IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Guo Law Corporation v. Li,*
2024 BCSC 1121

Date: 20240627
Docket: S188703
Registry: Vancouver

Between:

Guo Law Corporation and Hong Guo

Plaintiffs

And

Zixin Li aka Jeff Li, Qian Pan aka Danica Pan, Jun Da Li, Cai Li Chen aka Caili Chen, Ming Fu Wu aka Mingfu Wu, Bank of Montreal, Gateway Casinos & Entertainment Limited and Canadian Imperial Bank of Commerce

Defendants

And

Guo Law Corporation and Hong Guo

Third Parties
Defendants by Counterclaim

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

Counsel for the Plaintiffs:	G. Cuttler A. Eshghi
Counsel for the Defendant Bank of Montreal:	B. Greenberg R. Schechter
Counsel for the Defendant Canadian Imperial Bank of Commerce:	S. Robertson
Counsel for the Defendant Gateway Casinos & Entertainment Limited:	L. Bevan K. Jalilvand

Place and Date of Trial/Hearing:	Vancouver, B.C. February 15–16, 2024
Place and Date of Judgment:	Vancouver, B.C. June 27, 2024

Table of Contents

I. BACKGROUND 5
A. Procedural History of the Litigation 5
B. Law Society Proceedings 8
C. BMO'S Unusual Activity Reports 10
D. Dealings at the Branch 10
E. Right to Enforce Payment of Cheque 1117 12
II. ISSUES 12
III. LEGAL PRINCIPLES 13
A. Summary Judgment 13
B. Relevant Legislation 15
IV. PRELIMINARY EVIDENTIARY ISSUES 17
V. ANALYSIS: SUITABILITY 18
A. Forgery 19
1. Ms. Guo's Signature on Cheque 1117 19
2. Preclusion 21
3. Conclusion 23
B. Holder in Due Course 23
1. Defect in Title 23
2. Fraud or Other Illegality 25
3. Conclusion 29
C. Litigating in Slices 29
VI. ALTERNATIVE RELIEF 31
VII. CONCLUSIONS AND COSTS 32

[1] The plaintiffs apply for summary judgement of part of the counterclaim filed by one of the defendants, Bank of Montréal (“BMO”). The issue raised by the application concerns the validity of a cheque in the amount of $887,562 that was deposited at the Richmond branch of BMO into an account owned by the defendant Qian Pan, aka Danica Pan. The disputed cheque is one of several implicated in a scheme perpetrated by Ms. Pan and others to misappropriate over $6.6 million.

[2] The disputed cheque was drawn from the trust account of the plaintiff Guo Law Corporation, whose principal is the plaintiff Hong Guo. Ms. Guo was disbarred in January 2024, having been the subject of several proceedings before the Law Society and having been found to have committed numerous instances of professional misconduct.

[3] Guo Law Corporation held bank accounts at the Canadian Imperial Bank of Commerce (“CIBC”). BMO accepted the disputed cheque for deposit, but CIBC refused to honour the cheque. In its counterclaim, BMO claims it has suffered a loss, and it seeks recovery for that loss from the plaintiffs.

[4] The defendant Gateway Casinos & Entertainment Limited (“Gateway”) operates the Starlight Casino in New Westminster, BC. It is alleged that Gateway was a vehicle into which the misappropriated funds were deposited.

[5] The positions of BMO, Gateway, and CIBC (I will refer to them as the “Defendants”) are aligned on this application.

[6] The issues raised by this application are one facet of a complicated factual matrix, which is the subject of much litigation. The parties’ views differ as to the relevance and significance of those surrounding facts. Within that matrix, the discrete issue in this application is whether the plaintiffs have established that one of the claims in BMO’s counterclaim is bound to fail such that the Court should dismiss it pursuant to Rule 9-6(5).

I. BACKGROUND

[7] The plaintiff Guo Law Corporation ("GLC") is a law firm in Richmond, British Columbia. Its principal and sole lawyer was the plaintiff Hong Guo. Ms. Guo was disbarred as a lawyer in January 2024.

[8] GLC's office is in the same building as BMO's Richmond branch (the "Branch"), although GLC used the defendant CIBC for its own banking.

[9] The defendant Zixin Li was employed by the plaintiffs as a bookkeeper and office manager for the law firm. Among his responsibilities were preparing trust cheques, making bank deposits, and recording financial transactions. The defendant Qian Pan was employed by the plaintiffs as a conveyancing clerk. Ms. Pan held an account at the Branch.

[10] The plaintiffs assert that between February and April 2016, Mr. Li and Ms. Pan (the "Personal Defendants") conspired to misappropriate over $6.6 million from GLC's trust account at CIBC. Virtually, all of those misappropriated funds were deposited into Ms. Pan's account at the Branch. Ms. Pan opened a gaming account at Gateway where she deposited and then withdrew the misappropriated funds. While the misappropriation of trust funds may not be in dispute, the parties disagree about the plaintiffs' role in, knowledge of, and responsibility for that misappropriation.

A. Procedural History of the Litigation

[11] The plaintiffs filed a claim against the Personal Defendants and others in July 2016 (the "NW Action"). The plaintiffs claimed that Mr. Li and Ms. Pan conspired to steal or, otherwise, misappropriate trust cheques and trust funds of GLC's trust account around February 2016. The plaintiffs allege that funds also were deposited into BMO, CIBC, and other financial institutions. The plaintiffs also allege that Mr. Li forged Ms. Guo's signature on cheques that were misappropriated. The Personal Defendants then purportedly absconded to China. That action alleged unjust enrichment and sought from the Personal Defendants and others, among other

relief, joint and several damages for misappropriation, embezzlement, fraud, conversion, and conspiracy.

[12] The plaintiffs claim that upon learning of the stolen funds in April 2016, Ms. Guo worked with Chinese authorities to investigate the matter, which allegedly resulted in apprehensions and confessions from Mr. Li and Ms. Pan. These facts and many others are disputed by the Defendants.

[13] In early 2018, the plaintiffs started a new action against CIBC in the Vancouver Registry (the “CIBC Action”).

[14] In June 2018, the plaintiffs filed an application in the NW Action to add BMO and Gateway as defendants. At the same time, they applied in the CIBC Action for an order for disclosure of certain documents from, among others, Gateway and the British Columbia Lottery Corporation.

[15] In July 2018, both Gateway and BMO consented to an order to add them as defendants to the NW Action and to give leave to the plaintiffs to file an amended notice of civil claim in that action.

[16] In December 2018, the parties consented to an order consolidating the NW Action with the CIBC Action.

[17] On December 10, 2018, the plaintiffs filed a new notice of civil claim in the consolidated action (the “NOCC”), which also had a new action number (Vancouver Number S188703): that is the current action.

[18] Briefly stated, the claims alleged against one of more of the Defendants in the NOCC include:

a) conversion of trust funds and trust cheques, including by paying out funds on forged trust cheques;

b) knowing assistance in the Personal Defendants' conversion and breach of trust, or participating in the conversion and breach of trust with wilful blindness or recklessness;

c) becoming a constructive trustee by knowingly assisting the Personal Defendants' conversion of some of the trust funds and breach of trust, or by participating in the conversion and breach of trust with wilful blindness or recklessness;

d) knowingly dealing with converted funds after having knowledge of suspicious circumstances that would put a reasonable person on inquiry, which it failed to do; and

e) breach of a duty of care to prevent crimes, causing the plaintiffs' loss.

[19] The following is a brief summary of events in this litigation since the NOCC was filed:

a) On January 4, 2019, CIBC filed a response to the NOCC as well as a third-party notice against the plaintiffs.

b) On February 8, 2019, BMO filed a response to the NOCC, a counterclaim and third-party notice against the Personal Defendants and the defendants Juan Da Li; Cai Li Chen, aka Caili Chen; and Ming Fu Wu, aka Mingfu Wu.

c) Gateway also filed a response, counterclaim, and a third-party notice against the Personal Defendants on March 1, 2019.

d) On March 27, 2019, CIBC amended its third-party notice to add the Personal Defendants. The plaintiffs admit the litigation was dormant around this time until they filed a notice of intention to proceed on June 30, 2020.

e) The plaintiffs filed replies to the responses to the NOCC and responses to the counterclaims and third-party notices in December 2020.

f) On December 24, 2020, the plaintiffs applied for default judgement against the personal defendant Mr. Li, which was granted January 11, 2021.

g) Between April 2021 and September 2021, the parties produced lists of documents. The plaintiffs admit the litigation was again dormant around this time until they filed a notice of intention to proceed on November 11, 2022.

h) The plaintiffs filed the current notice of application on September 29, 2023.

[20] While there has been some exchange of lists of documents, document discovery is not complete, no discoveries have been set and no trial date has been set.

B. Law Society Proceedings

[21] Ms. Guo was disbarred in January 2024, and she has been the subject of extensive investigation by the Law Society, resulting in the following decisions to which the Defendants made reference in this application: *Guo (Re),* 2020 LSBC 52; *Guo (Re),* 2022 LSBC 30; *Guo (Re)*, 2023 LSBC 28; *Guo (Re)* 2023, LSBC 41; and *Guo (Re)* 2023, LSBC 46. As a result of those hearings, the following findings of professional misconduct have been made against Ms. Guo:

a) Breach of trust accounting rules;

b) Conflict of interest;

c) Failure to supervise staff;

d) Misappropriation and mishandling of trust funds;

e) Breach of Law Society orders;

f) Failure to provide a quality of service equal to a competent lawyer;

g) Breach of an undertaking to the Law Society; and

h) Knowingly making false representations and failing to respond substantively to the Law Society.

[22] In the decision that resulted in Ms. Guo being disbarred, a panel of the Law Society found that she had engaged in misleading behaviour including consistently providing incorrect or misleading information to the Law Society and demonstrating a consistent and repetitive failures to respond to Law Society enquiries; the panel concluded that she was ungovernable: *Guo (Re)*, 2023 LSBC 46 at paras. 206, 208, 215.

[23] In addition, Law Society panels have made comments questioning her credibility, and concluded that she was not a reliable witness due to her admitted poor memory and the extent to which "her poor memory was used as an excuse to explain incorrect and or evasive answers": *Guo (Re)*, 2023 LSBC 28 at para. 74. In that same proceeding, Ms. Guo's own counsel acknowledged that her evidence "on matters of detail where uncorroborated by other witnesses or contemporaneous documents is likely not reliable" (para. 69).

[24] One prominent fact relates to the Law Society's finding that Ms. Guo improperly left at least 125 pre-signed, blank cheques drawn on GLC's trust account with Mr. Li in mid-March 2016 while she was on vacation, which, in part, led to the finding that she "fail[ed] to properly supervise her staff": *Guo (Re)*, 2021 LSBC 43 at para. 16; *Guo (Re)*, 2020 LSBC 52 at para. 48.

[25] Mr. Li and Ms. Pan filled out the pre-signed cheques by adding payee names and amounts. Between March 9 and March 31, 2016, Ms. Pan made a number of deposits into her account by way of cheques and drafts payable to her from GLC. Ms. Pan deposited these into her account by attending personally at the Branch.

[26] After the deposits at the Branch, Ms. Pan purchased BMO bank drafts payable to Gateway. Ms. Pan attended Gateway and deposited the bank drafts into her Gateway account. She then made use of the monies.

C. BMO'S Unusual Activity Reports

[27] BMO relies on the affidavit of Lauren Rutherford, senior manager in BMO's Anti Money Laundering Financial Intelligence Unit ("FIU"). She explained that an unusual activity report ("UAR") is a preliminary report generated whenever a transaction is identified as being unusual in that it is contrary to a customer's routine. In that way, a UAR might be indicative of illegal activity, such as funding of terrorism, money laundering, or fraud. Ms. Rutherford explained the creation of a UAR does not conclusively demonstrate that a transaction is related to criminal activity, or even that it is suspected to be related to illegal activity. Furthermore, a UAR is not intended to prevent any account activity or restrict customer activity. Instead, it is meant merely to flag transactions for additional investigation.

[28] UARs are sent to FIU, and they are not shared beyond that unit within BMO. The filing of a UAR with FIU triggers additional scrutiny, which might lead to more detailed investigation. The process starts with a preliminary review, which can take anywhere from 45 to 60 calendar days. Personnel at the FIU determine whether additional due diligence is required, which might include asking questions of the customer, or requests for documentation pertaining to the source of the funds. An UAR inquiry may result in closing the inquiry without any further action, placing restrictions on an account, closing the account, taking required regulatory actions, or other steps.

D. Dealings at the Branch

[29] Ms. Pan sometimes dealt with an employee named Ivan Lee, who was a financial service manager at the Branch in February 2016. In his affidavit, he listed in nine cheques negotiated by Ms. Pan at the Branch, confirming that he must have processed some of those because he recognized his handwriting on them.

[30] He also deposed that each time he processed a cheque for Ms. Pan, he recalled an alert message popping upon the system advising that the "client had some unusual account activity". The alert encouraged caution and suggested the

cheque should be verified with the drawer. However, this was not a UAR. As noted above, UARs are not shared outside of the FIU.

[31] Mr. Lee described how he proceeded after seeing the alert:

> 10. My standard practice when caution is advised in depositing cheques or drafts, which I followed the first time Ms. Pan attended at the Branch to deposit a cheque with me, was to verify the cheque. I did so by first googling the payor law firm, Guo Law Corporation to obtain their telephone number independently of the information on the cheque.
>
> 11. Next, I called Guo Law Corporation, identified myself as being from BMO, and asked to speak to someone in their accounts payable department. I was then connected to an individual in their accounts payable department. This is how I first spoke with the Defendant, Jeff Li ("Mr. Li"). I cannot recall if I spoke with Mr. Li each time I called Guo Law Corporation, but each time I called, I spoke with someone in the accounts payable department. I would then provide details of the cheque number, amount, and payee, and asked the representative of the Guo Law Corporation to confirm whether the cheque was authentic and legitimate and if the details matched their records. In each case, the representative of Guo Law Corporation confirmed the cheque was authentic and legitimate.
>
> 12. In respect of each cheque I processed for Ms. Pan after the first cheque, I followed the same verification process, except I did not Google Guo Law Corporation each subsequent time.

[32] Mr. Lee had greater confidence in the authenticity of the cheques because they came from a law firm's trust account. He also made direct inquiries of Ms. Pan about the transactions. She told him that her family was selling numerous properties in Richmond and moving the funds to China. She also said the outgoing drafts were payable to Gateway because she believed the casino was able to wire the funds to China at a reduced cost. Mr. Lee "had no reason to doubt these explanations at the time, especially since [GLC] had verified the cheques, and no concerns had been raised with me by anyone outside of BMO".

[33] However, on March 29, 2016, after consulting with the Branch manager, Mr. Lee filed a UAR because they were concerned about the possibility that Ms. Pan might be engaged in money laundering. However, he "did not have any suspicions related to fraud" because none of the cheques had been flagged or returned by the drawee financial institution, and he had verified each cheque.

[34] Cheque 1117 was the final cheque in a sequence of cheques cashed by Ms. Pan. It explicitly named Ms. Pan as the payee. Mr. Li presented that cheque to the Branch, and it was processed by Mr. Lee on March 30, 2016. BMO processed the cheque and credited the amount to Ms. Pan's account. CIBC did not honour Cheque 1117, and did not provide the funds to BMO. BMO had already credited the account of Ms. Pan as named payee, and, as a result, it has suffered a loss.

E. Right to Enforce Payment of Cheque 1117

[35] In its counterclaim, BMO seeks, among other things, "[p]ayment of [Cheque 1117] by GLC pursuant to the *Bills of Exchange Act*", R.S.C., 1985, c. B-4 [*BEA*]. In this application, the plaintiffs seek to dismiss this claim.

[36] The *BEA* governs the negotiation of instruments including cheques. The parties dispute which provisions of the *BEA* are applicable, how the applicable provisions operate, and how they are to be applied to the underlying facts. They also disagree which of the underlying facts are material to the *BEA* issues.

[37] BMO takes the position that because Ms. Guo left pre-signed cheques with Mr. Li that were payable to a bearer without specifying a payee, the plaintiffs have no legal basis to challenge any bearer having been paid on those pre-signed cheques.

[38] The plaintiffs claim Cheque 1117 bears a forged signature. They rely on one of Ms. Guo's two affidavits in which she deposed:

> I did not sign [Cheque 1117]. I did not authorize anyone to sign [Cheque 1117] on my behalf. The signature on [Cheque 1117] is a forgery.

[39] The Defendants dispute the reliability and credibility of these statements.

[40] Ms. Guo's position is that because her signature on Cheque 1117 was forged, BMO has no authority to enforce its payment.

II. ISSUES

[41] There are two issues:

a) whether the matter is suitable for summary judgement; and

b) if it is, whether BMO was a “holder in due course” of Cheque 1117.

[42] There are also some evidentiary issues on which the parties disagreed.

III. LEGAL PRINCIPLES

[43] There is little dispute about the governing legal issues.

A. Summary Judgment

[44] Rule 9-6 of the *Supreme Court Civil Rules* allows a party in an action to apply for summary judgement on all or part of the claim. In this application, the plaintiffs seek summary judgement in relation to part of BMO’s counterclaim. Thus, pursuant to the wording of the *Rules*, the plaintiffs are the “answering parties”, and BMO is the “claiming party”. Rule 9-6(4) specifically permits an answering party to apply for judgment dismissing all or part of an originating pleading (in this case, BMO’s counterclaim).

[45] Rule 9-6(5) sets out the court’s options when hearing an application under 9-6(4):

> (5) On hearing an application under subrule (2) or (4), the court,
>
> (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
>
> (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,
>
> (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
>
> (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

[46] The onus is on the applicant to prove beyond a reasonable doubt that there is no triable issue or that the other party is bound to lose, and this is acknowledged to be a very high bar: *Bonneau v. British Columbia*, 2023 BCSC 1676 at para. 13; *Dussiaume v. Sandoz Canada Inc.*, 2023 BCSC 795 at para. 16; *Edgar v. The*

British Columbia Institute of Technology, 2015 BCSC 710; *McLean v. Law Society of British Columbia*, 2016 BCCA 368.

[47] Case law confirms that “no genuine issue exists” where it is manifestly clear or beyond doubt that the claiming party is bound to lose. The policy underlying this rule is the idea that it is essential to the proper operation of the justice system that cases with no chance of success are weeded out an early stage: *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 10.

[48] A genuine issue of fact arises from a material conflict in the evidence, although Rule 9-6 is still available where there are disputed facts in the pleadings. In that case, each party must put its “best foot forward” as to the existence or non-existence of material issues and the underlying materials facts: *Lameman* at para. 11.

[49] In *Aubichon v. British Columbia (Attorney General),* 2022 BCCA 77, the court stipulated that the court must not weigh matters of fact, but uncontested facts pleaded by the plaintiff should be assumed to be true, and any inferences drawn from facts should be drawn most favourable to the plaintiff (para. 18). In other words, if the judge on an application for summary judgement is required to assess and weigh evidence, it is clear that the test has not been met: *Kerfoot v. Richter*, 2018 BCCA 238 at para. 29.

[50] On the other hand, R. 9-6(5)(c) notes that if a court is satisfied that there exists only a question of law, it may be appropriate to determine the question and pronounce judgement. This is because the rule is designed to prevent claims or defences that have no chance of success from proceeding to trial.

[51] In *Lameman*, the Supreme Court also noted that summary judgement motions should be decided on the basis of pleadings and materials before the court and “cannot be defeated by vague references to what may be adduced in the future, if the matter is allowed to proceed” (para. 19): see also *Dussiaume v. Sandoz Canada Inc*., 2023 BCSC 795*; Williams v. Audible Inc.*, 2022 BCSC 834 at para. 56.

B. Relevant Legislation

[52] BMO's position is that it is a "holder in due course" of Cheque 1117. Holder in due course is defined in s. 55 of the *BEA*.

> 55 (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely,
>
> > (a) that he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact; and
> >
> > (b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.
>
> (2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance therefore, by fraud, duress or force and fear, or other unlawful mean, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

[53] In relation to s. 55(1)(b), s. 3 of the *BEA* specifies that something done "honestly, whether it is done negligently or not" constitutes a thing done in good faith.

[54] BMO relies on s. 165(3) to assert it is a "holder in due course" of Cheque 1117, and as such, it is entitled to seek payment from all parties liable for that cheque, including the plaintiffs.

> 165 (1) A cheque is a bill drawn on a bank, payable on demand.
>
> (2) Except as otherwise provided in this Part, the provisions of this Act applicable to a bill payable on demand apply to a cheque.
>
> (3) Where a cheque is delivered to a bank for deposit to the credit of a person and the bank credits him with the amount of the cheque, the bank acquires all the rights and powers of a holder in due course of the cheque.
>
> [Emphasis added.]

[55] Also relevant is s. 57:

> 57 (1) Every party whose signature appears on a bill is, in the absence of evidence to the contrary, deemed to have become a party thereto for value.
>
> (2) Every holder of a bill is, in the absence of evidence to the contrary, deemed to be a holder in due course, but if, in an action on a bill, it is admitted or proved that the acceptance, issue or subsequent negotiation of

> the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof that he is the holder in due course is on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course.
>
> [Emphasis added.]

[56] The presumption in s. 57(2) is displaced by some evidence to the contrary: *Maxham v. Excalibur International Capital Corp.*, 13 B.C.L.R. (3d) 280 at para. 28, 1995 CanLII 937 (S.C.). When the presumption is displaced, the onus shifts to the holder of a cheque to prove that it is a holder in due course: *National Money Mart Company v. State Farm Fire and Casualty Company*, 2016 ONSC 6298 at para. 25.

[57] However, if a signature is forged, the signature is inoperative, and there is no right to enforcement payment of it, unless the party against whom payment is sought is precluded from relying on the alleged forgery. Section 48 of the *BEA* states:

> 48 (1) Subject to this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery for want of authority.
>
> (2) Nothing in this section affects the ratification of an unauthorized signature not amounting to a forgery.
>
> (3) Where a cheque payable to order is paid by the drawee on a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer has no right of action against the drawee for the recovery of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of the forgery to the drawee within one year after he has acquired notice of the forgery.
>
> (4) In case of failure by the drawer to give notice of the forgery within the period referred to in subsection (3), the cheque shall be held to have been paid in due course with respect to every other party thereto or named therein, who has not previously instituted proceedings for the protection of his rights.
>
> [Emphasis added.]

[58] As noted, Ms. Guo's position is that her signature on Cheque 1117 was forged, and it is therefore inoperative, meaning BMO cannot enforce payment of it.

BMO's position is that she is precluded from relying on the forgery based on the facts in this case.

IV. PRELIMINARY EVIDENTIARY ISSUES

[59] The plaintiffs object to the admissibility of portions of Mr. Lee's affidavit. The evidence is relevant to the issue of whether BMO had notice or ought to have had notice of the alleged forgery on Cheque 1117, and more generally, of the illegal scheme being carried out by the Personal Defendants. The issue of BMO's notice is relevant to what provisions of the *BEA* apply, and who bears the burden.

[60] The plaintiffs' objections are based on the exact words underlined in the following passage from *Kennedy v. Kennedy*, 2006 BCSC 190:

> [5] In *C. (K.L.) v. C. (J.)* (2000), 9 R.F.L. (5th) 279, 2000 BCSC 798, Master Baker provided a useful summary of the jurisprudence on objectionable affidavits as follow at para. 9:
>
> > Counsel for Mr. C. relies upon *Foote v. Foote (1986), 6 B.C.L.R. (2d) 237 (B.C.S.C.)*; *Creber v. Franklin* (August 25, 1993), Doc. Vancouver D083222 (B.C.S.C.); and *Webber v. Wallace* (August 23, 1944), Doc. Duncan 53639 (B.C.S.C.). All are decisions of our court. Shortly stated, in all these cases the court directed that portions of affidavits be expunged for various reasons. These reasons include: hearsay upon hearsay, or irrelevance (*Foote v. Foote*), inadmissible opinion, adjectival descriptions, or subjective descriptions of reactions (*Creber*), unidentified witnesses, opinions regarding motives, or argument (*Webber*).
>
> [Underlining added.]

[61] I start by noting it is not clear to me how Mr. Lee's evidence would be "self-serving" since he is an employee of BMO, not a defendant.

[62] Also, to the extend the plaintiffs rely on there being an independent ground that "adjectival or subjective descriptions of reactions" are inadmissible, I had occasion to comment on that concept in *McEwan v. Canadian Hockey League*, 2022 BCSC 1104 at paras. 75–80, concluding that *C. (K.L.)* does not stand for the "proposition that there is a free-standing basis to strike statements that contain "adjectival descriptions or subjective descriptions of reactions" (para. 79).

[63] Regardless of the foregoing, I find none of the plaintiffs' objections persuasive. Most of the objections are based on the allegation that statements are "self serving, subjective and argumentative statements of Mr. Lee's feelings and therefore irrelevant and inadmissible" (emphasis added). However, I find, in the impugned statements, Mr. Lee is describing his state of mind and thought process; therefore, the statements are part of his narrative to explain his actions and put them in context.

[64] I find his evidence admissible, and dismiss all of the plaintiffs' objections.

V. ANALYSIS: SUITABILITY

[65] To succeed in their application for summary judgment, the plaintiffs must establish that the *BEA* provisions relied on by BMO in its counterclaim fail to raise a genuine issue for trial. I am not satisfied the plaintiffs have met that test, and for that reason, their application is dismissed.

[66] The plaintiffs' position is that it is beyond doubt that BMO is not a "holder in due course" of Cheque 1117. Their argument rests on the following propositions, individually and in combination:

a) Cheque 1117 is a forgery;

b) BMO bears the burden of proof to establish it is a holder in due course; and

c) BMO has admitted it had, or ought to have had, notice that Ms. Pan was engaged in fraud and/or illegality before it accepted Cheque 1117 for deposit, disentitling it from being a holder in due course.

[67] I find each of these propositions raise genuine issues for trial, as do the subsidiary issues within them. They raise either questions of fact and/or questions of mixed law and fact. Almost all of the facts relied on by the plaintiffs in support of the statements are disputed in either the pleadings, or in both the pleadings and evidence adduced by the Defendants.

[68] Furthermore, I find the plaintiffs' propositions invite the Court to weigh and assess evidence, or draw inferences, in the face of disputed evidence. This obviates a conclusion that no genuine triable issue is raised.

[69] I explain my analysis under two topics:

a) whether Ms. Guo's signature on Cheque 1117 was forged, and

b) whether BMO was a holder in due course.

A. Forgery

[70] The plaintiffs' position is that there is no triable issue that Ms. Guo's signature on Cheque 1117 is a forgery. I disagree.

1. Ms. Guo's Signature on Cheque 1117

[71] Ms. Guo deposed that she did not sign Cheque 1117 nor authorize anyone to sign it. She does not explain how or why she knows this. In light of her self-described significant memory and cognitive issues (see above, para. 23), the failure to provide that explanation is troubling, and diminishes the reliability of her statements.

[72] Given the findings of the Law Society about Ms. Guo's numerous instances of misconduct, especially that she failed to adequately supervise her staff and left with them blank, signed cheques, I am not prepared to accept her assertion of forgery at face value. In my respectful view, it would be contrary to the interest of justice and the public interest to accept, at this stage, any self-serving statements about the very events that led to Ms. Guo's disbarment when they are uncorroborated by any independent evidence. In light of that, her statements cannot independently serve as proof of forgery.

[73] I add that even if my reliance on the interests of justice and public interest is misplaced, I would still not accept the plaintiffs' position for a number of reasons.

[74] Ms. Guo's knowledge, responsibility and/or liability for the misappropriation of funds from GLC, including with regard to Cheque 1117, are disputed by the parties, and are therefore issues best suited for trial.

[75] I agree with BMO and Gateway that Ms. Guo's statements about the forgery are bald assertions with no details or explanations. In *Bank of B.C. v. Anglo-American Cedar Products Ltd.*, 57 B.C.L.R. 350, 1984 CanLII 322 (S.C.) at para. 4, the court approved of the following statements from *Yong v. Letchumanan,* [1980] A.C. 331 (P.C.):

> Although in the normal way it is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that [s/he] is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit, however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable is may be.
>
> [Emphasis added.]

[76] In August 2016, Ms. Guo made an affidavit in the NW Action stating her signature on numerous cheques was forged by Mr. Li. However, she later admitted to the Law Society that she left Mr. Li with a number of blank cheques that she had signed, which included cheques she had previously sworn bore her forged signature. In those circumstances, it would be imprudent for this Court to accept her bald statement that Cheque 1117 bears a forged signature.

[77] Regardless of that factor, a conclusion that a signature is a forgery usually requires expert evidence. Indeed, the plaintiffs rely on what they assert is expert evidence that her signature on Cheque 1117 is a forgery. However, that evidence has not been served in compliance with the *Rules* regarding expert opinion, and for that reason, and others, the Defendants object to that evidence being accepted in this application. Even if the plaintiffs' expert evidence was properly adduced, I find the reports themselves are equivocal and only point to the possibility that the signatures are fraudulent.

[78] The plaintiffs argue that because the Defendants failed to file their own expert evidence, their reports are persuasive thus cementing as unassailable Ms. Guo's claim of forgery. I disagree for the reasons stated above.

[79] In addition, on an application for summary judgment, the parties are not expected to bring their whole case, but only to "put their best foot forward". Given the concerns about the plaintiffs' expert evidence, I do not find the lack of similar evidence from the Defendants to be fatal to their position.

[80] I also note that the plaintiffs take issue with BMO's and Gateway's reference to and reliance on findings from various Law Society decisions with regard to the forgery issue. Given that the Law Society has power over the regulation of lawyers and law firms, my concerns about the wisdom of this Court accepting Mr. Guo's evidence on this point (see above, paras. 71 and 72) are heightened. I also note the inconsistency of the plaintiffs' position. They rely on Law Society decisions to support the position that it is "incontrovertible" Ms. Pan obtained Cheque 1117 by fraud, while denying the ability of the Defendants to also rely on features of the Law Society decisions.

[81] More importantly, I do not agree that the Law Society decisions could support an incontrovertible finding at this stage that Ms. Pan obtained Cheque 1117 by "fraud" as that terms is used in the *BEA* given its findings of misconduct against Ms. Guo, and the possibility one could argue that Ms. Pan had actual or ostensible authority to negotiate the cheque.

[82] For all those reasons, I find the issue of whether Ms. Guo's signature on Cheque 1117 was forged is clearly a genuine issue for trial.

2. Preclusion

[83] The plaintiffs point to s. 48(1) which states a "signature" that is forged is inoperative. However, even if I had found that it indisputable that Ms. Guo's signature on Cheque 1117 was forged, there would still be a triable issue as to

whether BMO is a holder in due course. A party asserting forgery may be precluded from raising that to resist payment on a disputed cheque.

[84] The plaintiffs submit they are not precluded from asserting forgery against BMO. They rely on *Canadian Pacific Hotels Ltd. v. Bank of Montreal*, [1987] 1 S.C.R. 711, 1987 CanLII 55 [*CP Hotels*]. Justice Le Dain held that a customer of a bank, in the absence of a verification agreement, owes no duty to that bank to examine statements or to maintain an adequate system of internal accounting. The plaintiffs say based on *CP Hotels*, BMO cannot lay blame on the plaintiffs for failing to immediately catch Ms. Pan's alleged fraud.

[85] *CP Hotels* does not assist the plaintiffs. I do not read the case as addressing duties that might be owed to a collecting bank, which is the BMO's position relative to the plaintiffs with regard to Cheque 1117. The case stands for the proposition that an ordinary customer in the absence of a verification agreement, owes no duty to its own bank to review and verify transactions on bank statements. The plaintiffs are not BMO's customers.

[86] Even if my interpretation of *CP Hotels* is misguided, I am satisfied the issue is a genuinely triable issue. The parties made extensive submissions about the applicability of *CP Hotels* to the facts in this application citing, among others, *Royal Bank v. Societe Generale (Canada*), 2006 Carwell Ont 8091; *D2 Contracting Ltd. v. The Bank of Nova Scotia*, 2015 BCSC 1634, affirmed 2016 BCCA 1634; *Kholsa v. Korea Exchange Bank of Canada*, 2009 ONCA 467. They also referred to a number of cases discussing where responsibility for a loss occasioned by fraud should lie, including *Rogers v. Priyance Hospitality Inc*., 2016 ONSC 7851; *Marvco Colour Research Ltd. v. Harris*, [1982] 2 S.C.R. 774, 1982 CanLII 63.

[87] Their differing submissions as to the relevance and applicability of that case law to the issue of preclusion under s. 48 only buttresses my conclusion that this issue is not suitable for summary disposition.

[88] The same is true with regard to the parties' submissions as to whether the plaintiffs' professional duties pursuant to the *Legal Profession Act*, S.B.C. 1998, c. 9, are relevant to these issues. I tend to agree with BMO's position that those duties are relevant to any policy analysis about loss allocation in this case, and specifically whether these plaintiffs are precluded from relying on s. 48. It is both surprising and disappointing that the plaintiffs take the position in this Court that they owed no positive duties to prevent fraud to the "public at large". Regardless, the parties' disparate positions on that issue also supports the conclusion that preclusion is a genuine issue for trial.

3. Conclusion

[89] For all those reasons, the plaintiffs have failed to establish that no triable issue exists on whether Cheque 1117 was forged. Accordingly, the issue of whether they are precluded from relying on s. 48 to resist BMO's counterclaim is also a triable issue.

B. Holder in Due Course

[90] The parties' dispute on this issue focusses primarily on two issues:

a) Whether BMO had "notice of defect of the person who negotiated" Cheque 1117 (*BEA*, s. 55(2)); and

b) Whether it is "admitted or proved" that the Cheque 1117 is "affected with fraud … or illegality" (*BEA*, s. 57(2)).

[91] While the juridical issues under s. 55 and s. 57 are distinct, the parties' evidence and arguments on both issues had extensive overlap, and I intend my analysis under each to apply to the other, as applicable.

1. Defect in Title

[92] BMO relies on s. 55(1)(b), submitting that it accepted Cheque 1117 in good faith and had "no notice of any defect in title". Section 55(2) states that title to a bill is defective if the person negotiating the bill obtained it by "fraud" or other unlawful

means[1]. The plaintiffs submit it is incontrovertible that Ms. Pan obtained Cheque 1117 by fraud or illegal means, thus defeating BMO's claim to be a holder in due course.

[93] At least to some degree, the plaintiffs' submissions focussed on their insistence that BMO bears the burden to establish it is a holder in due course. This relies in large part on the plaintiffs' submission that BMO has failed to adduce any admissible evidence to contradict the plaintiffs' position that Ms. Pan illegally negotiated Cheque 1117 at the Branch. That position, in turn, is largely dependent upon the plaintiffs' objections to the admissibility of Mr. Lee's affidavit, which I dismissed (see above, paras. 59 - 64). In light of that, the plaintiffs' position cannot succeed.

[94] In any event, given the factual matrix in which this application exists, and in light of the pleadings, there is considerable controversy about the details of the misappropriation scheme and the plaintiffs' knowledge, role, and responsibilities for that. Thus, the facts central to BMO's counterclaim are disputed, making summary judgment unavailable.

[95] Furthermore, the plaintiffs pointed on more than one occasion to what they claimed were evidentiary gaps, suggesting BMO failed to "put its best foot forward". Putting one's best foot forward is not the same as bringing one's entire case, which is the standard for a summary trial. In my respectful view, the plaintiffs appeared to conflate the two concepts.

[96] However, in my view, who bears the burden on the issue of whether BMO is a holder in due course is not a material issue before me. My task is to ask whether the plaintiffs have established that no genuine issue for trial arises with respect to BMO's being a holder in due course. I have concluded otherwise and therefore I

[1] The legislation refers to "bills". All references in this judgment to cheque(s) and/or Cheque 1117 is meant to be a reference to a bill for the purpose of the statute.

need not resolve the issue of whose burden it is to establish whether BMO is a holder in due course.

[97] The plaintiffs say it is "manifestly clear" that when Ms. Pan negotiated Cheque 1117 to BMO, her title was defective because she "obtained it" by fraud or unlawful means. It is helpful to review the evidence the plaintiffs have adduced in support of that position. Their submissions cited two decisions of the Law Society (rendered September 4, 2018, and November 4, 2020): *Guo (Re),* 2020 LSBC 52; *Guo (Re),* 2021 LSBC 43. Those cannot support an argument that BMO had notice of fraud or illegality because they were rendered years after Cheque 1117 was presented to BMO.

[98] While I accept that the plaintiffs can put forward the proposition today that it is undisputed that Ms. Pan and Mr. Li were involved in a scheme to misappropriate a significant amount of GLC's trust funds, the issue is whether BMO had notice of the alleged fraud or illegality, in the words of s. 55(2), "at the time [Cheque 1117] was negotiated". Ms. Guo deposed that she discovered the misappropriation "on or about" April 1, 2016. Leaving aside the fact how problematic it is that Ms. Guo cannot be precise about the day she discovered two of her employees stole over $6.6 million from her law firm's trust account, I cannot agree it is "beyond doubt" that BMO had notice of that scheme at the time when Ms. Guo herself did not.

[99] The rest of the parties' submissions regarding s. 55(2) of *BEA* are encompassed by the following discussion about fraud and illegality, and I adopt and apply that discussion to the defect in notice issue.

2. Fraud or Other Illegality

[100] The plaintiffs submit the following are uncontroverted facts:

a) From about February to early April 2016, Mr. Li and Ms. Pan engaged in a conspiracy and misappropriated just over $6.6 million from GLC's CIBC trust account and all, but about $85,000, were deposited into Ms. Pan's BMO account.

b) During this period, Mr. Li made out eight unauthorized and fraudulent trust cheques payable to Ms. Pan totalling over $4.8 million, and five CIBC bank drafts payable to Ms. Pan totalling just over $1.6 million.

c) Ms. Pan deposited the funds from those cheques and drafts into her BMO account.

d) BMO issued bank drafts totalling over $5.9 million to Ms. Pan payable to Gateway, and Ms. Pan deposited those drafts into an account she had there.

[101] While the plaintiffs cite both the Law Society decisions to support the foregoing, their submissions focussed to a large degree, if not exclusively, on Ms. Guo's evidence[2]. Her evidence is contested, and it is specifically contested with regard to her knowledge or/and responsibility for the misappropriation. I again rely on my concerns about accepting Ms. Guo's evidence about the very matters for which she was disbarred.

[102] I am in no position and have no reason to doubt or question the Law Society's conclusions about the activities of Mr. Li and Ms. Pan in the misappropriation of funds. However, I do not accept the plaintiffs' implicit contention that their misfeasance settles any issues in this application. Instead, I find that the Law Society decisions raise significant questions directly relevant to the issues raised in BMO's counterclaim about the applicability of various provisions of the *BEA* to the facts surrounding the misappropriation of funds from GLC.

[103] The Defendants specifically plead that Cheque 1117 being made out to Ms. Pan was the result of the plaintiffs' breach of professional duties and their negligence. They allege that Cheque 1117 was one of the cheques pre-signed by Ms. Guo that was left blank, and therefore they argue Ms. Pan had ostensible authority to deposit the cheque. In that circumstances, their position is that Cheque 1117 was not affected by fraud or conduct akin to fraud. Thus, the facts asserted in

[2] To the extent they rely on Law Society decisions, I rely on my earlier discussion (paras. 80-81).

the pleadings themselves demonstrate that the question of how Ms. Pan came to be in a position to negotiate Cheque 1117 raises a genuine issue for trial, as does the evidence adduced for this application.

[104] The plaintiffs rely on *National Money Mart Company v. State Farm Fire and Casualty Company*, 2016 ONSC 6298 [*Money Mart*]. In that case the court held that the presumption of a holder in due course is lost if that party "shuts its eyes to the facts presented and put suspicions aside without further inquiry". The plaintiffs contend that BMO "shut its eyes" to its own suspicions, thus depriving it of the presumption that it was a holder in due course. The plaintiffs point to the following as raising suspicions that Ms. Pan might be engaged in money laundering: (i) the alert noticed by Mr. Lee; (ii) the email from the Branch manager to Mr. Lee asking about Ms. Pan; and (iii) Mr. Lee's submission of the UAR (see above paras. 30 - 33).

[105] The plaintiffs submit in light of those circumstances, there were other steps BMO could have, and should have, taken when presented with Cheque 1117, including not accepting the cheque or putting a hold on it. However, the issue is not what BMO could have done, but whether what they did in the circumstances amounted to "shutting its eyes". In any event, either approach calls for a weighing and assessment of evidence precluding the appropriateness of summary judgment.

[106] The plaintiffs also submit that BMO having a suspicion of money laundering is the equivalent to suspecting fraud. I do not agree. The plaintiffs' argument rests on it being accepted that there is no material difference between the terms of "fraud" and "money laundering". The terms are not defined in the statute, but I find it reasonable to assume they probably have distinct meanings. Regardless of that, it is clear from Mr. Lee's evidence that he treated them differently since he suspected Ms. Pan might be involved in money-laundering, but not fraud. For both reasons, this is a triable issue.

[107] I add that by suggesting the Court should ask what more BMO could have done, the plaintiffs, in my view, strengthen the conclusion that there is a genuine triable issue as to whether the holding from *Money Mart* applies to these facts.

[108] Apart from those factors, BMO submits Mr. Lee's evidence defeats the plaintiffs' allegation that it "shuts its eyes" to notice, knowledge, or suspicion of fraud. Specifically, it relies on the following:

(a) At the relevant times, Mr. Lee was not, and could not have been, aware of the earlier UAR filed in February 2016 because UARs are not shared outside of the FIU;

(b) Every time he was given a cheque by Ms. Pan, Mr. Lee verified the authenticity of the cheque by directly contacting GLC, whose staff confirmed its details and stated it was legitimate;

(c) When he was given Cheque 1117 by Mr. Li, he verified that it was authentic;

(d) The fact that the cheques were drawn on a trust account of the law firm gave Mr. Lee greater confidence that the cheques were trustworthy;

(e) He made inquiries of Ms. Pan regarding the source of the funds and had no reason to doubt her explanation;

(f) At some point he consulted with the Branch manager regarding Ms. Pan's account;

(g) After that consultation, he submitted a UAR because of concerns of potential money laundering, but not in relation to suspected fraud.

[109] The foregoing evidence amply shows that whether BMO shut its eyes is a triable issue.

[110] Even if I accepted the plaintiffs' version of that evidence (which I do not), that might, at most, result in a finding that BMO suspected fraud or illegality; suspicion is not proof. The wording in s. 57(2) requires that it be "admitted or proved" that a cheque affected by fraud. The issue is disputed in the pleadings and the evidence.

[111] The plaintiffs also submit that the UAR amounts to an admission that BMO suspected Ms. Pan of fraud. This fails to accord any weight to Ms. Rutherford's uncontradicted evidence that a UAR is merely flagging the transaction for further investigation, and not determinative of fraud or other illegal activity. Ms. Rutherford added that UARs are not intended to prevent account activity or restrict customer activity and that they only trigger a review process.

[112] The plaintiffs argue that the Court should draw an adverse inference against BMO because it did not file an affidavit from people who the plaintiffs claim had knowledge of “material facts” (the employees who signed the February 2016 UAR and/or the Branch manager). I disagree. Those facts have been disclosed in this litigation, and BMO was not required to filed additional evidence about them, especially since Mr. Lee gave first-hand knowledge. BMO was not required to bring its entire case. There is no basis upon which to draw an adverse inference.

[113] Finally, the plaintiffs’ position about the state of BMO’s suspicion or knowledge about fraud or illegality clearly requires the Court to draw numerous inferences about contested facts. The plaintiffs alleged that only inferences favourable to their position could be drawn, but that precept is only operative where those inferences are drawn from uncontested facts, which is not the case here.

3. Conclusion

[114] For all those reasons, I find the plaintiffs have failed to establish that there is no genuine triable issue as to whether BMO was a holder in due course of Cheque 1117.

C. Litigating in Slices

[115] Apart from the discrete issues between the plaintiffs and BMO, I also find it summary judgment on this application would be prejudicial to the other Defendants.

[116] Gateway submits that an overarching consideration justifying dismissal of the plaintiffs’ application is that it would amount to “litigation in slices”; I agree.

[117] Gateway submits granting summary judgment in this application requires the Court to make findings that could embarrass a future presider because of the extensive overlap of facts and legal issues: *Dahl et al. v. Royal Bank of Canada*, 2005 BCSC 1263, aff'd *Dahl v. Royal Bank of Canada*, 2006 BCCA 369 at paras. 12–15.

[118] For instance, a determination about the validity of the signature on Cheque 1117, and the circumstances surrounding it, carries a risk that a subsequent presider will have to face similar or same issues. This is made clear because of the amended notice of civil claim in which the plaintiffs assert that Mr. Li forged signatures on cheques used in other transactions.

[119] Another example is any determination, even if interim, on whether BMO is a "holder in due course" requires determinations about steps BMO took to assess the validity of Cheque 1117, which could prejudice Gateway's defence against the allegation of unjust enrichment.

[120] Additionally, Gateway submits the issues in this application are factually intertwined with the originating pleadings and Gateway's counterclaim. In that way, its position in the litigation could be prejudiced even if the specific legal consequences that would flow from this application do not directly impact Gateway's rights. The plaintiffs' claim against Gateway alleges it knowingly assisted, participated in, was wilfully blind to or had constructive notice of the alleged fraud committed by Ms. Pan and Mr. Li. I agree any determination of any aspects of that scheme has the potential to prejudice Gateway's defence to the plaintiffs' claims.

[121] CIBC also points out that it had an account agreement with the plaintiffs. It relies on that agreement in its pleadings and submits its terms provide a full defence to the plaintiffs' claims against it. CIBC takes the position the agreement proves that the plaintiffs had an obligation to establish what steps they took to prevent the alleged fraud and forgery. CIBC submits this creates a clear intertwining of issues, making any summary disposition untenable: *Greater Vancouver Water District v. Bilfinger Berger AG,* 2015 BCSC 485 at paras. 128–134.

[122] CIBC also submits that has specified pled the provisions of the *BEA* as a defence to any forged or unauthorized bills. Thus, the factual and legal issues raised in this application could directly impact one of its defences to the main claim.

VI. ALTERNATIVE RELIEF

[123] The plaintiffs submit if they are unsuccessful on their application for summary judgement, the funds paid into court in the bankruptcy and insolvency proceedings relating to GLC should be paid to plaintiffs' counsel pursuant to R. 9-6(5)(d).

[124] In the bankruptcy proceeding (Vancouver Registry No. B170021), Justice Funt on August 29, 2022, made a number of orders sought by the proposal trustee, FTI Consulting Canada Inc. That order primarily dealt with the sale of land, and orders relating to specific claims made in the proposal. In addition, Funt J. specifically ordered that upon completion of the sale of the lands, "the Proposal Trustee shall pay the amount of $817,813.00 (the 'BMO Posted Funds') to the credit of Court – Action No. S-188703 (the 'BMO Litigation')", and that those funds would be "held subject to further order of the Court made in the BMO Litigation, or by agreement of the parties to the BMO Litigation" (paras. 18(c)–(d)).

[125] In May 2023, Justice Crossin made an order amending para.18(c) of the Funt J.'s order to correct the amount required to be paid into court. Justice Crossin's order also stated that upon payment into court, the proposal was fully performed.

[126] The plaintiffs submit since the proposal has been performed, the disputed funds can be paid out their law firm.

[127] I decline to grant this order. Apart from anything else, granting the alternative relief would essentially give the plaintiffs the same benefit as if they had succeeded on the application for summary judgment. Thus, with respect, that is not truly "alternative" relief.

[128] The plaintiffs also submit Ms. Guo's assertion of financial hardship supports the relief being granted: *Webster v. Webster*, 101 D.L.R. (3d) 248 at para. 15, 1979

CanLII 744 (B.C.C.A.). *Webster* is distinguishable. It was a family law case. One issue was whether a wife in a divorce proceeding was entitled to seek relief from a garnishing order on the basis of “undue hardship, abuse” or the order being “unnecessary”.

[129] Even if *Webster* applied, Ms. Guo's evidence of hardship is wholly inadequate. She provides no documents or certified records regarding her overall assets, income, liabilities, or debt. Remarkably, she attempts to rely on her inability to work as creating hardship to justify her access to the funds paid into Court, even though her inability to work arose from her own misconduct, suspension, and ultimate disbarment.

[130] I add that it may be contrary to the interests of justice to allow a lawyer disbarred for her own misconduct (as opposed to mental health or disability issues) to successfully claim financial hardship when that would have the effect of giving her success on an application on which they otherwise could not succeed.

[131] Lastly, the funds were paid into court as a form of security for BMO’s counterclaim. The plaintiffs argue that Justice Funt’s order stating the funds would held “subject to further court order” opens the door to release that security, notwithstanding BMO’s counterclaim has not been determined. I disagree; that position has no merit.

VII. CONCLUSIONS AND COSTS

[132] For all the reasons stated in this judgment, the plaintiffs’ application is dismissed. BMO, CIBC, and Gateway are entitled to their costs of the application.

“Sharma J.”