

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0991342 B.C. Ltd. v. 1129354 B.C. Ltd.*,
2024 BCSC 915

Date: 20240529
Docket: S213351
Registry: Vancouver

Between:

0991342 B.C. Ltd.

Plaintiff

And

1129354 B.C. Ltd. and Randeep Nijjar

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

R.M. Morse
D.S. Boéré

Appearing on his own behalf and 1129354
B.C. Ltd.:

R. Nijjar

Place and Date of Trial:

Vancouver, B.C.
October 3-6, 10-12, 2023
December 11-14, 2023
February 28, 2024

Place and Date of Judgment:

Vancouver, B.C.
May 29, 2024

INTRODUCTION	3
BACKGROUND.....	4
The Nijjar Family	4
Quality Hotel.....	6
Knight Street and Dunbar Street Projects	7
Aeddy Leung	7
0991 Company	8
The King George Property	9
Acquisition of the King George Property	9
Sale of the King George Property	10
0991's Term Deposits and the BMO Mutual Fund.....	10
1129 and the Abbotsford Property.....	10
Financing the Abbotsford Property	11
The Transfer	12
The Alleged \$400,000 Loan.....	16
After Mr. Leung's Departure	18
REASONS ON DENIAL OF ADJOURNMENT AND FURTHER PLEADINGS	19
CREDIBILITY AND RELIABILITY OF THE PARTIES	23
Legal Principles	23
Analysis.....	25
DRAWING OF AN ADVERSE INFERENCE	28
Legal Principles	28
Position of Parties	29
Analysis.....	29
ISSUES.....	31
ISSUE 1: HAVE THE DEFENDANTS ESTABLISHED A LIMITATION DEFENCE?	32
.....	
Legal Principles	32
Position of the Parties	33
Analysis.....	35
ISSUE 2: ARE THE DEFENDANTS LIABLE FOR THE CONVERSION OF	
\$400,000?.....	37
Legal Principles	37
Position of the Parties	38
Analysis.....	39

Conclusion.....	42
ISSUE 3: DID THE DEFENDANTS CONSPIRE IN THE CONVERSION OF THE \$400,000?.....	42
Legal Principles	42
Position of the Parties	44
Analysis.....	44
ISSUE 4: ARE THE DEFENDANTS LIABLE IN DETINUE?	45
ISSUE 5: WHAT DAMAGES ARE THE PLAINTIFF ENTITLED TO?	45
Position of the Parties	46
Analysis.....	47
CONCLUSION.....	49

Introduction

[1] This trial involves a dispute between 0991342 B.C. Ltd. (“0991”) and Randeep (“Nick”) Nijjar and his company, 1129354 B.C. Ltd. (“1129”). At its heart, it is a dispute between Bhupinder (“Bob”) Nijjar and Rajinder (“Raji”) Nijjar, and their youngest son, Nick. This lawsuit is one of five actions and one petition that have been commenced involving this family and their companies.

[2] Since the key individuals all share the same last name, I use their preferred first names for ease of reference, meaning no disrespect in doing so.

[3] At issue in this action is whether Nick arranged for an unauthorized transfer of \$400,000 from the plaintiff’s mutual fund to a bank account under his control (the “Transfer”). It is alleged that he then used the \$400,000 to help pay for a purchase of a property on Huntingdon Road, Abbotsford (the “Abbotsford Property”) by 1129 in February 2018. Bob and Raji, the directors and controlling minds of 0991, deny that they authorized the Transfer and allege that they first became aware of the Transfer in late 2020 or early 2021.

[4] Nick admits that he arranged for the transfer of \$725,000, out of a joint account he had with Raji, to a law firm that was handling the purchase of the Abbotsford Property. He says he was not aware that a portion of those funds, being

\$400,000, originated from the plaintiff's mutual fund. He says he had nothing to do with authorizing the removal of the \$400,000 from the mutual fund. He further asserts that the monies belong to him since Bob and Raji owe him millions of dollars. The issue of whether and how much money Bob and Raji may owe to Nick is the subject of one of the other proceedings, being Vancouver Registry No. S210483 (the "483 Action"). Bob and Raji have counterclaimed against Nick and a number of corporate entities in the 483 Action. The 483 Action was scheduled for a 30-day trial, now 50 days, before Justice Wilkinson, which began on April 8, 2024.

[5] Nick alleges that it was the Nijjar family's former financial controller, Aeddy Leung, who facilitated the Transfer on behalf of Bob and Raji. There is an action, Vancouver Registry No. S203955, in which Mr. Leung and others were sued by Bob and Raji and a number of companies, for the return of funds misappropriated by Mr. Leung (the "Leung Fraud Action"). The Leung Fraud Action was settled on August 24, 2023 for the sum of \$1,250,000.

[6] I will provide background as context to this claim, address the applications that were made at the commencement of the trial, comment on the credibility and reliability of the parties, and then address the issues in the action.

Background

[7] A great deal of the evidence I heard at trial was provided as background; however, not all the evidence is crucial to the ultimate decision I have to make in this action. Since there are a number of other proceedings extant and which will be heard by other judges, I will make it clear what findings of fact I am making in this action.

The Nijjar Family

[8] Bob and Raji moved to Canada in the 1970s. They have three children: Rajeev ("Raj") Nijjar, born in 1976; Karen Nijjar, born in 1980; and Nick, born in 1983.

[9] After their move to Canada, Bob and Raji were able to build up significant wealth investing in real estate development and building homes. Bob testified that he was involved in a number of property development projects and he would incorporate companies for each specific project. Some of the projects involved only Bob and Raji, and on other projects Bob invested with his son, Raj. Bob estimates that they incorporated more than 30 companies. In 1976, Bob and Raji purchased their first house on Fraser Street, Vancouver, British Columbia. In 2001, Bob bought his first hotel, the Biltmore Hotel in Vancouver, with another partner.

[10] Raji obtained her real estate licence in or around 1981 and began working as a realtor. In 1992, Raji became a notary to assist with the real estate development business.

[11] Raj went to law school and became a lawyer. In or around 2003, Bob invested in an apartment building with Raj. The arrangement was that they would each invest 50% and then share 50% of any profits. Raj and his parents have continued investing in a number of projects together.

[12] Nick attended the University of Victoria from approximately 2000 to 2005 and obtained a bachelor's degree in psychology. When he was in university, his mother set up a joint bank account, being an account ending in 764, which Raji says she used to send Nick money so he could pay his rent, living expenses, and other expenses (the "Nick and Raji Joint Account"). Nick testified that Raji withdrew money from the Nick and Raji Joint Account on several occasions.

[13] Nick obtained his real estate licence in 2006. Nick testified that from approximately 2008 to 2011/2012 he took an online program to become a Certified Professional Accountant but he never obtained his final certification.

[14] Bob and Raji testified that Nick did not invest money in any of their development projects.

Quality Hotel

[15] Bob and Raji say that after Nick finished university he was hired as the general manager of the Quality Hotel. Nick was expected to work full-time and was paid about \$5,000 per month. Bob testified that Nick only attended at the hotel one to two hours a day and after 2011, spent less and less time there. He claims that Nick continued to be paid \$5,000 a month from 2008 until around 2015. Nick denies that he received any income from the Quality Hotel and says that he only received payments to his personal credit card which was allocated as income. The Quality Hotel is owned by 685946 B.C. Ltd. ("6859"). Bob testified that he and Raji own 6859. A Central Securities Register was entered into evidence that records that Bob and Raji are the sole shareholders of 6859.

[16] Nick testified that 6859 was 50% his and that he and his dad incorporated this company. Nick claims that the Central Securities Register is false. However, on February 14, 2020, Nick emailed Shayla-Lynn Lotnick at MNP, an accounting firm, stating that "685946 B.C. Ltd. belongs to my parents, it is the owner of the Quality Hotel". Nick's explanation for writing this email was that he was instructed to write it by his family members, under the impression that he should not claim it as his own given an ongoing Canadian Revenue Agency ("CRA") investigation. He says that he now believes this instruction was part of their scheme to deny his rightful ownership in the company.

[17] Nick testified that a number of his parents' properties and companies belong to him. His evidence was that he entered into a partnership with his father to purchase the Chieftain Hotel, located in Squamish, British Columbia, which was purchased in July 2005. He claims that money from the sale of three properties - two properties in Victoria and one on Main Street in Vancouver - was used to purchase the Chieftain Hotel. He testified that the money from the sale of the Chieftain Hotel was then used to purchase the Quality Hotel. Nick said that he then used money from the Quality Hotel to purchase the Coast Hotel in 2013. All of these claims are denied by Bob and Raji.

Knight Street and Dunbar Street Projects

[18] Bob wanted to get Nick involved in the property development businesses and he bought two properties: a property on Knight Street (the “Knight Project”) and a property on Dunbar Street, that was being subdivided into two lots (the “Dunbar Project”).

[19] The agreement on the Knight Project was that Bob and Raji would put the money in and Nick would manage the project. They would split the profits on a 50/50 basis. Bob and Raji claim that Nick did not end up managing the Knight Project and Bob ended up hiring Herbert Hung to teach Nick, and ultimately, to finish the project. Bob agreed to give to Mr. Hung, 50% of the proceeds of the Knight Project as payment for managing the project. Bob and Raji claim that they split the remaining 50% with Nick, despite him not managing the project.

[20] Bob purchased the Dunbar Project in cash. The plan was to subdivide it into two lots. Bob testified that after he was paid back the purchase price, the plan was to share the profits with Nick, if he managed the project. Bob says that Nick took all the proceeds from the bank account without repaying Bob for the purchase price and failed to split the proceeds with him. Nick testified that the proceeds of sale from a property he owned on West 16th Avenue (the “West 16th Property”) were used to purchase the Dunbar Project.

Aeddy Leung

[21] Mr. Leung began working for Raji in her notary practice and then as a bookkeeper for Bob and Raji. From 2004 to January 2020, Mr. Leung was an independent contractor and not an employee. Mr. Leung also did work for Raj and Nick.

[22] Mr. Leung’s duties included bookkeeping, preparing account reconciliations, preparing cheques for Raji or Bob to sign for bill payment, making deposits at the bank, and reviewing bank statements. Mr. Leung was supposed to open and review bank statements when they came in, compare them to each company’s records, and

let Bob or Raji know of any discrepancies. Mr. Leung handled deposits at the bank, but he was not authorized to sign or cash cheques, or transfer money. He was supposed to go to Bob or Raji when he needed their signature.

[23] Mr. Leung was responsible for keeping the corporate records and incorporating companies for Bob and Raji.

[24] In 2018, Bob estimates he had approximately 20 accounts, maybe more, though some were term deposits. At that time, neither Bob nor Raji had online banking and they received their bank statements in the mail. Bob testified that the bank statements for their companies came to the Coast Hotel at 1041 SW Marine Drive, where Mr. Leung worked. Bob explained that Mr. Leung would often meet the postal worker to collect incoming mail before it hit his desk.

[25] In January 2020, Mr. Leung resigned. There was a CRA audit that started in 2019. Mr. Leung did not tell Bob and Raji about the CRA audit. Bob only learnt about it when the CRA attended at the Coast Hotel to get records for Bob and Raji's companies.

0991 Company

[26] 0991 was incorporated in 2014. Bob and Raji have been directors and shareholders since incorporation. The Register of Directors for 0991 shows Raj was also appointed as a director on January 17, 2004 and ceased to be a director the same day. Bob testified he does not know why Raj was listed as a director for one day but that Raj did not act as a director and his involvement in 0991 was limited. Bob and Raji have been the sole shareholders of 0991 since incorporation.

[27] In the response to civil claim, the defendants admit that Bob and Raji are the directors and controlling minds of 0991.

[28] 0991 was dissolved for failure to file. Bob testified that it was one of Mr. Leung's duties to make the corporate filings. A lawyer was retained and a restoration application was made on June 11, 2020.

The King George Property

Acquisition of the King George Property

[29] 0991 acquired an interest in a property on King George Highway, Surrey, British Columbia in approximately 2014 or 2015 (the “King George Property”).

[30] The transaction involved a purchase agreement for part of the King George Property, purchasing the remainder out of foreclosure, and taking an assignment of a mortgage. The purchase price was approximately \$11.2 to \$11.4 million in total. Bob testified that the entire purchase price came from himself and his companies and that none came from Nick. During the negotiations, he asked for Raj’s assistance.

[31] Bob and Raji testified that they took over a mortgage in foreclosure to save the investment. She explained that 0773907 B.C. Ltd. (“0773”) purchased the first mortgage, using shareholder loans to finance the purchase, as 0991 did not have its own assets.

[32] Bob testified that he would take Nick to some of the business meetings to introduce him to contacts and Nick may have tagged along when he was negotiating the deal, but that was the extent of his involvement.

[33] Nick testified that he was involved in the acquisition of the King George Property. He testified that he was present when the original mortgage documents were signed and he was involved in offering the mortgage.

[34] Nick testified to his belief that 0991 was a “false corporate shell” and that the money to purchase King George Property came from 0773, a company that Nick says was owned 50% by himself and 50% by Bob. It is not clear on what evidence Nick makes such assertions. The incorporation documents for 0773 show that 0773 was incorporated on November 6, 2006. The sole shareholder was Bob. His evidence was that 0773 had funds of its own which were used for the purchase of the King George Property.

Sale of the King George Property

[35] The King George Property was subdivided and sold in two lots. One lot was sold to Ansu Developments, and the other lot to a company related to Ansu Developments. The sales occurred in or around 2014 and 2016 and together the lots sold for almost \$15 million.

[36] Bob testified that Nick was not involved in the sale of the King George Property. Nick may have been copied on some of the emails because Nick knew the realtor involved, but Nick was not involved in a meaningful way. Bob did not arrange to share the profits from the sale of the King George Property with Nick since he was not doing this project with him and it was his money that was used to purchase the King George Property.

0991's Term Deposits and the BMO Mutual Fund

[37] On January 12, 2015, 0991 opened a mutual fund with the Bank of Montreal ("BMO"), investment account number ending in 4262 (the "BMO Mutual Fund").

[38] After 2016, 0991 was not actively involved in business, but continued to hold money in bank accounts. Bob testified that 0991 held numerous term deposits. On advice from Mr. Leung, seven million dollars was split into seven term deposits, each holding one million dollars. One of the accounts that was created to hold one million dollars was the BMO Mutual Fund.

[39] Nick testified that the money in the BMO Mutual Fund came from various other companies and from the sale of other properties. There was no documentary evidence tendered at trial to support this.

1129 and the Abbotsford Property

[40] Nick is the sole shareholder and director of the defendant company, 1129. Nick testified that his wife was an "intended" shareholder but there was not another shareholder on paper. It is not clear to me what he meant by that.

[41] 1129 was incorporated and used to purchase the Abbotsford Property.

[42] According to Raji, Nick wanted to start a cannabis business, involving growing, processing, and distributing cannabis. Bob's evidence was that Nick told him in 2017 or 2018, that 1129 bought the Abbotsford Property for \$1.8 million for a cannabis business. Nick testified that he purchased the property with the intention of establishing a medical laboratory for extraction of derivatives.

[43] On May 29, 2017, a contract of purchase and sale was entered into with the seller being 0794968 B.C. Ltd. and the purchaser being 1151993 B.C. Ltd. ("1151") for a purchase price of \$1.8 million. The initial completion date was September 28, 2017, but it was extended to October 24, 2017, then to January 11, 2018, and finally to February 5, 2018. The deposit paid was \$90,000.

[44] 1151 later assigned its interest in the contract to 1129. Nick explained that 1151 was used for contract purposes only and had no assets or liabilities.

Financing the Abbotsford Property

[45] Nick applied for various mortgages to complete the purchase of the Abbotsford Property. There were various applications for mortgages, containing a number of inaccurate statements about Nick's financial situation. Nick testified that it was Mr. Leung who completed the various mortgage application forms.

[46] On January 10, 2018, a further \$100,000 deposit was paid in order to obtain additional time to find the necessary financing. Nick testified that the reason was to extend the completion date because of the CRA audit.

[47] On January 11, 2018, Nick accepted the commitment letter from a mortgage lender, being APMIC, issued on January 11, 2018, pursuant to which the lender was willing to advance a loan of \$1,189,500. In order to complete the purchase, a further \$525,856.89 was needed.

[48] The plaintiff says that Nick did not have the necessary funds to complete this sale. In support, it points to the various bank statements that Nick had for his accounts at BMO and Toronto Dominion ("TD").

[49] Nick's evidence was that he had monies to close the Abbotsford Property deal in his other companies and did not need to borrow any money to complete the purchase. In contrast, in his discovery conducted on October 14, 2021, he testified:

- 462 Q: Okay. And so when I said did you need \$525,000 to close the Abbotsford transaction, you said define the word "need".
- A: Yeah, because I was a builder and development and investment for 15 years prior to that and I was in no need of \$400,000 from anybody.
- Q: Did you have cash from other sources to close that transaction?
- A: No, I didn't.

[50] Bob testified that Nick asked him for a loan to finance the purchase, but he declined. Bob testified that he did not know anything about the cannabis business, had concerns about regulatory issues, and did not want to get involved in the cannabis industry.

[51] Bob testified that he told Nick that he would not give him any money but that he would pay back \$300,000 that he had borrowed from his sister, Surinder Sandhu, and that Nick could ask his aunt to borrow money. Bob's understanding was that Ajit and Surinder Sandhu agreed to lend Nick the money. At trial, Nick produced an unsigned promissory note for the principal amount of \$300,000, dated February 1, 2018, which Bob had not seen before. It states that Nick Nijjar promises to pay Ajit and Surinder Sandhu the sum of \$300,000, on demand, with interest rate of 8% per annum.

[52] On February 2, 2018, there was a \$300,000 deposit made into the Nick and Raji Joint Account.

The Transfer

The Documentary Evidence

[53] On February 5, 2018 at 9:19 a.m., Mr. Leung emailed Lily Chen of BMO Investments and requested the following:

Good morning Lily,

Need a big favor for help today.

Can you help us with the followings:

(1) Need to transfer \$700,000 from GIC into Bob/Raji's personal a/c no. [144], as we need to certify a cheque for \$400K today.

...

[54] Ms. Chen replies at 10:35 a.m., advising that "Fred" will take care of the redemption since she is away from the office. Mr. Leung emails Ms. Chen and Fred Chang, BMO Branch Manager, at 12:02 p.m., stating:

Hi Fred,

As Lily is off today, please see attached and help us with the followings:

(1) Redemption 700K from GIC and put into Bob's personal a/c [account ending in 144]

(2) Transfer \$400K into [Nick and Raji Joint Account] from Bob's personal a/c.

(3) Transfer \$525,856.89 into Trust a/c Cobbett & Cotton from [Nick and Raji Joint Account] as per Nick's instructions.

Please do it as soon as you can, as Nick has a closing today for that.

Sorry for the trouble, and many thanks for your help.

[55] Mr. Chang replies to Mr. Leung on February 5, 2018 at 1:02 p.m. advising that he transferred the funds to Cobbett & Cotton Lawyers ("Cobbett & Cotton"). Mr. Leung emails Mr. Chang with a copy to Nick at 1:32 p.m. thanking him.

[56] The investment statement for the BMO Mutual Account, for the period of January 1 to March 21, 2018, shows that mutual fund units, valuing \$705,733.30, were sold on February 5, 2018. The "disbursement summary" on the statement shows that the withdrawal was settled the following day on February 6, 2018 and deposited into 0991's bank account ending in 455 (the "455 Account"). The bank statement for the 455 Account shows a credit of \$705,733.30 on February 6, 2018 from the mutual fund redemption.

[57] My understanding is that the \$705,733.30 would not have been available until the following day when the withdrawal settled. However, since Nick needed \$400,000 of the funds urgently to close on the Abbotsford Property, Mr. Chang, on

behalf of BMO, issued an advance of \$400,000. This aligns with the transaction records and bank statements that were provided to me.

[58] This accords with the Transaction Record #006, which shows \$400,000 being debited from an account ending in “B24”, that reads “ADV MFUND REDEM 109064262 FCHANG” at 12:42:49 pm; and Transaction Record #007, which shows a joint account held by Bob and Raji at BMO, with account number ending in 144 (“Bob and Raji Joint Account”), being credited \$400,000, with a memo that reads “MFUND REDEEM ADVANCE, FROM 0991342 BC LTD”.

[59] Transaction Record #008 shows \$400,000 being debited from the Bob and Raji Joint Account on February 5, 2018 at 12:44:02 p.m. This aligns with the bank statement for the Bob and Raji Joint Account, which shows a credit of the “MFUND REDEEM ADVANCE, FROM 0991342 BC LTD” in the amount of \$400,000 on February 5, 2018.

[60] The bank statement for the Bob and Raji Joint Account also shows a corresponding transfer of \$400,000 to the Nick and Raji Joint Account on February 5, 2018 with the debit memo, “TRF FUNDS TO RANDEEP, NIJJAR ACCOUNT”. This aligns with Transaction Record #009, which shows a credit of \$400,000 to the Nick and Raji Joint Account on February 5, 2018 at 12:46:20 pm, with a memo that reads, “FUNDS TRANSFERRED FROM BOB NIJJAR”. The bank statement for the Nick and Raji Joint Account shows the deposit of \$400,000 on February 5, 2018, with the corresponding memo reading “FUNDS TRANSFERRED FROM BOB NIJJAR”.

[61] Transaction Records #010 and #011 show a subsequent transfer to Cobbett & Cotton trust account ending in 736 on February 5, 2018 for \$525,856.89 from the Nick and Raji Joint Account. The bank statement for the Nick and Raji Joint Account reflects this February 5, 2018 transfer to Cobbett & Cotton.

[62] As noted above, the bank statement for the 455 Account shows a credit of \$705,733.30 on February 6, 2018 from the mutual fund redemption. The statement also shows two debits made from this account on February 6, 2018, being:

- 1) a transfer of \$300,000 to the Bob and Raji Joint Account; and
- 2) a second debit memo that reads “RECOVER MFUND REDEMPTION, ADVANCE” of \$400,000.

[63] My understanding is that the first debit of \$300,000 was made pursuant to Mr. Leung’s request that \$700,000 be transferred to the Bob and Raji Joint Account. Since \$400,000 had already been advanced, this reflects the balance. The second debit memo reflects BMO recovering the \$400,000 it had already advanced to the Bob and Raji Joint Account on February 5, 2018, before the mutual fund withdrawal had formerly settled.

Oral Evidence

[64] Bob and Raji testified that they did not authorize the sale of the mutual fund units and the subsequent transfer of \$400,000 into the Bob and Raji Joint Account. They further did not authorize the transfer of the \$400,000 from the Bob and Raji Joint Account into the Nick and Raji Joint Account. They further did not authorize any of 0991’s monies being used to assist in purchasing the Abbotsford Property.

[65] Bob testified that when he received the statements for the 455 Account and the transaction records showing the Transfer he was surprised. He never had a discussion with Nick or Mr. Leung about redeeming the mutual funds in February 2018. He says that these records were obtained in 2020.

[66] Nick raises a question about the authenticity of the transaction records on the basis that on the face of them the signature appears to extend beyond the borders of the document. There was no explanation provided on how these documents were created; however, I accept that they align with the bank statements.

[67] There is no dispute that the sum of \$525,856.89 was transferred to Cobbett & Cotton from the Nick and Raji Joint Account. Nick testified that he authorized this transfer be made. Nick testified that he did not authorize anything except the payment to Cobbett & Cotton.

[68] Nick suggested that the \$400,000 reflected in these transfers did not come from the BMO Mutual Fund but must have come from some other account. He relies on the fact that the series of transfers were made on February 5, 2018, despite the BMO Mutual Fund statement indicating the withdrawal was not settled until February 6, 2018. However, this argument ignores the transaction records that sets out the advance of \$400,000 that was made on February 5, 2018 with specific reference to the BMO Mutual Account number, as reflected in Transaction Record #001 and its subsequent redemption as reflected on the 455 Account bank statement.

[69] Nick advances as a defence that the \$400,000 was his money and did not belong to Bob and Raji. In his discovery he states:

509 A: They weren't even aware of it. And this money is mine. The only reason you're saying they had something to do with it is you're defining that 400,000 as theirs. That 400,000 is not theirs; they had nothing to do with it.

The Alleged \$400,000 Loan

[70] Nick produced a promissory note in the amount of \$400,000 owed to Bob and Raji. This document is signed by Nick. It has a date of February 1, 2018. The promissory note bears interest at 5%. It contains the following term: "Term of this Agreement is for a period of 6 months, with an advance notice of 3 months for termination after the 12 months."

[71] This promissory note was not initially disclosed by Nick until one month prior to the adjourned April 2022 trial date.

[72] Bob and Raji deny being aware of this promissory and deny that they gave to Nick a loan of \$400,000 in February 2018.

[73] Nick testified that there was a meeting on February 1, 2018, where he, Bob, Raji, and Mr. Leung met. He said it was at this meeting that Nick asked for \$400,000 and his parents agreed to loan it to him. Nick said Mr. Leung handed him a promissory note to sign. He says he signed it and gave it back to Mr. Leung, who took it away. He claims that he found this signed promissory note in some half-empty boxes that came from the Quality Hotel.

[74] Nick agreed that he did not pay any interest as set out in the promissory note.

[75] At trial, Nick also referenced a cheque for \$400,000 dated February 1, 2018 written from the Bob and Raji Joint Account. On the Re: line it refers to a “Loan to Nick”. The cheque is numbered 2625 (the “2625 Cheque”). The cheque was produced for the first time during the trial. Nick testified that he found this cheque in the same half-empty boxes that he found the promissory note in, but did not explain why the promissory note was disclosed in March 2022 but the cheque was not. When asked why the cheque was only disclosed in the trial, Nick suggested that he would have provided it to his former counsel so he could not “effectively answer that”.

[76] Nick testified that he first saw the cheque on February 1, 2018, but that Mr. Leung took it to get it certified.

[77] At Nick’s discovery on October 14, 2021, when asked about the email sent by Mr. Leung on February 5, 2018 to Lily Chen at BMO, which states, “need to certify a cheque for \$400K today”, he testified that there was no cheque. At trial, Nick explained that he said this because, while he believed a certified cheque was coming, the loan payment was ultimately made by a transfer to his account.

[78] The bank statement for the Bob and Raji Joint Account from January 12 to February 9, 2018 was produced. Of note, there is no cheque numbered 2625 cashed in or around February 1, 2018. However, there are cheques numbered 2624 cashed February 5, 2018, and cheque numbered 2626 cashed February 6, 2018.

[79] Bob and Raji testified that there was no meeting on February 1, 2018 where they agreed to lend Nick the sum of \$400,000. They had never seen the 2625 Cheque before and they did not sign nor authorize the preparation of this cheque. When Raji was shown the cheque, she recognized her signature on it but testified that Mr. Leung was cutting and pasting their signatures and she had never seen this cheque before.

[80] The plaintiff submits that both the promissory note and the cheque were concocted. In particular, it suggests that the 2625 Cheque was concocted on the eve of or during this trial.

After Mr. Leung's Departure

[81] Bob and Raji testified that after Mr. Leung resigned and they took control of their finances they noted a number of irregularities in their bank statements. For many of the accounts, they had incomplete bank records, or no bank records at all. Their understanding was that Mr. Leung had diverted much of their mail to an old office address.

[82] Bob and Raji had to go to the bank to rebuild their records and request statements for all of their accounts. Nick volunteered to help with this. Bob and Raji testified that the 0991 bank statements were not in their records when Mr. Leung left. In May 2020, Nick confirmed that for 0991 he only had statements from 2019. Raj advises that he could not find any statements for this account before 2018.

[83] Bob and Raji testified that they found out that many cheques and term deposits had been cashed without their knowledge. They began investigating and Bob determined that Mr. Leung had forged his signature on a number of cheques. Due to the unexplained transfers and other irregularities, they hired another accountant to do a comprehensive accounting.

[84] As a result of their investigation, the Leung Fraud Action was commenced. In that action, Mr. Leung swore an affidavit deposing that he took more than \$2.5 million from Bob and Raji, and their companies.

Reasons on Denial of Adjournment and Further Pleadings

[85] At the commencement of the trial on October 3, 2023, an application was brought by Nathan Ganapathi, counsel for Nick, seeking to withdraw as counsel. In addition, there was a notice of application filed seeking to amend the pleadings. I permitted Mr. Ganapathi to withdraw as a counsel since it was clear he was not medically capable of continuing. As a result of his withdrawal, I considered whether the trial should be adjourned. I did not adjourn the trial and provided a short set of oral reasons advising that a more fulsome set of reasons would be provided as part of the trial reasons. I further did not permit Nick to amend the response to civil claim and bring a counterclaim.

[86] These are my reasons for the denial of the adjournment and refusal to permit further amendments to the response and the issuance of a counterclaim.

[87] In relevant part, the history of this proceeding is as follows:

- March 18, 2021 – notice of civil claim filed along with notice of fast track action;
- May 12, 2021 – response to civil claim filed with Stephen Warnett acting as counsel for the defendants;
- July 23, 2021 – defendants file a notice of application seeking joinder of this action with three others;
- August 27, 2021 – first notice of trial filed for trial date on November 29, 2021 for three days. This trial date was adjourned by consent to allow for the joinder application to take place.
- February 22, 2022 – second notice of trial filed for a trial date of April 11, 2022 for three days;
- March 3, 2022 – Justice Kirchner issued reasons denying the joinder application, reasons indexed at 2022 BCSC 327;

- April 7, 2022 – defendants file an application for document production and the adjournment of the April trial date;
- April 11, 2022 – Justice Stephens ordered the production of documents from the plaintiff, the adjournment of the trial, the defendants to pay the plaintiff’s cost thrown away in any event of the cause, and the removal of the action from fast track;
- May 26, 2022 – third notice of trial filed for a trial date of October 2, 2023 for 9 days;
- July 13, 2022 – Mr. Warnett resigns as counsel for the defendants;
- July 20, 2022 – Nick files a notice of intention to act in person on behalf of himself and 1129;
- August 3, 2023 – Mr. Ganapathi filed a notice of appointment as counsel for Nick only;
- August 4, 2023 – Trial management conference held at which Mr. Ganapathi sought leave to file a trial brief late. Leave was granted by Justice Duncan for defendants’ trial brief to be filed by August 14, 2023, for adjournment application by August 18, 2023, and for the adjournment application to be set for hearing prior to August 31, 2023;
- August 14, 2023 – Nick filed a trial brief listing 22 witnesses and advising that the total time needed for trial was 95 hours;
- August 18, 2023 – defendants filed a notice of application seeking to adjourn the trial and to have it heard after the 483 Action;
- September 13, 2023 – Justice A. Ross refused the defendants’ application to adjourn the trial;

- September 18, 2023 – plaintiff filed a notice of application seeking will-say statements for each of the witnesses listed on Nick’s trial brief filed August 14, 2023;
- September 20, 2023 – Justice Baker ordered Nick to provide will-say statements for each of the witnesses listed on the trial brief filed August 14, 2023 by September 27, 2023; and
- On September 29, 2023 – the plaintiff filed a notice of application seeking an order barring Nick from calling certain witnesses.

[88] The trial commenced on October 3, 2023. Two unfiled notices of applications were handed up to me. I was advised that they were provided to counsel for the plaintiff just after 10 a.m. on the morning of the trial.

[89] The first application was made by Mr. Ganapathi seeking an order that he cease to be counsel for Nick. This application was not opposed by the plaintiff. It was clear that due to Mr. Ganapathi’s medical condition he could not proceed as counsel.

[90] As a result of Mr. Ganapathi’s withdrawal as counsel, Nick then sought to have the trial adjourned. The defendants had already sought an adjournment which had been denied by Justice Ross on September 13, 2023.

[91] In my view, the only further consideration was whether in light of Mr. Ganapathi’s withdrawal as counsel should the trial proceed with Nick not only representing 1129 but also himself.

[92] It was my view that the trial should proceed in light of the fact that it involved the discrete issue of whether \$400,000 had been removed from the plaintiff’s bank account without its authorization. Of significance, Nick had been acting on his own behalf and on behalf of 1129 since July 2022. Mr. Ganapathi had only been retained in August 2023 to act only on behalf of Nick and not 1129. It was Nick’s intention to act for 1129 at the trial.

[93] It was my view that Nick had the ability to act on his own behalf. I also note that it is clear during this trial that Nick had a great deal a familiarity with the documents and the evidence he wanted to present.

[94] In weighing the prejudice, it was my view the prejudice to the defendants was significant in light of the past conduct in this matter and the delays that had occurred. Bob and Raji are in their seventies. Bob had to have a number of medical investigations on October 5 and 6, 2023.

[95] The second unfiled application handed up to me on the morning of October 3, 2023 was an application to amend the response and to file a counterclaim. The notice of application states that Schedule A is attached as the amended pleadings, but there was no Schedule A attached. The application itself sought to add as parties:

- Bob and Raji;
- Raj;
- Aeddy Leung; and
- 40 plus corporations managed and controlled by Bob, Raji, and/or Raj.

[96] It further sought to amend the response to civil claim to plead that there was civil fraud and misrepresentations that first arose in 2004. The notice of application states that the proposed amendments allege that Bob, Raji, and Raj, along with Mr. Leung, stole “companies, properties and money valued in excess of \$100 million”.

[97] It was clear to me that Nick was attempting to incorporate into this action some of the allegations that he was advancing in the 483 Action. Seeking such extensive amendments and pleading new causes of actions on the morning of the trial should not be condoned.

[98] The time for filing a counterclaim had long passed. I was not provided with a copy of the proposed counterclaim. In support, I was provided with an affidavit of Nick Nijjar #4 sworn on October 3, 2023, which references exhibits that were not attached to the affidavit provided to me. It was not clear to me whether the exhibits were attached at the time Nick swore the affidavit. Mr. Ganapathi, who had agreed to speak to this application, advised that he was not ready to proceed with the application and that the materials were not ready.

[99] The granting of the amendments sought in the response and the counterclaim would have required the adjournment of the trial which would have been prejudicial to the plaintiff.

[100] The plaintiff received the unfiled notice of application to amend on the morning of the trial. There was no notice given to any of the 40 different companies that Nick was seeking to add as parties.

[101] As a result, I refused to permit the application to amend to proceed in light of the failure to properly serve the application and in light of the significant prejudice to the plaintiff.

Credibility and Reliability of the Parties

[102] Before setting out the substantive issues in this action, I will deal with the credibility and reliability of the parties and whether an adverse inference should be made for the failure of the defendants to produce relevant documents and failing to call certain witnesses.

Legal Principles

[103] The factors to be considered when assessing credibility were summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal ref'd [2012] S.C.C.A. No. 392:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment

involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[104] Justice Mayer echoed these principles and provided further guidance in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739, aff'd 2020 BCCA 130:

[89] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the sincerity of a witness and the accuracy of the evidence that the witness provides. In some cases it becomes apparent that a witness has made a conscious decision not to tell the truth. In other cases, a witness may be sincere but their evidence may not be accurate for a number of reasons.

[90] Evaluating the accuracy of a witness' evidence involves consideration of factors including the witness' ability and opportunity to observe events, the firmness of their memory, their objectivity, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his pre-trial evidence by the time of trial or their testimony at trial during direct and cross-examination, whether the witness' testimony seems implausible, and the demeanor of a witness generally.

[91] An acceptable methodology for assessing credibility is to first consider the testimony of a witness on its own followed by an analysis of whether the witness' story is inherently believable in the context of the facts of the entire case. Then, the testimony should be evaluated based upon the consistency of the evidence with that of other witnesses and with documentary evidence, with testimony of non-party, disinterested witnesses being particularly instructive. At the end, the court should determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[92] Some additional factors which may impact credibility include the following:

- a) A series of inconsistencies, considered in their totality, may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' testimony: see paras. 57-59, 86 of *F.H. v. McDougall*, 2008 SCC 53, adopting the

comments of Rowles J.A. at paras. 28-29 in *R. v. R.W.B.* (1993), 24 B.C.A.C. 1.

b) Where a witness is found to have lied under oath, their credibility may be wholly undermined: *Le v. Milburn*, 1987 CarswellBC 2936 (W.L.) at para. 1; *Jones v. Jones*, 2008 BCSC 1401 at paras. 31, 32 and 60; *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 9.

c) Collusion and deception between two or more witnesses in the course of a litigation may taint the entirety of a witness's evidence: *Bradshaw* at para. 190;

d) Credibility will be undermined when a witness seeks to rely on false documents regarding the issues at trial: *Osayande v. Canada (Minister of Citizenship And Immigration)*, 2002 FCT 368 at paras. 19 and 21;

e) Credibility will be undermined when a witness (or party) has failed to produce documents: *Bradshaw* at para. 188; *Pacific West Systems Supply Ltd. v. Vossenaar*, 2012 BCSC 1610 at paras. 84 to 86;

f) Credibility will be in doubt when a witness's explanation defies business logic or common sense: *R. v. Storey*, 2010 NBQB 86 at para. 78; *Wang v. Wang*, 2017 BCSC 2395 at paras. 45-46 and 89-90; and

g) Credibility may be impacted when a witness is evasive, longwinded and argumentative in their responses to questions: *Bradshaw* at paras. 191 to 192.

[Emphasis in original.]

Analysis

[105] The plaintiff argues that Nick:

- was evasive, argumentative, and non-responsive in the witness stand and provided unreliable evidence;
- repeatedly breached the rule in *Browne v. Dunn* (1893), 6 R. 67, 1893 CanLII 65 (FOREP) (U.K.H.L.);
- took an unrealistically antagonistic course of defending himself, including making accusations of criminal conduct on behalf of numerous members of the Bar, showing that he cannot be relied upon to tell the truth;

- would change his story when it was in his own interest to gain a benefit;
- provided explanations for prior inconsistent statements that ranged from the “implausible to downright unbelievable” and were “not rooted in reality”;
- purported to give evidence about matters outside his knowledge; and
- was boastful, exaggerative, and self-serving in his evidence.

[106] On the other hand, the plaintiff submits that Bob and Raji were forthright in acknowledging the limits of their knowledge and told the Court when they were speculating or where a fact was outside of their knowledge. They gave their evidence in a straightforward and logical manner, which accorded with the objective documentary evidence where available.

[107] Nick did not address many of the specific allegations made against his credibility in his submissions but he did submit that throughout the trial he had conducted himself in a respectful manner. He says he listened to the directions of the Court and attempted to follow them.

[108] I will first address the credibility and reliability of Bob and Raji. I accept that they were credible and reliable witnesses. They did not attempt to malign Nick and provided evidence in a balanced manner. They did not exaggerate nor embellish. They readily admitted that due to the passage of time they might not have a clear memory of all of the details of what happened. That is understandable since in some circumstances they were being asked about events that had happened in the early 2000s. The evidence they gave made logical sense and, in many instances, was corroborated by documents. I have no hesitation in accepting their evidence of what transpired in respect to the Transfer and their lack of authorization for monies to be removed from the BMO Mutual Fund, which ultimately ended up in the hands of the defendants.

[109] Turning to the credibility and reliability of Nick's evidence, I first comment that during this trial, he demonstrated respect for the Court and the proceedings. For the most part, he was respectful in his questioning of Bob and Raji. Overall, I am of the view that Nick did an admirable job in light of the last-minute loss of his counsel and his need to conduct a lengthy trial on his own.

[110] However, it is clear that Nick is convinced that he is a victim of a fraud, predominantly perpetrated by his older brother, Raj, but also by his parents and Mr. Leung. He is entrenched in his view that he has been deprived of millions of dollars that he believes he is rightfully entitled to. I have no doubt that this belief is firmly held, but it permeated his approach to this action and, to a degree, taints his evidence. It leaves me with a concern that Nick was not able to be objective and with uncertainty as to the reliance I can place on his testimony.

[111] I agree with the plaintiff's submissions that, during this trial, there were a number of times when Nick was evasive, argumentative, and non-responsive when answering questions during cross-examination. In my view, this stems from his belief that he has been wronged and his inability to distance himself from that firmly held belief. As a result, in many instances he was inclined to argue rather than answer questions.

[112] I did not find that Nick deliberately attempted to give evidence outside of his knowledge. As a self-represented litigant, he strived to provide evidence in accordance with the rules of evidence. He took direction from the Court to try and restrict his evidence to what was relevant to this action. However, since he believes that his parents owe him millions of dollars, he felt compelled to repeatedly return to these allegations to justify his conduct and the receipt of the \$400,000.

[113] I am not persuaded that Nick deliberately breached the rule in *Browne v. Dunn*. In light of the extensive evidence he felt compelled to cross-examine Bob and Raji with, it is understandable that he missed putting certain evidence to them. I believe that Nick tried to confront Bob and Raji with what he viewed as crucial issues, but a lot of the cross-examination was spent on issues not being decided in

this action. I accept that Nick breached the *Browne v. Dunn* rule a number of times; however, in my view, the breaches of the *Browne v. Dunn* rule in this case were inconsequential to my decision.

[114] I am left with the impression that much of Nick's evidence must be viewed with caution. That is not to say that everything that Nick testified to has no merit or is deserving of no weight. It means, on the key factual determinations that I have made, I preferred the evidence of Bob and Raji to that of Nick.

[115] In respect to this action, I was not persuaded by the evidence of Nick in respect to the circumstances surrounding the Transfer. I specifically recognize that I did not hear nor see all of the documents respecting Nick's alleged involvement in the various projects Bob and Raji carried out over many years. The evidence of Nick in respect to what role he played in any of the projects was not fully provided. As such, my credibility findings in this particular case should have little sway on the trial in the 483 Action or any other proceedings between these parties.

Drawing of an Adverse Inference

Legal Principles

[116] Adverse inferences may be drawn where a party fails to produce relevant documents that they were required to produce, or should have produced, without a satisfactory explanation: *Walek v. Guardian Storage Inc.*, 2010 BCSC 365 at para. 46; *Douglas v. Douglas*, 2017 BCSC 921 at para. 97.

[117] An adverse inference can be drawn where a party refuses to call or produce a witness at trial, without a sufficient explanation, who might be expected to give supporting evidence. The inference is that such disclosure would not support that party's testimony: *Buksh v. Miles*, 2008 BCCA 318 at para. 31; *Thomasson v. Moeller*, 2016 BCCA 14 at para. 35.

Position of Parties

[118] The plaintiff argues that an adverse inference is warranted in this case in respect of Nick's failure to produce the CRA requirement to pay from the fall of 2017. His failure to do so should result in a finding that it does not exist.

[119] The plaintiff further argues that an inference should be made that the 2625 Cheque, a text message dated January 30, 2018 (Exh. R), and promissory note are not *bona fide* and did not exist when the discovery requests were made.

[120] The plaintiff asserts that an adverse inference should be made in respect to Nick's failure to call his wife, Amrita Nijjar ("Amrita"), and Mr. Leung as witnesses. The inference the plaintiff seeks is that Amrita would not have established that: the West 16th Property and the funds from its the sale were rightfully hers; the funds from the sale of West 16th Property ended up in the BMO Mutual Fund; and that Nick was authorized to take the funds.

[121] The plaintiff asserts that Nick vacated Mr. Leung's subpoena after it was put to him on the stand that he had known of Mr. Leung's fraud, known that Mr. Leung could get him his parents' money without their knowledge, and had used that information to take the \$400,000 in question. The plaintiff says that an inference should be drawn that Mr. Leung would not have supported Nick's evidence that there was a meeting where Bob and Raji agreed to give him money, provided the 2625 Cheque, and drafted the promissory note.

Analysis

[122] Pursuant to Rule 7-1 of the *Supreme Court Civil Rules*, there is an ongoing, positive duty on parties to produce all relevant documents on a list of documents. If Nick was relying on a requirement to pay that was issued in 2017 to support that his bank accounts were frozen at that time, it was his obligation to produce that document. If he did not have it in his possession, he could have obtained it from the CRA. In light of this failure, I accept that on the evidence before me there was no

requirement to pay issued in 2017. I further note that at his discovery on October 14, 2021, Nick stated that his accounts were frozen in 2018 and not in 2017.

[123] I am not persuaded that the 2625 Cheque was something that was recently created by Nick. It is not clear to me how Nick would be in possession of a cheque numbered 2625 from the Bob and Raji Joint Account in the fall of 2023 such that he could have forged it on the eve of trial. I accept that the cheque came from the chequebook for the Bob and Raji Joint Account and in light of the fact that the cheque numbered before it, and the cheque numbered after it, were cashed in February 2018, it is likely that this cheque was prepared in that time period.

[124] That this cheque existed in February 2018 for \$400,000 is supported by the email sent by Mr. Leung on February 5, 2018 to Lily Chen. However, based on the evidence I heard, I accept that this cheque was prepared in 2018, but it was not authorized by Bob or Raji. Perhaps it was initially Nick's plan to ask Bob and Raji to lend him the \$400,000, as such, the cheque was prepared. Nick's evidence is that the cheque was not cashed because the decision was made to do a bank transfer instead. I accept that it was not cashed because no loan agreement was made.

[125] The promissory note may also have been prepared back in 2018, but it is clear it was not signed. I accept that no agreement was reached whereby Bob and Raji agreed to loan \$400,000 to Nick.

[126] The text message dated January 30, 2018, was not disclosed to the plaintiff until December 11, 2023 while Nick was giving his direct evidence, and it was not put to Bob during his cross-examination. The only explanation given by Nick on why it was not disclosed was that he believed he had given it to his former lawyer. It is not clear to me if this text was fabricated, but in light of the failure of the defendants to produce this document until after Bob and Raji had testified it was not permitted to be tendered into evidence.

[127] On the morning of December 13, 2023, Nick announced that he had decided not to call Mr. Leung or Amrita. Nick submitted that since a settlement agreement

had been reached in the Leung Fraud Action he felt he should not call Mr. Leung. His view was that Mr. Leung had conspired with the plaintiff and it was not his place to call Mr. Leung.

[128] It is puzzling why Nick decided not to call the two witnesses when I gave him permission to call them. There was no satisfactory explanation given. If Nick wanted to establish his defence that it was Bob or Raji that gave instructions to Mr. Leung to authorize the Transfer, it was imperative that he call Mr. Leung to give this evidence. If Nick wanted to support his evidence that there was a meeting on February 1, 2018, in which an agreement was reached that Bob and Raji agreed to the loan when Mr. Leung was present, then Mr. Leung should have been called. I do not accept that the fact that a settlement was reached in the Leung Fraud Action supports that Mr. Leung and the plaintiff were conspiring together. It was not the responsibility of the plaintiff to call Mr. Leung as a witness. The plaintiff was not seeking to rely on any evidence of Mr. Leung to support the claim against the defendants. I accept that an adverse inference should be drawn that Mr. Leung would not have supported Nick's evidence on these contested points.

[129] Turning to Amrita, there was no satisfactory explanation given by Nick on why he did not call his wife. As I indicated at para. 53 of my oral reasons on the calling of defendants' witnesses, I was convinced that Amrita would have relevant evidence. An adverse inference should be drawn for the failure to Nick to call his wife and that her evidence relating to the West 16th Property would not have supported Nick's evidence.

Issues

[130] The pleadings, evidence, and submissions raise the following issues:

1. Have the defendants established a limitation defence?
2. Are the defendants liable for conversion of the \$400,000?
3. Did the defendants conspire in the conversion of the \$400,000?

4. Are the defendants liable in detinue?
5. What damages are the plaintiff entitled to?

Issue 1: Have the Defendants Established a Limitation Defence?

Legal Principles

[131] Section 6(1) of the *Limitation Act*, S.B.C. 2012, c. 13 requires that a court proceeding must not be commenced more than two years from the date on which the claim is discovered. It does not require that the claim be commenced within two years after the day on which the wrongful act took place.

[132] Section 8 of the *Limitation Act* codifies the common law principles of discoverability, stating that a claim is discovered for the purposes of s. 6(1) on the first day on which a person knew or reasonably ought to have known all of the following:

- a) that injury, loss or damage had occurred;
- b) that the injury, loss or damage was caused by or contributed by an act or omission;
- c) that the act or omission was that of the person against whom the claim is or may be made;
- d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

[133] A plaintiff has constructive knowledge of the material facts on which a plausible inference of liability on the defendant can be drawn where the evidence shows that the plaintiff “ought to have discovered the material facts by exercising due diligence”: *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31 at paras. 29, 42–44 [*Grant Thornton*].

[134] The Supreme Court of Canada discussed the doctrine of fraudulent concealment in *Pioneer Corp. v. Godfrey*, 2019 SCC 42 at paras. 51–54. The equitable doctrine provides that where a defendant fraudulently conceals the existence of a cause of action, the limitation period is extended until the plaintiff discovers or ought reasonably to have discovered the fraud: at para. 52.

[135] As a response to the global COVID-19 pandemic, on March 26, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order No. M086 (the “Order”) suspending limitation periods in court proceedings. The Order was issued pursuant to s. 10(1) of the *Emergency Program Act*, R.S.B.C. 1996, c. 111. The material part of the Order reads:

Every mandatory limitation period and any other mandatory time period that is established in an enactment or law of British Columbia within which a civil or family action, proceeding, claim or appeal must be commenced in the Provincial Court, Supreme Court or Court of Appeal is suspended.

[136] The suspension remained in effect through the operation of the *COVID-19 Related Measures Act*, S.B.C. 2020, c. 8 (item 27 of Schedule 2), until it was repealed effective March 25, 2021.

Position of the Parties

[137] The defendants argue that the transaction at issue occurred on February 5, 2018 and the action was not filed until over three years later. The defendants submit that the delay in starting the action related to the fallout between Nick, on one side, and Bob and Raji on the other. They say this claim was one of a series of retaliatory actions taken as a result of Nick’s demand for an accounting of his ownership interest and profit of the hotel and development businesses.

[138] The defendants argue that the exercise of reasonable due diligence by the directors of 0991 would have uncovered all of the transactions relating to the BMO Mutual Fund well before March 26, 2020. As such any delay beyond that date is inexcusable and should not be countenanced by the Court.

[139] The plaintiff says that the claim was only discovered in late 2020 or early 2021. It argues that Bob and Raji did not discover the Transfer until quite late into their investigation of Mr. Leung. It asserts that there is no evidence to suggest that they knew about the claim prior to then. It argues they first knew of the cause of action shortly before filing the claim.

[140] It submits that the plaintiff exercised reasonable diligence which is a subjective test being based on a standard of reasonableness and not perfection: *Roberts v. E. Sands & Associates*, 2014 BCCA 122 at para. 34; *Grant Thornton* at para. 29.

[141] The plaintiff says that Bob and Raji reasonably relied on their financial controller to review their personal and corporate bank statements and bring to their attention any irregularities. In 2018, Mr. Leung had been providing services to Bob and Raji for approximately 15 years with nothing to suggest to them that he was untrustworthy. There was nothing to raise their suspicions that any type of investigation had to be conducted until late January 2020, when Mr. Leung resigned.

[142] The plaintiff asserts that Nick and 1129 concealed their actions in not telling Bob and Raji about the Transfer and participating in a systematic cover up of the various unauthorized transactions. Invoking the doctrine of fraudulent concealment, they say it would be unconscionable to allow them to rely on this advantage gained by having concealed the existence of this Transfer to support a limitation defence.

[143] The plaintiff submits that by late 2020, Nick's relationship with his parents had disintegrated and he started to delete all of the documents stored in the Dropbox account so that his parents could no longer access them.

[144] In the alternative, if the claim was discoverable in 2018, the plaintiff says that Bob and Raji would have needed time to review the statements and find the Transfer. It would be unreasonable to say that the plaintiff should have discovered the Transfer immediately. It would have been necessary to review the various bank statements in order to understand what had transpired. The BMO Mutual Fund

statement covered the period from January 1 to March 31, 2018. The two-year period would not have expired until the end of March 2021, due to the pandemic suspension of limitation periods.

Analysis

[145] I first address the Dropbox issue. I reject the suggestion that Raji was deleting the files from the Dropbox. It is clear from the video Raji took as the files in the Dropbox were being deleted that she was in shock and in panic as she watched the messages come up that files were being deleted. On a number of occasions, one can see both her hands and she is clearly not deleting anything. I also am not persuaded that any of the other individuals present in the office were deleting files. There are video shots of the other two individuals standing behind Raji, being Raj and a bookkeeper, while the deletion messages are appearing on the screen. It also would make no sense that any of these individuals would be deleting materials from the Dropbox.

[146] I am also not prepared to make the finding on the evidence before me that Nick was the individual deliberately deleting the contents of the Dropbox on October 2, 2020. Nick testified that when his user access was removed, the Dropbox began to delete folders. It would have been helpful to me to have some evidence from a computer or IT expert to explain whether, if Nick's access to the Dropbox had been removed, files could have been automatically deleted. Without some further explanation on how the Dropbox system worked I am not prepared to find Nick deleted the files.

[147] Turning to the issue of the limitation period. Under two different approaches to the evidence, I find that the limitation period had not expired when the notice of civil claim was filed in this action on March 18, 2021.

[148] If I accept that Bob and Raji received the bank statements from the Bob and Raji Joint Account and the Nick and Raji Joint Account in February 2018, they would not have received the BMO Mutual Fund statement until sometime after March 31, 2018. After receiving the various bank statements, they would have needed some

time to reasonably cross-reference the statements and understand that monies had been removed from the BMO Mutual Fund that ended up in their joint account. They then would have had to figure out that monies were transferred to the Nick and Raji Joint Account and ultimately to Cobbett & Cotton. Finally, they would have to investigate what role Cobbett & Cotton played, including obtaining a copy of the transfer memorandum signed by Nick, and what the funds were ultimately used for, being to fund the purchase of the Abbotsford Property. I accept that all of those steps would have taken Bob and Raji well into the spring of 2018, at the very earliest. It would have been at that time that Bob and Raji had the requisite knowledge of the material facts upon which a plausible inference of liability on Nick and his company could be drawn: *Grant Thornton* at para. 42.

[149] I note that Nick testified that, as of March 19, 2020, not all of the BMO statements had been received. He testified that he was still trying to piece together information. I accept that all of the parties were trying to piece together what had happened after Mr. Leung resigned and the piecing together took many months to accomplish.

[150] Based on the above, I am satisfied that the claim was not discoverable until sometime after March 26, 2018 (and I note it would likely have been months later). Thus, given the COVID-19 suspension, the limitation period did not expire until March 26, 2021. Since the action was started on March 18, 2021, I am satisfied that it was started within the limitation period.

[151] The other approach, equally reasonable, is that Bob and Raji did not discover the various transfers until late 2020 or early 2021 because they did not have the bank statements until then. I found both Bob and Raji to be credible witnesses and I accept their evidence that they did not review those statements until near the end of the investigation of Mr. Leung. It is clear that after Mr. Leung left, Bob and Raji were trying to locate bank statements with the assistance of Nick. Bob and Raji were faced with the difficult task of trying to understand what had happened to millions of dollars that had been taken from a number of different accounts. They needed to

retain a forensic expert to help them. Bob and Raji exercised reasonable diligence throughout in their attempts to understand what had transpired with their funds. I accept that initially they had no suspicions that Nick had taken money from them and it was only as a result of a close review of the bank statements that the Transfer was discovered.

[152] I accept that Bob and Raji exercised reasonable diligence and the claim was not discovered until near the end of 2020. In this scenario, the limitation period would not have expired until the end of 2022. As such, the notice of civil claim being filed on March 18, 2021 is well within the limitation period.

[153] I find that this action was started within the limitation period and the defendants' limitation defence is dismissed.

Issue 2: Are the Defendants Liable for the Conversion of \$400,000?

Legal Principles

[154] The tort of conversion involves “a wrongful interference with the goods of another, such as taking, using or destroying those goods in a manner inconsistent with the owner’s right of possession:” *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727, 1996 CanLII 149 at para. 31.

[155] To make out an action for conversion, the plaintiff must establish:

- (a) a wrongful act by the defendant involving the goods of the plaintiff;
- (b) the act must consist of the handling, disposing, or destroying the goods; and
- (c) the defendant’s actions must have either the effect or intention of interfering with (or denying) the plaintiff’s right or title to the goods:

Ast v. Mikolas, 2010 BCSC 127 at para. 126 [*Ast*].

[156] Funds in a bank account can be subject of conversion. If a defendant takes the plaintiff’s money without the plaintiff’s consent and uses it for his or her own purpose, the defendant has committed conversion: *Ast* at para. 128; *Pang v. Zhang*, 2021 BCSC 591 at paras. 42.

[157] Conversion is a tort of strict liability; a mistake as to the ownership of the goods or funds does not constitute a defence if the physical consequences were intended: *Pang* at paras. 43–44, citing *Insurance Corporation of British Columbia v. Palma*, 2011 BCCA 51 at para. 9.

[158] Where conversion is committed by a corporation, the sole director and officer of that corporation is jointly liable for the conversion: *Pang* at para. 48; *Li v. Li*, 2017 BCSC 1312 at para. 218.

[159] If a defendant claims that money was transferred as a gift, the onus is on the defendant to demonstrate that a gift was intended: *Ast* at paras 117–121, citing *Pecore v. Pecore*, 2007 SCC 17 at paras. 24–26.

Position of the Parties

[160] The plaintiff argues that Nick was well aware that he was taking the plaintiff's funds and appropriating them for his own uses without the consent of the plaintiff. However, even if he was not aware of that fact, that is no defence to a claim in conversion. It is enough that he received the funds and put them to his own use, thereby denying the plaintiff's right as the true owner of the funds.

[161] Nick provided a number of different explanations for the Transfer. They were:

1. the Transfer was on account of his bank accounts being frozen by the CRA;
2. the funds in the BMO Mutual Funds belong to him and he suggested they came from a variety of sources, including:
 - i. the sale of 1925 SW Marine Drive;
 - ii. the sale of 1818 SW Marine Drive;
 - iii. the sale of the West 16th Property;
 - iv. a hotel (either the Quality or Coast); and

- v. real estate commission earned by Nick;
3. the funds were from the sale of the King George Property, but rightfully belonged to 0773, which Nick says is 50% his;
4. the funds were reimbursement for expenses on properties Nick says he owns;
5. the payments were an account of what Nick was owed from the family enterprise; and
6. Bob and Raji agreed to loan Nick the money.

Analysis

[162] I make the following findings of facts relating to the transfer of the \$400,000 from the BMO Mutual Fund:

1. that money was deposited in the BMO Mutual Fund account;
2. out of the BMO Mutual Fund, the sum of \$400,000 was transferred to the Bob and Raji Joint Account;
3. the \$400,000 was transferred to the Nick and Raji Joint Account;
4. \$525,856.89 was transferred from the Nick and Raji Joint Account to Cobbett & Cotton to pay the outstanding amount owed to purchase the Abbotsford Property.

[163] I accept Bob and Raji's evidence that they did not authorize any of the transfers. The email exchange between Mr. Leung to Lily Chen and Fred Chang confirms that the instruction to the bank officials came from Mr. Leung. However, in that email exchange Mr. Leung advises that the instructions came from Nick. There is no mention of Bob and Raji giving instructions to Mr. Leung. If the instructions came from Bob and Raji it makes no sense that Mr. Leung would have referenced Nick as the source of the instructions.

[164] Nick admits that he gave the instruction to transfer the \$525,000 to Cobbett & Cotton, but there needed to be enough money in that account for this transfer to occur. Prior to the deposit of the \$400,000 there was only \$311,769.37 in that account. That was not enough money to pay for the outstanding amount needed to complete the purchase of the Abbotsford Property.

[165] I accept that the evidence supports that Nick instructed Mr. Leung who in turn instructed the bank officials.

[166] I agree with the submissions of the plaintiff that if Bob and Raji had agreed to provide funds to Nick there would be no need to have the funds transferred from the BMO Mutual Account into the Bob and Raji Joint Account and then to the Nick and Raji Joint Account. The funds could have been transferred directly to Nick so that he could fund his company's purchase of the Abbotsford Property.

[167] I am not persuaded that Nick was entitled to remove \$400,000 from the BMO Mutual Fund without authorization of 0991, regardless of whether he was owed money by his parents or their corporate entities as he argues. He admits that the controlling minds of 0991 were Bob and Raji. The monies deposited into the BMO Mutual Fund was owed to the lawful holder of the account, being 0991.

[168] I will next deal with the various explanations that Nick gave for why the \$400,000 was taken and why it belongs to him.

[169] The evidence does not support that Nick's bank accounts were frozen in early February 2018. Bob testified that his bank accounts were only frozen sometime in July 2019. His understanding was that Nick's accounts were also frozen. A number of Nick and Amrita's bank statements for January and February 2018 were produced and they support that various transactions took place at that time.

[170] In addition, the only requirement to pay that was produced is one dated October 28, 2018. Nick did not produce any earlier requirement to pay in 2017. As I have already found, an adverse inference should be made against Nick for his failure to disclose this document.

[171] Nick speculates that the funds came from a variety of sources. On the evidence at this trial, a finding cannot be made where all the funds came from. There is no evidence that supports where the funds in the BMO Mutual Fund came from other than the evidence of Bob and Raji. The evidence supports that the funds were in an account owned by 0991.

[172] I cannot conclude on the evidence before me who was entitled to the sale proceeds of 1925 SW Marine Drive, 1818 SW Marine Drive, and the West 16th Property. The issue of the ownership of those properties and the entitlement to funds arising from the sale of those properties is an issue for the 483 Action.

[173] Nick alleges that 0991 is a “false corporate shell” and that the funds from the sale of the King George Property rightfully belong to 0773. He claims that he owns 50% of 0773. The evidence at this trial supports that 0773 is owned by Bob. If there is other evidence that supports that Nick has some ownership interest in 0773 that is for him to try and establish in the 483 Action.

[174] Nick says that Bob and Raji were transferring him \$300,000 to \$400,000 per month to cover monthly expenses for various construction properties. Even if that was the case, that does not support that the \$400,000 taken from the BMO Mutual Fund represented a payment for expenses. All of the evidence before me supports that the \$400,000 was used for the purchase of the Abbotsford Property and not for the reimbursement of any expenses related to various construction projects.

[175] The existence or non-existence of a “Nijjar Family Enterprise” is not an issue to be decided in this action. That is the main focus of the 483 Action.

[176] Nick’s final assertion is that the funds were a loan. The issue of the existence of a loan has already been canvassed. I have found no loan was ever entered into between Nick and his parents for the \$400,000.

Conclusion

[177] I find that the defendants, with the assistance of Mr. Leung, took the \$400,000 from the BMO Mutual Fund without the consent of the plaintiff and without the knowledge of Bob and Raji.

[178] It is clear on the evidence and from Nick's admissions, that the funds were used to complete the purchase of the Abbotsford Property. As a result of the Transfer, 0991 was denied access to these funds.

[179] As a result, the elements of conversion have been met.

Issue 3: Did the Defendants Conspire in the Conversion of the \$400,000?

Legal Principles

[180] The plaintiffs must establish their case on a balance of probabilities. There is no special standard of proof for fraud or conspiracy: *F.H. v. McDougall*, 2008 SCC 53 at paras. 42–46.

[181] There are two types of actionable civil conspiracy:

- a. predominant purpose conspiracy — where, whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or
- b. unlawful act (or unlawful means) conspiracy — where the conduct of the defendants is unlawful; the conduct is directed towards the plaintiff (alone or together with others); and the defendants should know in the circumstances that injury to the plaintiff is likely to, and does, result.

Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2013 SCC 57 at paras. 73–74, 80 [Pro-Sys], citing *Canada Cement LaFarge Ltd. v. British Columbia Lightweight Aggregate Ltd.*, [1983] 1 S.C.R. 452, 1983 CanLII 23 at 471–72 [LaFarge].

[182] The elements of the tort of unlawful act conspiracy are:

- a) the defendants acted in combination by agreement or common design;
- b) the defendants committed an unlawful act;
- c) the defendants' conduct was directed towards the plaintiffs;
- d) the defendants knew or ought to have known that injury to the plaintiffs was likely to result from their unlawful act; and
- e) the defendants' unlawful conduct in furtherance of their conspiracy caused injury to the plaintiffs:

LaFarge at 471–72; *Watson v. Bank of America Corporation*, 2015 BCCA 362 at para. 56.

[183] In either type of conspiracy claim, the defendants must act in combination—that is, in concert—by agreement with a common design. At least two parties must have agreed to conspire together: *Pro-Sys* at para. 72, *Golden Capital Securities Ltd. v. Rempel et al*, 2004 BCCA 565 at paras. 47, 56 [*Golden Capital*].

[184] With respect to unlawful act conspiracy, the type of conduct that constitutes an “unlawful” act is not fixed. The Ontario Court of Appeal in *Agribrands Purina Canada Inc. v. Kasamekas*, 2011 ONCA 460 [*Agribrands*], explained that “unlawful” acts can include criminal or quasi-criminal conduct, or privately actionable conduct:

[37] It is clear from [the jurisprudence on unlawful conduct] that quasi-criminal conduct, when undertaken in concert, is sufficient to constitute unlawful conduct for the purposes of the conspiracy tort, even though that conduct is not actionable in a private law sense by a third party. The seminal case of *Canada Cement LaFarge* is an example. So too is conduct that is in breach of the *Criminal Code*, R.S.C. 1985, c. C-46. These examples of “unlawful conduct” are not actionable in themselves, but they have been held to constitute conduct that is wrongful in law and therefore sufficient to be considered “unlawful conduct” within the meaning of civil conspiracy. There are also many examples of conduct found to be unlawful for the purposes of this tort simply because the conduct is actionable as a matter of private law...

[38] What is required, therefore, to meet the “unlawful conduct” element of the conspiracy tort is that the defendants engage, in concert, in acts that are wrong in law, whether actionable at private law or not. In the commercial

world, even highly competitive activity, provided it is otherwise lawful, does not qualify as "unlawful conduct" for the purposes of this tort.

Position of the Parties

[185] The plaintiff argues that the facts support a finding of unlawful means conspiracy. Nick acted on behalf of himself and on behalf of 1129 in converting the Transfer for the defendants' use. Nick knew that he was not authorized to take the funds from the BMO Mutual Fund and also knew that he was not entitled to do what he did. However, each of the defendants knew that they needed money and that Nick could wrongfully take it from one of his parents' accounts, and they worked, or conspired, together so that they could use the BMO Mutual Fund for their own purpose in closing on the Abbotsford Property. They knew, or ought to have known, that it was unlawful to remove the funds from the BMO Mutual Fund, to retain the funds, and also knew that by removing the funds, it was likely that 0991 would suffer harm as it would no longer have access to the funds that were rightfully its own.

[186] The defendants did not take any specific position on the issue of conspiracy, but it was their position that they were entitled to take the funds as their own.

Analysis

[187] A conspiracy requires an agreement between two or more individuals to act in concert, as such, there is no basis for finding an individual liable for a conspiracy: *Agribrands* at para. 28. The difficulty with the assertion of a conspiracy here is that the plaintiff is alleging that Nick and his company 1129 conspired together. Nick is the sole director and operating mind of 1129 and I am not persuaded that in that capacity he should be treated as another distinct individual: *R. v. McDonnell* [1996] 1 Q.B. 233 at 234, 245. For the purpose of a conspiracy I would not consider Nick, the individual, and Nick, as the sole directing mind of 1129, as two separate individuals that could form an agreement to act in concert. As a result, the plaintiff's claim of a conspiracy fails.

Issue 4: Are the Defendants Liable in Detinue?

[188] The plaintiff presented the claim in detinue as an alternative claim. In light of my finding that the defendants are liable in conversion, it is not necessary to address whether the defendants are also liable in detinue.

Issue 5: What Damages are the Plaintiff Entitled to?

[189] The plaintiff claims for the return of the \$400,000 plus interest and punitive damages in the range of \$30,000 to \$50,000.

[190] In conversion, the remedy is that the defendant pays the value of the property at the time it was wrongfully taken, together with the consequential loss: *McKnight v. Hutchison*, 2019 BCSC 944 at para. 172, citing *Kostiuk, Re*, 2002 BCCA 410 at paras. 34, 66.

[191] I find that the plaintiff is entitled to the return of the \$400,000 plus interest at the pre-judgment interest rate pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, from February 5, 2018 to the date these reasons are pronounced, from the defendants, jointly and severally.

[192] I will address a further argument made by Nick in his closing submissions that the \$400,000 in this action was potentially recovered as part of the settlement of the Leung Fraud Action. I note that the claim made against Mr. Leung in the Leung Fraud Action was for misappropriated funds exceeding \$2.5 million. Mr. Leung admitted to taking in excess of \$2.5 million. The settlement that was reached with Mr. Leung was for \$1,250,000. Even if the \$400,000 was included in the \$2.5 million there is no basis to argue that the plaintiff in this action has been compensated in the settlement of the Leung Fraud Action considering the actual settlement amount.

[193] I turn now to the issue of punitive damages.

Legal Principles

[194] The Supreme Court of Canada in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, set out the purposes of punitive damages:

[36] Punitive damages are awarded against a defendant in exceptional cases for “malicious, oppressive and high-handed” misconduct that “offends the court’s sense of decency”: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 196. The test thus limits the award to misconduct that represents a marked departure from ordinary standards of decent behaviour. Because their objective is to punish the defendant rather than compensate a plaintiff (whose just compensation will already have been assessed), punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment).

[195] In *Whiten*, the Supreme Court of Canada set out the factors to be used to assess the blameworthiness of a defendant’s conduct at para. 113:

- (1) whether the misconduct was planned and deliberate;
- (2) the intent and motive of the defendant;
- (3) whether the defendant persisted in the outrageous conduct over a lengthy period of time;
- (4) whether the defendant concealed or attempted to cover up its misconduct;
- (5) the defendant’s awareness that what he or she was doing was wrong;
- (6) whether the defendant profited from its misconduct; [and]
- (7) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff ... or ... was irreplaceable.

[Citations omitted.]

[196] The objective of such damages is “to punish the defendant, deter the defendant and others from similar conduct, and mark the community’s collective condemnation of what has happened”: *McKnight v. Hutchison*, 2022 BCCA 27 at para. 162.

[197] Courts should only resort to an award of punitive damages in exceptional circumstances where the conduct is deserving of full condemnation and punishment: *West Bros. Frame & Chair Ltd. v. Yazbek*, 2019 BCSC 1844 at para. 224, citing *Whiten* at para. 94.

Position of the Parties

[198] The plaintiff argues that punitive damages are warranted on the basis that compensatory damages are not sufficient to meet the aims of denunciation,

deterrence, and retribution. It submits that Nick exploited his parents' vulnerability in converting the \$400,000 to his own use, knew how his parents operated and their reliance on Mr. Leung, and took advantage of that.

[199] The plaintiff relies on the case of *Premium Weatherstripping Inc. v. Ghassemi*, 2017 BCSC 2191 [*Ghassemi*], in which the Court found that the personal defendant used his position of trust and control over the operations of the corporate plaintiff not only to facilitate the theft of its products, but also to stifle and frustrate any detection of the wrongdoing. The concealment of the fraud put the plaintiff to a great deal of extra expense and delay in conducting its investigation. The Court ordered punitive damages in the amount of \$30,000 against both defendants.

[200] It submits that, similar to the defendants in *Ghassemi*, Nick used his position of trust and control over the plaintiff's banking habits to facilitate the conversion of the monies and to obfuscate any detection of the wrongdoing. As a result, Bob and Raji had to go through their records with an external accountant following Mr. Leung's departure after the CRA investigation was commenced, which put them to extra expense. The plaintiff argues that this requires more than simply compensatory damage in response.

[201] The defendants made no specific submissions respecting punitive damages, but they maintained that they had the right to do what they did and that Nick strongly believes that he is the one who has been wronged by Bob, Raji, and Raj.

Analysis

[202] I reject that Nick was the individual that caused Bob and Raji to request all of their records and retain an external accountant which put them to extra expense. It is clear that a thorough investigation was carried out to determine what fraudulent acts Mr. Leung had done. As was plead in the Leung Fraud Action, the investigation was needed because:

1. The Plaintiffs are victims of a sophisticated and long-standing fraudulent scheme perpetrated by their trusted former financial controller, Chi Sing Aeddy Leung ("**Mr. Leung**"), who misappropriated over \$2.5 million in

cash, bank deposits, and investments belonging to the Plaintiffs over approximately twenty years.

[203] In the Leung Fraud Action, the plaintiffs sought to recover the costs of forensic investigations to discover the misappropriated funds.

[204] I have found that Nick used Mr. Leung to request the transfer of the funds from the BMO Mutual Fund to a Bob and Raji Joint Account. Mr. Leung dealt with the BMO employees to facilitate this transfer. In that regard, there was no attempt to hide from whom the request originated. It is also clear in the email from Mr. Leung that he was following the instructions of Nick. This was not hidden. At any time, the BMO employees could have confirmed the instructions with Bob and Raji, but they did not.

[205] I am not persuaded that the actions of Nick are equivalent to the actions of the defendants in the *Ghassemi* case.

[206] In *Ghassemi*, the Court found that no plausible explanation was given respecting the actions taken by Mr. Ghassemi. In this action, Nick says that the monies, or some of it, that were in the possession of 0991 belonged to him and as such he had a right to those funds. As I have already commented, I am not in a position to make any finding as to all of the source of the funds that went into the BMO Mutual Fund. I am not making any finding as to whether Nick may be owed money as a result of business transactions he did with his parents. I cannot comment on the legitimacy, if any, of Nick's claims that 0991 was in possession of monies that belonged to him.

[207] I note that the plaintiff made submissions on the Nijjar Family Enterprise and whether it is a legal entity and whether a joint family venture has been made out. I am not deciding whether there existed some type of family enterprise or family joint venture that Nick and his parents participated in. I accept that I did not hear all of the evidence in respect to this issue. All of those issues are the subject matter of the 483 Action.

[208] I agree with the submission of Nick that I did not hear all of the evidence respecting his dealings with his parents nor did I review all of the documents. This action was restricted to one transfer of funds from an account of the plaintiff for which Nick admitted was owned and operated by Bob and Raji. It is not for me to decide the issue of whether Nick will ultimately be successful in proving that some funds in the possession of Bob and Raji or, their corporate entities, belongs to him. That awaits the trial and decision in the 483 Action.

[209] I am not persuaded that, on the evidence before me, Nick's conduct meets the exceptional threshold nor that, in all of the circumstances, it offends the Court's sense of decency.

[210] An award of punitive damages is not warranted.

Conclusion

[211] The following orders are made:

1. The defendants' limitation defence is dismissed.
2. The plaintiff is entitled to damages in the amount of \$400,000 from the defendants, jointly and severally, with prejudgment interest from February 5, 2018 to the date of the pronouncement of these reasons.
3. If the parties cannot agree on the amount of prejudgment interest, they have liberty to return before me to decide the amount.
4. The plaintiff's claim in conspiracy against the defendants is dismissed.
5. The plaintiff's application for punitive damages is dismissed.

[212] I have not ordered Nick's signature to be dispensed with since I want him to see the amount of interest being claimed. I request that plaintiff's counsel provide to Nick a breakdown of how the interest was calculated. If there is any delay on the defendants' part to sign the order, after being provided with the breakdown of the calculation of prejudgment interest, the plaintiff can submit it to me for signing.

[213] The plaintiff seeks to make submissions on costs. Plaintiff's counsel is to submit a request to appear within in 30 days of these reasons being pronounced, providing a timeline for the plaintiff's written submissions and confirmation that a short oral submission is being requested. In the alternative to making written submissions on costs, the plaintiff is entitled to costs against the defendants on Scale B.

"Forth J."