with this mother-in-law, Susana Du, about this and she was willing to provide the loan. Mr. Lee negotiated the terms of the loan with Mr. Munro on Ms. Du's behalf. On October 27, 2021, UpMeals and Ms. Du entered into a loan agreement by which Ms. Du agreed to loan UpMeals the $500,000 at 8% per annum simple interest to be paid at the end of the contractual term which was three months (the "Bridge Loan").

[10] The three-month term expired on January 28, 2022. UpMeals did not repay the loan and still has not. On July 23, 2023, Ms. Du commenced an action (the "Bridge Loan Action") against UpMeals over this unpaid loan and took default judgment. There was some error or misunderstanding about the default judgment because UpMeals had filed a *pro forma* response to civil claim just before the default judgment application was processed. Nevertheless, since UpMeals does not dispute the Bridge Loan or its indebtedness to Ms. Du, it did not apply to set aside the default judgment. Instead, because of its financial circumstances, it sought and was granted an order by Brongers J. staying execution on the judgment for a period of 12 months, which will expire on January 8, 2025.

[11] Ms. Du alleges there were some additional terms to this Bridge Loan that were contained in a "Collateral Contract". She did not mention the Collateral Contract in her Bridge Loan Action. She has now brought another claim respecting the Bridge Loan (the "Bridge Loan Collateral Contract Action") suing UpMeals and

Mr. Munro over that alleged Collateral Contract. Mr. Munro and UpMeals deny any such contract.

D. Mr. Lee's Termination

[12] Starting in February 2023, certain differences arose between Mr. Munro and Mr. Lee. From Mr. Munro's perspective, Mr. Lee began behaving in a way that undermined UpMeals' operations. On May 10, 2023, UpMeals terminated Mr. Lee's employment, alleging cause in relation to Mr. Lee's behavior, and, on June 26, 2023, removed him as a director. On April 15, 2024, UpMeals commenced an action against Mr. Lee and Mana Advisory for breach of contract in relation to the investor relations work (the "Upmeals Action"). The claimed breach stems from Mr. Lee's alleged misconduct that led to his termination and removal from the board.

III. The Court Actions

[13] There are six different court actions concerning UpMeals, Mr. Munro, Mr. Lee, and Ms. Du. As mentioned, one of those (the Bridge Loan Action) has concluded with a default judgment and another (the Lease Deposit Action) is the subject of the present summary trial application. The other four are extant and, together with the present action, are subject to UpMeal's application to have them tried together. By way of summary, the six different court actions are as follows.

The Lease Deposit Action: *Glenn Lee v. UpMeals Technologies Inc.*, Vancouver Reg. No. S236434

[14] This is the present action to recover the principal amount of the funds advanced by Mr. Lee to UpMeals to cover the cost of the lease deposit. The central issues in dispute are whether the funds advanced by Mr. Lee are a loan, as Mr. Lee claims, or a capital contribution, as UpMeals claims, and when UpMeals' obligation to repay the principal is triggered.

The Investor Relations Action: *Glenn Lee and Mana Advisory Inc*. v. *UpMeals Technologies Inc*., Vancouver Reg. No. S238272

[15] In this action, Mr. Lee and Mana Advisory sue UpMeals for unpaid invoices for Mr. Lee's investor relations work. UpMeals admits liability for some unspecified

amount of the claim but not all of it. It acknowledges that some invoices issued by Mana Advisory are proper and payment on them is due from UpMeals. However, UpMeals pleads that some invoices are not valid as they do not relate to work done for UpMeals. It pleads that further disclosure is required to assess which invoices are valid and which are not. It also disputes the interest claim Mr. Lee and Mana Advisory make in respect of the unpaid invoices.

The Bridge Loan Action: *Du v. UpMeals Technologies Inc.*, Vancouver Reg. No. S235074

[16] This is the action in which Ms. Du sued UpMeals for repayment of the $500,000 Bridge Loan made on October 27, 2021. As discussed earlier, default judgment was taken on this action and UpMeals accepts that default judgment since it accepts the indebtedness to Ms. Du. Execution on that default judgement is suspended until January 2025 pursuant to Brongers J.'s order.

The Bridge Loan Collateral Contract Action: *Susana Du v. UpMeals Technologies Inc. and Drew Munro*, Vancouver Reg. No. S240499

[17] This is a second action concerning the same $500,000 Bridge Loan. In this action, Ms. Du alleges that the agreement that she sued over and has taken default judgment on in the Bridge Loan Action was merely an agreement made for "optics" and did not represent the full agreement between her and UpMeals. She alleges in the Bridge Loan Collateral Contract Action that Mr. Munro was concerned that the true terms of the parties' agreement for the Bridge Loan would not reflect well in UpMeals' books so they made one agreement for optics and another – the "Collateral Contract" – which contained the true terms of their agreement. She alleges the Collateral Contract committed UpMeals to the following terms:

a) repay the $500,000 in three months (same as the "Optics Contract");

b) pay Ms. Du a commitment fee of $15,000 (additional to the Optics Contract);

c) pay interest at 8% per annum on the principal (same as the Optics Contract); and

d) pay a “consulting fee” of 1.33% ($6,700) per month (additional to the Optics Contract).

[18] In addition, Ms. Du alleges that on the same day that this agreement was made, Mr. Munro represented to Ms. Du that UpMeals would fulfill the obligations in the Collateral Contract and Mr. Munro would transfer 500,000 of his own shares in UpMeals to her upon receipt of the principal loan amount. Ms. Du claims she relied on these representations in deciding to make the Bridge Loan to UpMeals.

[19] Ms. Du advanced the $500,000 to UpMeals and Mr. Munro transferred the 500,000 shares to her. However, as discussed earlier, UpMeals has not repaid the $500,000 principal.

[20] The claim alleges that Mr. Munro acknowledged UpMeals’ indebtedness under the Optics Contract and that he initially acknowledged the obligations under the Collateral Contract. However, it is alleged that starting in March 2023 he denied the terms of the Collateral Contract.

[21] Since Ms. Du has already taken judgment on the Optics Contract, her claim in the Bridge Loan Collateral Contract Action excludes those matters covered by the default judgment (i.e. the order to repay the $500,000 plus interest) but seeks to enforce the terms relating to the additional interest charges in the Collateral Agreement. Ms. Du also claims the alleged representations were fraudulent and, on this basis, she seeks to impose personal liability on Mr. Munro for the terms of both the Optics Contract and the Collateral Contract.

[22] Unsurprisingly, UpMeals and Mr. Munro’s response to civil claim asserts the Bridge Loan Collateral Contract Action is an abuse of process as an attempt to relitigate matters already determined in the Bridge Loan Action. They plead the matters in this action ought to have been raised in the Bridge Loan Action. They deny the Collateral Contract and deny any misrepresentations. They also claim this

action was brought for an improper and collateral purpose to secure an advantage for Ms. Du in her other claims. They acknowledge that Mr. Munro transferred the 500,000 shares to Mr. Du but assert this was a gratuitous transfer done as a demonstration of his appreciation for Ms. Du's patience in awaiting repayment of the Bridge Loan beyond the three-month term.

The Share Transfer Action: *Glen Lee, Susana Du, and Mana International Holding Company Inc. v. Andrew Munro*, Vancouver Reg. No. S238273

[23] In this action, Mr. Lee and Ms. Du sue Mr. Munro over an alleged commitment to transfer to them shares he holds personally in UpMeals. This is the third action that invokes the Bridge Loan. It also puts in issue Mr. Lee's remuneration with UpMeals and that ties it, perhaps indirectly, to the Investor Relations Action.

[24] In this action, the plaintiffs plead that when Mr. Lee was offered the position of chief operating officer, UpMeals could not afford to increase the pay he was receiving from the investor relations position so instead Mr. Munro offered to transfer two million of his own shares in UpMeals to Mr. Lee (or to his company, Mana International Holding Company Inc.) as an incentive for Mr. Lee to take on this new role. The claim characterizes this as a representation that Mr. Lee relied upon in accepting the COO position.

[25] This claim also alleges that in December 2021, Mr. Munro asked Mr. Lee if he would personally guarantee equipment leases for UpMeals. Mr. Lee claims he agreed to do so based on Mr. Munro's continuing representation that he would transfer the two million shares in UpMeals to Mr. Lee.

[26] Further, this claim alleges that in December 2022 or January 2023, Ms. Du agreed not to commence an action to sue UpMeals over the unpaid Bridge Loan in exchange for Mr. Munro agreeing to transfer 1.5 million of his own shares in UpMeals to Ms. Du and repaying 50% of the principal amount of the Bridge Loan by April 30, 2023, neither of which was done.

[27] The claim also alleges that before and after Mr. Lee was terminated, Mr. Munro made disparaging statements about Mr. Lee and Ms. Du to other directors, officers, and employees of UpMeals and to independent contractors who did business with UpMeals. They claim both suffered damage as a result. On this basis, the seek punitive and aggravated damages, presumably in connection with the other breaches they assert respecting the alleged share transfer promises.

[28] In his response to civil claim, Mr. Munro asserts that this action, like the Bridge Loan Collateral Contract Action, has been brought for an improper and collateral purpose for Mr. Lee and Ms. Du to gain an advantage in the other matters. He denies any agreement to transfer shares to either Mr. Lee or Ms. Du and denies making any representation to this effect. He also denies making disparaging remarks about either Mr. Lee or Ms. Du but says that, to the extent he made any such remarks, his statements were true.

The UpMeals Action: *UpMeals Technologies Inc. v. Glenn Lee and Mana Advisory Inc*. Vancouver Reg. No. S242433

[29] In this action UpMeals claims damages against Mr. Lee for alleged misconduct in connection with this investor relations work. A response to civil claim had not yet been filed when the present applications were heard.

IV. Analysis

[30] For the reasons that follow, I have concluded that judgment should be granted for the plaintiff in the Lease Deposit Action. I have further concluded that the four remaining extant actions should be tried together with evidence in one action being evidence in all. Very briefly, I reach these conclusions because the Lease Deposit Loan Action is a discrete action that is factually and legally distinct from the other actions and it is suitable for summary determination. I can see no reason to delay giving judgment on that discrete action simply to consolidate it with the other actions. I am supported in that conclusion by *Wu v. Li* 2023 BCSC 1205.

[31] However, I am persuaded that the remaining extant actions have interconnecting and overlapping factual issues and parties, and, in my view, it is in the interests of justice that they be tried together.

A. The Summary Trial Application

[32] A case may be suitable for summary trial disposition where the necessary facts can be found by the court and it would not be unjust give judgment even though there may be disputed issues of fact or law: *Gichuru v. Pallai*, 2013 BCCA 60 at para. 30; *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 211 (C.A.). Where evidence given on a summary trial application conflicts, the court is not necessarily precluded from deciding the case provided that the conflicts can be resolved with reference to other evidence, such as documents, discovery testimony, or undisputed facts. However, a court cannot simply choose between one affidavit and another: *Cory v. Cory*, 2016 BCCA 409 at para. 10; *Canex Investment Incorporation v. 0799701 B.C. Ltd.*, 2019 BCSC 1414 at paras. 40-41.

[33] UpMeals argues the case is not suitable for a summary trial because the court will require in-person testimony of the parties to determine whether the $256,300 advanced by Mr. Lee is a loan as Mr. Lee claims or a capital investment as UpMeals claims. Even if it is a loan, UpMeals submits a full trial is needed to determine the terms of repayment for the loan, including whether the principal is repayable on demand. Since the parties' agreement was not reduced to writing, UpMeals argues the resolution of these issues will require the court to make a credibility assessment of Mr. Lee's and Mr. Munro's competing versions of the terms of their oral agreement.

[34] I find the issue of whether the funds advanced under the Lease Deposit Funding Agreement were advanced as a loan or a capital investment does not require a trial. In assessing whether funds advanced to a company are characterized as a loan or a capital investment, courts are to look at the intention of the parties and the surrounding circumstances with a view to determining the substance or true

nature of the transaction: *Broer v. Multiguide GmbH*, 2023 BCCA 134 at paras. 43-55. The parties' intentions are not necessarily determinative.

[35] In this case, there is no dispute that Mr. Lee advanced UpMeals the $256,300 at a floating interest rate of prime plus 5%. Nor is there any disagreement that UpMeals had to pay the interest on the advance monthly and that the principal had to be repaid at some point in the future. Mr. Lee received no equity for the advance. In form and substance, I find this transaction has all the hallmarks of a loan. Further UpMeals' financial statements for the years ending March 31, 2022 and 2023 identify this advance as a loan that was "due on demand". Those financial statements were prepared by UpMeals' accountant but signed-off on by Mr. Munro as having been "reviewed and approved".

[36] Further, in January 2023, about a year after the funds were advanced, Mr. Lee and Mr. Munro tried to reduce their agreement to writing but did not complete that. However, in their exchange of emails, each proposed wording around the terms of repayment that characterized the advance as a loan. In fact, in his emails to Mr. Lee, Mr. Munro described UpMeals as the "Borrower" and Mr. Lee as the "Creditor" (not the "Investor).

[37] A respondent to a summary trial application must put their "best foot forward" in responding substantively to the application, even if their primary position is the case is not suitable for summary trial disposition: *Gichuru v. Pallai*, 2013 BCCA 60; *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275. Here, Mr. Munro has put forward no evidence to explain the compelling evidence that he treated the lease deposit advance as a loan. That, together with the fact that interest was charged on the advance and all parties agree that the principal had to be repaid at some point, satisfy me that this transaction was clearly a loan and a full trial is unnecessary to determine that issue.

[38] The question of when the principal amount of the loan had to be repaid is less obvious but, in my view, can still be properly determined on a summary trial

application. This is because the question largely turns on legal principles and facts that are not materially in dispute.

[39] I find that when the parties made the loan agreement in December 2021, it was their *expectation* that it would be repaid once UpMeals was in a financial position to do so but there was no specific *agreement* to this effect. This is evident from the parties' subsequent conduct and negotiations which can be examined in an effort to understand the terms of an unwritten agreement: *Broer,* at paras. 47, 53-55

[40] In January 2023 when the parties were attempting to reduce their agreement to writing, the significant point of discussion was Mr. Lee's rights to recall the loan on demand. At that time, Mr. Lee maintained that he needed an unfettered right to recall the loan in case his own financial institution exercised its right of recall against him. Mr. Munro resisted this, maintaining that shareholders would see an unfettered right of recall as too risky for UpMeals. To address this, Mr. Munro proposed wording to the effect that Mr. Lee could recall the loan from UpMeals if UpMeals defaulted on an interest payment and failed to rectify that within 30 days, or if Mr. Lee's financial institution recalled the loan. Mr. Lee said in a responding message that this was acceptable to him.

[41] Ultimately, the parties did not conclude the written terms for their loan agreement so I cannot rely on this email exchange as constituting the terms of agreement. However, it is evidence that the parties had not previously discussed any triggering event that would permit Mr. Lee to recall the loan. The fact that their correspondence identified only two situations in which the loan could be recalled on demand – default on interest payment or recall by the bank – tends to support UpMeals' position that the terms of repayment were open ended as long as UpMeals paid interest on a monthly basis.

[42] However, this does not mean the loan does not, at some point, become payable on demand. In *Glacier Creek Development Corporation v. Pemberton Benchlands Housing Corporation*, 2007 BCSC 286, Justice Wedge found that a

shareholder loan advanced to the company without specific terms of repayment is assumed to be payable on the lender's demand. She wrote:

> [58] …funds advanced to a company by its shareholder may be in the nature of a demand loan even though there is no expectation of repayment until the company is profitable. The fact that an advancement of funds does not contain terms as to time for repayment does not render the advancement something other than a loan. To the contrary, it is presumptively a debt due and owing and payable on demand.
>
> [Emphasis added]

[43] Justice Wedge relied on *Marsuba Holdings Ltd. (Re) (Trustee of)*, 1998 CanLII 6586 (BCSC) where Justice Shaw considered a shareholder loan that was made without any terms of repayment but on the parties' expectation that it would be repaid when the company was earning a profit. He said the parties had not contemplated that the company may never reach profitability. He held that, despite the parties' expectations, the fact there were no stated terms of repayment meant that the loan was due and owing on the lender's demand.

[44] Here, UpMeals argues the agreement is not silent on repayment but it was a term of the parties' verbal agreement that it was not repayable until UpMeals became profitable. As I have said though, this was merely an expectation and not an agreement as evidenced by the January 2023 email exchange which shows the parties had different expectations over Mr. Lee's right to recall the loan. Nothing in that exchange of correspondence suggests that Mr. Munro believed Mr. Lee was reneging on an earlier commitment that the time for repayment was loosely defined by UpMeals' financial circumstances. Rather, he and Mr. Lee were attempting to reduce their agreement to writing based on their respective expectations. This satisfies me that there was no agreement on the terms of repayment at the time the parties agreed to the loan. This puts the case squarely within *Glacier Creek* and *Marsuba* making the loan repayable on demand.

[45] However, even if it was a term of the loan that it was only repayable upon the UpMeals becoming profitable, that is a contingent event that must occur within a reasonable amount of time to give the contract commercial effect. In *Cultivate*

Capital Corp. v. 1011173 B.C. Ltd., 2021 BCSC 1258 at para. 72-73 Justice Armstrong noted that a loan that is repayable on a contingent event become payable on demand if the event does not occur within a reasonable time (citing *Berry v.* Page (1989), 38 B.C.L.R. (2d) 244, 1989 CanLII 2780 (C.A.)). He explained the rationale as follows:

> [73] … To suggest that if money is loaned with a repayment expectation based on a contingent event, an un-businesslike outcome or commercial absurdity would be created if the money was never to be repaid: see *Roberts v. Heavy Metal Marine Ltd.*, 2011 BCSC 256 at paras. 60-63 and 66-67, aff'd 2011 BCCA 435.

[46] What is a reasonable amount of time will necessarily depend on the circumstances. In this case, I find the parties could not have expected the loan to have continued much beyond the time that UpMeals terminated Mr. Lee's contract, which occurred on May 10, 2023. Thus, a full year has passed since the termination and more than two years has passed since the loan was advanced. I find that in the circumstances of this case, a reasonable period of time has passed such that the loan is now payable on demand if it was not already.

[47] I therefore grant judgment to Mr. Lee for the debt in the amount of $254,300 plus contractual interest calculated according to the HSBC Bank of Canada prime rate plus 5% as was agreed to by the parties when the loan was made.

[48] UpMeals argues that regardless of the terms of the loan agreement, it is simply unable to repay the loan at this time. Mr. Munro deposes that forcing UpMeals to repay the loan now will put the company at risk of failure and jeopardize the jobs of some 50 employees. While that is a legitimate concern, it is not a defence to the obligation to repay the loan on demand. It may be relevant to an application to stay execution of the judgment, as Brongers J. did with Ms. Du's Bridge Loan Action. Counsel for UpMeals invited me to make a similar order in this case should I grant judgment but I do not believe that would be fair to Mr. Lee since that relief was not sought in UpMeals' application response. However, I will make an order staying execution on this judgment for 30 days so that UpMeals may make an application similar to the one heard by Brongers J.

[49] Mr. Lee seeks an order for a full indemnity for legal costs asserting that is what the parties had agreed to. Costs may be recovered on a full indemnity or solicitor-client basis by the successful party in a contractual dispute where the right to do so is clearly and unequivocally expressed in the parties' contract. As Justice Douglas summarized in *Shang v. Dhuu*, 2021 BCSC 68:

> [11] Solicitor-and-client costs are enforceable as a contractual right if clearly and unequivocally expressed in the parties' contract: *Bakshi v. Shan*, 2013 BCSC 969 at paras. 43–44. No magical incantation is required in order for a party to be entitled to a specific order of costs pursuant to the terms of their contract: *Bakshi*, at para. 44.

[50] In this case, there is no "incantation" – magical or otherwise – setting out a right to solicitor and client costs at the time of the loan agreement. Mr. Lee relies on the fact that when the parties were attempting to reduce their loan agreement to writing in January 2023, he proposed such a clause and Mr. Munro did not take issue with it. He argues this infers that it was an accepted part of their agreement. However, the written terms were never concluded and, in my view, the inference Mr. Lee suggests is neither clear nor unequivocal. I decline to award costs on a solicitor-client basis but Mr. Lee will have his costs of the Lease Deposit Action at scale B.

B. The Application to Try the Actions Together

[51] Rule 22-5(8) permits the Court to order that two or more proceedings be consolidated or tried together. In considering an application under this section a court is to ask first whether, based on the pleadings, the proceedings involve common claims, disputes, and relationships. Second the court should ask whether the two proceedings are so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems: *Hui v. Hoa,* 2012 BCSC 1045 at paras. 33-34. This second question involves consideration of factors such as whether:

a) the order will create savings in pre-trial procedures

b) there will be a real reduction in trial time;

c) a person with a marginal interest will be required to attend the joined proceedings;

d) there will be a savings in expert time and fees;

e) one action is at a more advanced stage than others;

f) there will be a delay of a trial and, if so, whether anyone is prejudiced;

g) there is risk of inconsistent findings on identical issues; and

h) one party will be deprived of the right to trial by jury.

Hui, paras. 34-35; *Hashimi v. Miki*, 2019 BCSC 2287; *Raymond James Investment Counsel Ltd. v. Clyne*, 2018 BCSC 720.

[52] More generally, the court should ask itself if consolidation or trying the matters together makes sense such that it is in the interests of justice: *Wu,* para. 20.

[53] Since the Bridge Loan Action has concluded and I have just determined that a summary trial judgment should be granted in the Lease Deposit Action, I exclude those two actions from my consideration of whether the remaining four actions should be tried together.

[54] Mr. Lee and Ms. Du resist an order that the actions be tried together on the basis that they raise distinct claims and involve different parties. They argue the Investor Relations Action is specific to Mr. Lee's contract with UpMeals and does not concern Ms. Du. The Bridge Loan Collateral Action concerns only Ms. Du and not Mr. Lee. The Share Transfer Action names both Ms. Du and Mr. Lee as plaintiffs but they submit it is factually discrete from the other actions as it is only against Mr. Munro and raises discrete issues and alleged misrepresentations that are specific and personal to him.

[55] I am not persuaded by these arguments. In my view, there is a sufficient amount of commonality between the four remaining proceedings that the answers to

both questions identified in *Hui* strongly favour trying them together. The Investor Relations Action concerns Mr. Lee's remuneration for his contract work for UpMeals and the Share Transfer Action raises a question of whether Mr. Lee was to receive some *additional* remuneration beyond what he was receiving for his investor relations work for serving as COO and on the board of directors. Both actions engage the arrangements and agreements for Mr. Lee's remuneration with UpMeals. This will undoubtedly involve overlapping factual and potentially legal issues at least relating to the terms of the oral agreement or agreements and the circumstances surrounding them.

[56] The UpMeals action involves Mr. Lee's performance in his investor relations work and as COO and whether he has breached the term of his contract such that he is not entitled to the full compensation he claims in the Investor Relations Action. Those two actions clearly have common issues, disputes and relationships.

[57] The Share Transfer Action also raises legal and factual issues common to the Bridge Loan Collateral Action, namely whether Ms. Du was to receive some additional equity directly from Mr. Munro as consideration for her forbearance on the Bridge Loan. The Bridge Loan Collateral Action involves a question of whether additional consideration was provided in a collateral agreement. In my view, it is not in the interests of justice to have two different trials that separately examine the elements of the consideration that apply to a single loan agreement.

[58] Ms. Du and Mr. Lee argue that Ms. Du is not a party to the Investor Relations Action or the UpMeals Action and ought not be brought into a joint trial that involves proceedings she has no interest in. However, the suggestion that she may be inconvenienced by these actions being tried with those she is a party to is belied by the fact that she is a co-plaintiff with Mr. Lee in the Share Transfer Action even though that action alleges two discrete sets of misrepresentations said to have been made by Mr. Munro separately to Mr. Lee and Ms. Du on different matters. Clearly these plaintiffs saw some benefit in pursuing these claims in the same action. In doing so, Ms. Du has elected to have this aspect of her claim tried together with a

similar claim made by Mr. Lee. I cannot see that she would be significantly inconvenienced to have that claim tried with other related claims. Moreover, the fact that Mr. Lee and Ms. Du are represented by the same counsel on all matters mitigates any real inconvenience to Ms. Du.

[59] None of the four remaining actions has advanced beyond the pleadings stage and thus there will be considerable efficiencies in pre-trial procedures and a real reduction in trial time as there is much factual overlap amongst all four cases, at least with respect to the history of the parties' relationships. No delay in any trial will result from an order that these actions be tried together.

[60] Mr. Lee argues that there is potential inefficiency and prejudice in that at least some aspect of the Investor Relations Action may be amenable to summary trial because UpMeals admits that at least some of the invoices issued by Mana Advisory for Mr. Lee's contract work are valid. I question whether there is any real efficiency gained by pursuing a summary trial on some amounts claimed in that action while leaving other amounts for a full trial. Regardless, Rule 9-7(2) provides that a party may apply for judgment by summary trial "either on an issue or generally". It appears open to Mr. Lee to seek judgment "on an issue" even if the action is ordered to be tried together with others. Whether or not that order is made, Mr. Lee will need to persuade the court on a summary trial application that litigating a slice of the Investor Relations Action is appropriate.

[61] Thus, I am satisfied that trying the four remaining actions together makes considerable sense and is in the interests of justice.

V. Conclusion

[62] I grant judgment to Mr. Lee in the Lease Deposit Action in the amount of $254,300 plus contractual interest calculated according to the HSBC Bank of Canada prime rate plus 5%.

[63] Mr. Lee will have his costs at scale B for the Lease Deposit Loan Action. The application for solicitor-client costs on that action is dismissed.

[64] I order a 30-day stay of execution on my order in the Lease Deposit Action with UpMeals having liberty to apply for a longer stay. I am not seized of that application should it be brought.

[65] I order that the four remaining extant actions, namely the Investor Relations Action, the Bridge Loan Collateral Contract Action, the Share Transfer Action, and the UpMeals Action be tried at the same time with evidence in one being evidence in all. I also make the ancillary order sought by UpMeals to vary the implied undertaking with respect to documents and examinations for discovery. UpMeals is awarded costs of its application in any event of the cause at scale B.

"Kirchner J."