

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Mounce v. King*,  
2023 BCCA 184

Date: 20230425  
Docket: CA48480

Between:

**Gerald Mounce, G.M. Landco Management Ltd., and  
C-1 Contractors Ltd.**

Appellants  
(Defendants)

And

**Edwin King and Debra King**

Respondents  
(Plaintiffs)

Before: The Honourable Mr. Justice Harris  
The Honourable Madam Justice Stromberg-Stein  
The Honourable Mr. Justice Hunter

On appeal from: An order of the Supreme Court of British Columbia, dated  
July 15, 2022 (*King v. Mounce*, 2022 BCSC 1195, Victoria Docket S202224).

## Oral Reasons for Judgment

Counsel for the Appellants: G.N. Harney

Counsel for the Respondents: K.O. Hamilton

Place and Date of Hearing: Victoria, British Columbia  
April 25, 2023

Place and Date of Judgment: Victoria, British Columbia  
April 25, 2023

**Summary:**

*An appeal seeking to set aside an award of punitive damages on basis that the conduct underlying the award does not rise to a level justifying awarding punitive damages. Held: Appeal dismissed. No legal error in the judge's exercise of discretion has been demonstrated.*

[1] **HARRIS J.A.:** The appellants appeal an order awarding punitive damages to the respondents.

[2] Originally two grounds of appeal were raised, but the second ground of appeal has been abandoned. Accordingly, the only issue before us is whether the judge erred in principle in making an award of punitive damages in the amount of \$50,000. Despite everything I think being said that could be said to attack the judgment, I would not give effect to this ground of appeal.

[3] The case is unusual in a number of respects.

[4] At its root, it involves the appellants' wrongful failure to pay the respondents monies belonging to them as profits of a partnership or joint enterprise to develop real estate. Rather than pay what was owed, the appellants are alleged to have siphoned off the money for their own purposes. What is unusual is that when the matter finally came to trial, the appellants consented to the granting of relief for oppression, breach of contract, breach of fiduciary duty, breach of duty of good faith, and/or conversion, as I understand it. Although they appeared at trial and made submissions about the amounts properly owing, they called no evidence to support their arguments about what uses of the money or payments were legitimate, or whether there were reasons justifying their actions. Having said that, no doubt the financial information that was available to the court had emerged through the discovery process.

[5] The judge was therefore left to analyse the evidence and arguments to determine whether payments were proper and what was owing. He conducted this analysis in respect of six payments said to be in respect of professional fees and subcontract costs. He rejected the arguments advanced by the appellants. It would

serve no useful purpose to describe these matters any further—they are set out in the reasons for judgment indexed at 2022 BCSC 1195.

[6] On the appeal, the appellants say, in substance, that their conduct did not rise to a level justifying an award of punitive damages. They say the circumstances of this case are different from those in cases that the judge considered which justify such an award. The primary point that was raised before us was not to attack the judge’s findings of fact, but to suggest there were considerations the judge failed to take into account. In particular, the judge drew attention to the conduct of the parties during the 10-year period between 2005 and 2015, but during that period the respondents failed to seek financial information about the business. There was no active failure to disclose information during that period. In the fullness of time, the financial information that was required was produced during the discovery process. Moreover, the monies that had been removed had not left the jurisdiction. These factors were said not to have been taken into account by the judge.

[7] An award of punitive damages involves a principled application of considerations that are well settled in the law. Ultimately, the decision is a decision for the judge, and the judge’s exercise of discretion based on those principles. The judge correctly set the principles out at the beginning of para. 41. He identified the factors the plaintiffs relied on at para. 43. He accepted their submissions at para. 44, which reads:

[44] I agree that a punitive award is justified. The defendants’ failed to adduce any evidence which could support or explain their decisions to withdraw or credit the amounts claimed. Rather, the defendants’ explanations were so opaque, illogical, and contradictory that I have no choice but to conclude that their true intention was to obfuscate and avoid liability through the dispersal of a cloud of financial misinformation and confusion.

[8] At paras. 47–48, he reasoned as follows:

[47] As such, I am satisfied the defendants’ conduct—in misappropriating the funds and subsequently attempting to conceal their wrongdoings—are sufficiently high-handed and blameworthy as to warrant retribution and denunciation from the Court. In *Le Soleil Hospitality Inc. v. Louie*, 2010 BCSC

1183 at para. 365, the court stated blameworthiness is determined by considering the following, amongst other things:

- a) whether the misconduct was planned and deliberate;
- b) the defendant's motive and awareness the misconduct was wrong;
- c) the period over which the misconduct persisted;
- d) attempts at concealing the misconduct; and
- e) whether the interest violated was deeply personal to the plaintiff or irreplaceable.

[48] In my view, each of these factors militate in favour of an award of punitive damages. In particular, I note that the defendants' misconduct took place over the period of a decade, involved concerted efforts to conceal their wrongdoings, and effectively misappropriated a vast sum of the plaintiffs' retirement funds. Likewise, the defendants' attempts to conceal their misappropriations suggests they were aware of the wrongfulness of their actions. While recognizing that punitive damages are rare in commercial cases, I find that such an award is warranted here: see *e.g.*, *Le Soleil Hospitality Inc.* at para. 378.

I note that the findings of fact at para. 48 are not attacked directly, and it is not suggested that they provide a basis for our intervening with the judge's conclusion.

[9] It is evident to me that the judge's determination that punitive damages are justified is rooted in an application of principles to the findings of fact that he made in the case—those are not for us to revisit.

[10] The appellants have not been able to point to any error in the judge's findings of fact underlying his award of punitive damages that would be sufficient to warrant intervention. I have identified some of the considerations they say that the judge did not take into account, but I cannot find they provide any basis upon which we could intervene. It bears repeating that the appellants did not lead any evidence to explain, rationalize or justify their conduct so as to call the judge's conclusion into question. It also bears repeating that an award of punitive damages is a discretionary award and that intervention requires a demonstration of an error in principle.

[11] I have not been able to detect any error in principle and, accordingly, I would dismiss the appeal.

[12] **STROMBERG-STEIN J.A.:** I agree.

[13] **HUNTER J.A.:** I agree.

[14] **HARRIS J.A.:** The appeal is dismissed.

“The Honourable Mr. Justice Harris”