IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lin v. Hong Kong Expo Holdings Ltd.,* 2024 BCSC 1314

Date: 20240612
Docket: S1910968
Registry: Vancouver

Between:

Li Lin

Plaintiff

And

Hong Kong Expo Holdings Ltd., Canadian Metropolitan Properties Corporation, Hong Leong Oei and Yow Lin Zhu

Defendants

Before: The Honourable Justice Marzari

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	R. Clark, KC M.D. Noguera
Counsel for the Defendants:	M.B. Funt F.L. Pierce
Place and Date of Trial/Hearing:	Vancouver, B.C. May 27-28, 2024
Place and Date of Judgment:	Vancouver, B.C. June 12, 2024

[1] **THE COURT:** This is an application by way of summary trial seeking dismissal of this action against the defendants.

[2] In his action the plaintiff, Li Lin (“Mr. Li”), sues the defendants for damages in relation to an agreement he entered in spring 2017 with the defendant, Hong Leong Oei (“Mr. Oei”) for the development of largely undeveloped lands on Vancouver's False Creek waterfront (the “False Creek Development”). Mr. Li pleads that he was cheated out of his participation in this venture by Mr. Oei. Specifically, he argues breach of the agreement, and alleges that he ceased his participation in the contract only under duress, and as a result of a conspiracy against him formulated by Mr. Oei and the corporate entities that he controls (the corporate defendants, Hong Kong Expo and CMPC). Mr. Li also alleges that the defendant, Yow Lin Zhu, ("Mr. Zhu"), who is Mr. Oei's brother-in-law and CMPC's president, participated in this conspiracy against him.

[3] Mr. Li abandoned his claims in unjust enrichment against the defendants at the conclusion of the summary trial.

[4] The defendants have brought a summary trial application seeking dismissal of the entire action against them on the basis that the evidence does not support Mr. Li's allegations of duress, or if there was duress, on the basis that Mr. Li affirmed the contract by which he ceased to contribute to or participate in the False Creek Development, and received all of his initial investment funds back.

[5] The defendants also argue in the summary trial that the plaintiff's pleadings and evidence do not substantiate an action in conspiracy, or alternatively do not adequately plead an action against the corporate defendants controlled entirely by Mr. Oei.

[6] Finally, the defendants argue that Mr. Li essentially lacks standing to bring this claim on behalf of the corporate entity, Huge Rise, through which he alleges he entered into the development agreements. The defendants say that Mr. Li himself was not a party to any of the relevant agreements and that the assignment of rights

by Huge Rise to Mr. Li is not valid under the *Law and Equity Act*, R.S.B.C. 1996, c. 253 or at common law.

[7] I will begin with the review of the facts established in this summary trial which are not significantly contested by either party.

Uncontested Background Facts

[8] Mr. Li deposes that he is the directing mind of Huge Rise Development ("Huge Rise"). However, he concedes that the corporate records of Huge Rise establish that he is neither a shareholder nor a director of Huge Rise. Mr. Li has not disclosed his precise legal relationship to Huge Rise in these proceedings, though his affidavit implies that he has both signing authority for Huge Rise and that he has used Huge Rise as a vehicle for his own investments.

[9] Huge Rise is a company incorporated under the laws of Hong Kong. As a result of this summary trial application, Mr. Li disclosed an assignment contract between himself and Huge Rise dated September 30, 2019, by which Huge Rise assigned its rights arising from the agreements at issue in this claim against the defendants, to Mr. Li (the "Assignment").

[10] Mr. Oei is a businessman and resides in Singapore. Mr. Oei was the chairman, director, and the sole registered and beneficial shareholder of Expo Holdings, as well as chairman and director of the defendant, CMPC. Hong Kong Expo is a company incorporated under the laws of Hong Kong. It was the sole registered and beneficial shareholder in CMPC.

[11] The defendant, CMPC is a company incorporated under the laws of British Columbia. At the relevant times, CMPC was the registered and beneficial owner of several parcels of land along False Creek, in Vancouver, sometimes referred to as the "Plaza of Nations" lands (the "Lands").

[12] The first key agreement at issue in this case, which Mr. Li alleges has been breached by the defendants, is an agreement referred to as the Development

Project Cooperation Agreement (the "DPCA"). The DPCA was signed on March 31, 2017. In it, Huge Rise, Mr. Oei and a third party called Beitou Education Technology Group Limited ("Beitou") controlled by a Mr. Yang, entered into an agreement by which Huge Rise and Beitou could purchase 45% (22.5% each) of Mr. Oei's interest in Hong Kong Expo for a total of $250M. Mr. Li signed the DCPA on behalf of Huge Rise.

[13] The DCPA provides that the first half of the purchase price of the shares, costing $125M, would be paid by Huge Rise and Beitou from their own funds or funds arranged from their partners. The second half would be paid by way of a bank loan for $125M, which Mr. Oei would assist them in applying for, following payment of the first half of the purchase price.

[14] The first half of the purchase price was to be paid in two installments. The first installment was 10% of the total purchase price, and was due within three business days of signing. The second installment was 40% of the total purchase price and due no later than December 31, 2017. Under the terms of the DCPA, the transfer of Mr. Oei's shares in Hong Kong Expo was to take place after payment of the second installment, completing payment of half of the purchase price for the shares.

[15] Mr. Oei received the initial payments of $12.5M each, paid on account of Huge Rise and Beitou, shortly after the parties signed the DCPA.

[16] Between March 2017 and September 2017, the uncontested evidence establishes that Mr. Li raised a series of objections to the design of the project as developed to date by the lead architect on the False Creek Development, and at times threatened to quit or leave the project if that design was pursued. In the minutes of a meeting in August 2017, Mr. Li was told he could prepare a detailed report of his alternative vision and business case at his own cost to present to Mr. Oei, Mr. Zhu and Mr. Yang at their next meeting in September in 2017 in Singapore. The uncontested affidavit evidence also establishes that Mr. Li and Mr. Oei disagreed about their respective authority pursuant to the DCPA, with Mr. Li

suggesting that the signed DCPA gave him more control than Mr. Oei to direct the ultimate design and vision of the project. Mr. Oei disagreed.

[17] It is also apparent on the evidence that by September 30, 2017, Mr. Li was having trouble raising the additional $50M that he had to provide by December 31, 2017, as the second installment on the purchase price of the shares pursuant to the DCPA. He had also hit a substantial obstacle to getting a loan from Deutsche Bank for the third installment of $62.5M, when Deutsche Bank refused to open an account for Huge Rise. While the evidence is not entirely clear on this issue, it appears that this was in relation to their “Know Your Client” requirements.

[18] Mr. Li presented a series of proposals to Mr. Oei that would have avoided the requirement under the DCPA that he pay Mr. Oei an additional $50M by December 31, 2017, including that his $12.5M dollar investment thus far could be converted into the issuance of 3% of the shares of Expo Holdings. Mr. Oei rejected all of those alternative proposals.

[19] On October 2, 2017, Mr. Li prepared a handwritten agreement titled, "Termination and Cancellation of Development Project Cooperation Agreement", which provided that "due to personal reasons" Mr. Li asked Mr. Oei "for a termination" of the DCPA. It provides that the two parties agree to terminate the DCPA and "will not go after each other for legal liabilities" and that Mr. Yang would be informed of this agreement (the "Termination Agreement").

[20] The Termination Agreement also provides that, upon signing the agreement, Mr. Oei would return the $12.5M payment made by Mr. Li by October 10, 2017, into a bank account designated by Mr. Li.

[21] I find on the evidence before me that, had Mr. Li not prepared and signed the Termination Agreement but then defaulted on the requirement to pay the additional $50M by December 31, 2017, there was a known risk at the time that Mr. Oei would not have returned the $12.5M to Mr. Li at all.

[22] The Termination Agreement was signed by Mr. Li on behalf of Huge Rise (using its registered Chinese name) and by Mr. Oei. It is witnessed by Mr. Yang and Mr. Zhu.

[23] Mr. Li says that he signed the Termination Agreement under duress. In his affidavit sworn in response to this application, he swears that he did so after Mr. Oei threatened him with financial ruin, and that he would use his powerful connections in China to harm his family members.

[24] All parties agree that, following the signing of the Termination Agreement and in accordance with it, Mr. Li provided Mr. Oei with his chosen bank account to receive the funds, and Mr. Oei returned the $12.5 deposit. Mr. Li did not proceed to provide the additional $50M to Mr. Oei by December 31, 2017 in accordance with the DCPA, and Mr. Oei did not transfer 22.5% of his shares of Hong Kong Expo to Mr. Li. Nor did Mr. Li proceed to seek out or secure financing for the remaining $62.5M to complete the purchase of those shares.

[25] By way of the Assignment made on September 30, 2019, just shy of two years after the signing of the Termination Agreement, Huge Rise purported to assign its rights and claims relating to the DCPA and the Termination Agreement to Mr. Li personally. It is uncontested that notice of this Assignment was not provided until, at the very earliest, the service of Mr. Li's amended notice of civil claim sometime after August 2020. The Assignment itself was not provided to the defendants until it was attached to an affidavit of Mr. Li in response to this application in March 2024.

[26] Mr. Li argues that, although notice of the Assignment was not provided until after the expiry of the limitation period applicable to this action under the *Law and Equity Act*, he should not be estopped from relying on the Assignment under the common law, which would require adding Huge Rise as a plaintiff. He also argues that he has personal claims in relation to the enforcement of the DCPA because his name is included in the description of Party B, along with the English and Chinese names of Huge Rise.

[27] In response to the summary trial application, Mr. Li has sworn two fairly sparse affidavits. The first, sworn in March 2024, states that he controls the business affairs of Huge Rise, and that he does not require and often does not communicate in writing with Huge Rise for this purpose, but rather through meetings and phone calls. He provides an updated list of documents and swears that there are no further relevant documents to disclose. He also attaches the Assignment.

[28] In the second affidavit sworn in May 2024, shortly before the hearing of the summary trial, Mr. Li sets out what I assume is the basis of his claim in duress regarding the Termination Agreement, including that he was required to travel to Singapore for the meeting in September 2017, that he had heated discussions with Mr. Oei about the DCPA at that time, and that he was “forced” to sign the Termination Agreement on October 2, 2017. He swears that, "Against my will and in fear of the threats outlined in paragraphs … above, I was forced to sign the Termination Agreement, falsely indicating that Hugh [*sic*] Rise voluntarily wished to terminate the DPCA and provide Mr. Oei a release".

[29] Mr. Li's primary defence to this summary trial application is that the issue of duress is not suitable for summary trial and that the application is premature.

Suitability for Summary Trial

[30] Mr. Li argues that it is not suitable for two reasons:

a) Because there is conflicting evidence on the issue of duress which is inherently factual in nature; and

b) The application is premature because no discoveries have been set, and document disclosure is not yet complete.

[31] In a cross-application, Mr. Li seeks further particulars and broad disclosure from the corporate and personal defendants regarding their financial documents and correspondence with third parties. The defendants also had further disclosure demands outstanding at the start of the summary trial.

[32] The defendants say that the lack of discoveries and the outstanding disclosure and particulars requests does not relieve the plaintiff from having to put its best foot forward on a summary trial application. They note that after the summary trial application was filed in February, no examinations for discovery were requested.

[33] I agree with the plaintiff on the latter point that the parties had outstanding document disclosure and a general understanding that discoveries would occur after the cross applications on disclosure and particulars were heard.

[34] On the other hand, I agree with the defendants that there are issues put forward in this summary trial that are not dependent on discovery of the defendants. Particulars of Mr. Li's own experience of duress, for example, and whether his will was or was not overborn, are not things that he can reasonably expect discovery of the defendants to establish.

[35] I also consider that the issue of whether the Termination Agreement was affirmed by Mr. Li and Huge Rise after it was entered into, regardless of the allegations of duress, is an issue amenable to summary trial at this point in the proceedings.

[36] In addition, the issue of Mr. Li's standing to seek damages on behalf of Huge Rise, and the adequacy of his conspiracy pleadings, as opposed to the evidence on those points, are amenable to summary trial at this time.

[37] I will start with the issue of the Termination Agreement.

Whether The Termination Agreement is Binding

[38] The parties agree that the claim fails or succeeds on the validity of the Termination Agreement. If that Termination Agreement is binding on Mr. Li, then neither he nor Huge Rise are able to pursue their claims in contract or conspiracy.

[39] Mr. Li agrees that he signed the Termination Agreement on October 2, 2017. He has not denied that he wrote it himself, and that it binds Huge Rise. However, he says the Termination Agreement is void because he entered it under duress.

[40] The law is clear that a contract entered into under duress is voidable but not *void ab initio*: *Byle v. Byle*, 65 D.L.R. (4th) 641, 1990 CanLII 313 (B.C.C.A.); and *Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*, 2017 BCCA 442 at para. 48. The person suffering duress may either affirm the contract or treat it as void.

[41] There are two aspects of the determination of whether the Termination Agreement is binding. The first is whether Mr. Li was the subject of duress that overcame his will such that the Termination Agreement is voidable. The second is whether Mr. Li then treated the Termination Agreement as void as a result of the duress, or whether he elected to rely upon it despite the duress.

[42] There is substantial affidavit evidence before me in this summary trial sworn by Mr. Zhu setting out circumstances that tend to indicate that Mr. Li was threatening to quit the False Creek Development effort for many reasons, and that it was in Mr. Li's best interests to terminate his involvement in the DCPA in October 2017 in such a way that would allow him to still recover his $12.5M deposit. Mr. Zhu's uncontested evidence of the events leading up to the October 2, 2017 signing of the Termination Agreement provide strong circumstantial evidence that Mr. Li was acting voluntarily, and that his will was not overborn when he prepared and signed the Termination Agreement.

[43] However, I am satisfied that the evidence of Mr. Li, as sparse as it is, with respect to threats to his family members in China, are sufficient to make the question of duress a triable issue that is not amenable to this particular summary trial at this time.

[44] I am therefore prepared to assume that Mr. Li may be able to prove duress should his claim proceed to trial.

[45] However, this only makes the Termination Agreement voidable. The question of whether the Termination Agreement is void depends on whether Mr. Li elected to rely on the Termination Agreement notwithstanding the alleged duress.

[46] Mr. Li says that he did nothing to ratify the Termination Agreement. He says, in particular, that accepting the return of the $12.5M into a bank account of his own designation, and not paying the additional $50M due and owing on December 31, 2017 under the DCPA, was not affirmation of the Termination Agreement on his part, but mere “silence”. He argues there was no obligation upon him to protest the duress or advise the other parties to the contract that he was treating it as void, and his silence up until the service of his amended notice of civil claim almost 3 years later in 2020 did not give rise to any prejudice to the defendants.

[47] Mr. Li relies on the following statement of the law in *Byle*, that intention to ratify is an essential element:

> An excellent statement of the law on ratification or affirmation is found in reasons of Vogel J. delivering the judgment of United States Court of Appeals, 8th circuit, in *Diffenderfer v. Heublein Inc.*, 412 F.2nd 184, 188 (1969):
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> > This court was presented with a not dissimilar controversy in *Gallon v. Lloyd-Thomas Co*., 8 Cir., 1959, 264 F.2d 821, 77 A.L.R.2d 417, where Judge Matthes said:
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> > "Did plaintiff ratify the contract as a matter of law? Appellee insists that in view of plaintiff's actions and conduct, and his attitude toward the contract following its execution, the question must be answered in the affirmative. We agree. In resolving this crucial issue, we are mindful of the well-established principle of law that a contract entered into as the result of duress is not void, but merely voidable, and is capable of being ratified after the duress is removed. Ratification results if the party who executed the contract under duress accepts the benefits flowing from it or remains silent or acquiesces in the contract for any considerable length of time after opportunity is afforded to annul or void it. 17A Am.Jur., *Duress and Undue Influence*, s. 26; *Restatement of the Law of Contracts*, Vol. II, ss.499 and 484; Annotation 35 A.L.R. 866*; Oregon Pac. R. Co. v. Forrest*, 128 N.Y. 83, 28 N.E. 137; *Greenpoint Nat. Bank v. Gilbert*, 237 N.Y. 19, 142 N.E. 338; *Maisel v. Sigman*, 123 Misc. 174, 205 N.Y.S. 807, 814; *Application of Minkin*, 279 App.Div. 226, 108 N.Y.S.2d 945, 953-954, affirmed 304 N.Y. 617, 107 N.E.2d 94. An essential element in the doctrine of ratification is intention: indeed, it has authoritatively been said that it is "* * * at the foundation of the doctrine of waiver or ratification."
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> What should be particularly noted is that intention is an essential element.
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> [Emphasis in original]

[48] With respect to what that knowledge requirement is with respect to intention, Mr. Li relies on the following from *Kinsella v. Mills,* 2020 ONSC 4785:

> [354] If the court finds that a contract was executed under duress, it must also consider whether the coerced party ratified the contract after entering into it. A contract cannot be set aside on the basis of duress if the party who was subjected to the coercion later voluntarily ratifies the impugned contract, either explicitly or implicitly, at a time when the duress has ceased to operate on their mind (*Universe Tankships; Byle; Stott*, at para. 48; *Campbell*, at para. 79). Ratification occurs where a party having knowledge of the facts supporting a right to set aside a contract nonetheless acts pursuant to the agreement, remains silent or acquiesces in the contract to the prejudice of the other party and for any considerable length of time after the duress has lifted (*Byle*, at para. 33*; Bradley*, at para. 34). Knowledge of the legal right to set aside the contract is not an essential element of ratification where the other party has been adversely affected as a result of their reliance on the agreement (*Byle*, at paras. 33-41). In the context of a claim to set aside a domestic contract on the basis of economic duress, the court must be astute to the financial realities of the aggrieved party in considering whether ratification has occurred. Acceptance of payments pursuant to an impugned contract will not constitute ratification unless the evidence indicates that this occurred after the economic duress ceased. The reality is that in many such situations, the economic duress is ongoing in nature due to the recipient party's dependence on those payments to meet their basic daily needs (*Bradley*, at para. 34).

[49] I note that Mr. Li has sworn to the particular circumstances that he signed the Termination Agreement in Singapore, where he lacked support, as being one of duress. He does not assert duress beyond the signing of the Termination Agreement, or beyond the time he was in Singapore.

[50] Even if it might be arguable at trial that Mr. Li's duress extended beyond his return to Vancouver in October 2017, this is not a situation where his receipt of $12.5M could simply be seen as placidity or silence.

[51] I find that the uncontested evidence at the summary trial establishes both types of ratification of a voidable contract signed under duress as described in the *Diffenderfer* quote adopted by the Court of Appeal for British Columbia in *Byle*:

a) Mr. Li accepted the benefit of the Termination Agreement by accepting the payment of $12.5M and not paying the additional

$50M due three months later (or the additional $62.5M due after that); and

b) Mr. Li acquiesced in the reliance upon the Termination Agreement by the defendants, and Mr. Oei in particular, for a "considerable length of time"—in this case almost three years—well after he was in a position to have advised of his intent to treat the Termination Agreement as void and to enforce the DCPA.

[52] Although Mr. Li says there is no evidence of prejudice to the defendants in regard to this acquiescence, the prejudice is obvious. Mr. Oei did not enforce the DCPA against Mr. Li to obtain the contracted $125M Mr. Li had agreed to pay him for his shares. Instead he gave Mr. Li his $12.5M deposit back—something directly contrary to his interests had he been advised that Mr. Li was treating the Termination Agreement as void.

[53] By 2020, when Mr. Li finally gave notice to Mr. Oei that he considered the Termination Agreement void, the limitation period for Mr. Oei enforcing the DCPA and the payments that Mr. Li was obliged to pay for the shares had already passed. Mr. Oei could not have enforced Mr. Li's obligations directly, even if he still had shares to sell to Mr. Li.

[54] I find that both Huge Rise, and Mr. Li personally, accepted the benefit of the Termination Agreement by accepting the $12.5M from Mr. Oei pursuant to that Agreement, and not paying the additional $50M due in December 2017, and in doing so, ratified the Termination Agreement.

[55] Mr. Li cannot now bring a proceeding for breach of his participation rights under the DCPA, having taken the advantage of the Termination Agreement, to his benefit, and to the prejudice of Mr. Oei, and the defendants.

[56] On its face, the Termination Agreement deals with any and all claims by Huge Rise against Mr. Oei related to his participation in the DCPA to that date. I find that

this addresses not only Mr. Li's claims for breach of contract, but also his allegations of conspiracy which all pre-date the signing of the Termination Agreement. As noted above, Mr. Li abandoned his claims for unjust enrichment and “monies had and received” at summary trial.

Conspiracy

[57] As a result of my findings on the Termination Agreement, I do not need to answer the interesting question of whether Mr. Oei could form a conspiracy with the corporations that he solely owns and controls to harm Mr. Li.

[58] Nor is it necessary for me to consider whether, if such a conspiracy is possible, the bare pleading that Mr. Oei is engaged in unlawful conduct on his own behalf “and on behalf of his companies” is sufficient to establish the joint conduct and intention needed for tort of conspiracy.

[59] I did receive the case law provided by Mr. Li after the hearing but before the provision of these reasons in support of those propositions. In my view the cases provided did not say that a single person's conduct, said to be on behalf of themselves and a corporation they control, was sufficient to establish joint conduct for the purposes of a conspiracy.

[60] Furthermore, Mr. Li has provided no evidence on this summary trial application to support his allegation of conspiracy by Mr. Oei, Mr. Zhu or the corporate defendants. In addition, Mr. Li has not provided any evidence of how he personally, or Huge Rise, suffered a loss as a result of this conspiracy other than ultimately being induced to sign the Termination Agreement.

[61] There is no evidence in this summary trial, that Mr. Li’s signing the Termination Agreement ultimately resulted in a net loss to him. There is no evidence, for example, of what it would have cost him to complete the DCPA, to purchase 22.5% of Mr. Oei's shares of Expo Holdings, or that had he done so those shares would now be worth more than what he had contracted to pay for them.

[62] Ultimately, however, given that the main thrust of Mr. Li's argument was that the conspiracy resulted in the duress he experienced when he signed the Termination Agreement, I find that his reliance upon and ratification of that Termination Agreement which expressly dealt with all such claims, fully addresses Mr. Li's conspiracy claims.

Standing

[63] Although it is not strictly necessary, if this claim survives these reasons, I will also set out my finding on the standing of Mr. Li's claim based on the Assignment.

[64] In this regard, I find that Mr. Li did not provide the requisite notice of the assignment prior to the expiry of the limitation period of Huge Rise’s claims. Nor can Mr. Li properly be understood on the face of the DCPA to be a separate party to the contract in addition to Huge Rise.

[65] With respect to that latter point, Mr. Li asserts that because his name is included in the party description of Party B to the DCPA, he has independent rights to enforce under the DCPA against Mr. Oei.

[66] A full reading of the DCPA on its face and in its context, does not support such an interpretation. Indeed, it would defeat the very purpose of Mr. Li using Huge Rise to enter into the DCPA. On its face, the DCPA does not create obligations on both Mr. Li and Huge Rise to pay Mr. Oei, nor does it give both Mr. Li and Huge Rise the right to receive Mr. Oei's shares. Only one party is required to pay, and only one party gets the shares promised under the DCPA, and that is Huge Rise.

[67] I also note that there is no separate signature block for Mr. Li in his personal capacity on the final page of the DCPA.

[68] In addition, Mr. Li's intentional use of the corporate vehicle, and Huge Rise in particular, is apparent in part by the fact that the DCPA replaced an earlier agreement Mr. Li signed with Mr. Oei, where Mr. Li signed on behalf of a different corporate entity.

[69] Finally, I note that the Assignment describes Huge Rise as the entity that entered into the DCPA (as well as the Termination Agreement which is not contested). It is Huge Rise's interests in the DCPA that is the subject of the Assignment.

[70] While I agree that the DCPA is not drafted by experts, and occasionally blurs corporate identities, it is still clear that it is Huge Rise that must pay Mr. Oei for his shares, and that it is Huge Rise who will receive those shares. Only Huge Rise has an action for losses as a result of the breach of the DCPA, not Mr. Li personally.

Contract Not Assignable by Huge Rise to Li

[71] The fact that it is only Huge Rise that is a party to the DCPA is particularly problematic for Mr. Li because Clause 16 of the DCPA provides that the DCPA cannot be transferred.

[72] Mr. Li argues that at common law, there is no bar to assigning causes of action for commercial interests with a pre-existing interest (though there is a bar to assigning causes of action for personal injuries and other torts): *Fredrickson v. I.C.B.C.*, 28 D.L.R. (4th) 414, 1986 CanLII 1066 at paras. 23–26. As a result, there is nothing wrong with the assignment of Huge Rise claims for legitimate commercial interests at common law.

[73] I accept that the helpful review of the common law of the assignment of actions in torts and contracts in *Fredrickson* establishes that this particular type of claim was likely assignable at common law, unless the contract says that it is not assignable: *Fredrickson* at para. 44

[74] The DCPA provides that it is not assignable. I am not convinced by Mr. Li's attempt to distinguish *Brio Beverages (B.C.) Inc. v. Koala Beverages Ltd.*, 58 B.C.L.R. (3d) 178,1998 CanLII 6495 (C.A.) on the basis that that case considered specific wording that prevented a transfer “in whole or in part”. Mr. Li argues that because Justice Newbury underlines the term “or in part” of the particular non-assignment clause considered in *Brio,* that the non-assignment clause in this case,

which does not specifically prohibit “a part” of the contract from being assigned, is distinguishable.

[75] However, I think that *Brio* goes further than this. On the issue of whether a prohibition on assigning a contract also prevents the assignment of its “fruits” (generally liquidated damages or some other quantifiable benefit) Newbury J.A. adopts *Linden Gardens Trust Ltd. v. Lenesta Sludge Disposals Ltd.*, [1993] 3 All E.R. 417 (H.L.):

> [6] I also note the comments of Lord Browne-Wilkinson in *Linden Gardens Trust Ltd. v. Lenesta Sludge Disposals Ltd*. [1993] 3 All E.R. 417 (H.L.), who accepted "at least hypothetically" that there might be a case in which "the contractual prohibitory term is so expressed as to render invalid the assignment of rights to future performance but not so as to render invalid assignments of the fruits of performance." However, his Lordship continued:
>
> > These possibilities of confusion (and many others which could be postulated) persuade me that parties who have specifically contracted to prohibit the assignment of the contract cannot have intended to draw a distinction between the right to performance of the contract and the right to the fruits of the contract. In my view they cannot have contemplated a position in which the right to future performance and the right to benefits accrued under the contract should become vested in two separate people. I say again that that result could have been achieved by care and intricate drafting, spelling out the parties' intentions if they had them. But in the absence of such a clearly expressed intention, it would be wrong to attribute such a perverse intention to the parties. In my judgment. cl 17 clearly prohibits the assignment of any benefit of or under the contract. [at 429; emphasis added]
> >
> > [Emphasis in original]

[76] In relying on *Linden Gardens*, the Court of Appeal for British Columbia very clearly says, or very strongly suggests that allowing assignment of the fruits of a contract where an assignment is generally prohibited would require express language to that effect, and indeed it would be perverse to infer the transferability of the fruits of an agreement, but not the rest of the agreement, in the absence of clear language to that effect.

[77] In conclusion, I find that the DCPA contractually precludes its transfer—including the “fruits” of the DCPA—to the extent that they mean a transfer of the right to prosecute an action for breach of that contract.

Legal Assignment and the Notice Requirement

[78] I find that Mr. Li's standing to prosecute his claim fails on the late notice of the assignment under the *Law and Equity Act*.

[79] Even if I were to accept that notice of the assignment was effected by the service of the amended notice of civil claim in August of 2020 (and I note this is not given: See *Buhecha v. Impact Imaging Ltd.*, 2019 BCSC 663 at para. 32) this service was still after the limitation period expired.

[80] Mr. Li accepts that this is fatal to his standing under the *Law and Equity Act*, which has been interpreted strictly in terms of the giving of the assignment. Notice is an essential aspect of legal assignment and must generally be done before the expiration of the limitation period or the claim itself becomes void: See *Buhecha* at paras. 16–25.

[81] I also consider that it is too late for Mr. Li to seek to add or substitute Huge Rise as a plaintiff to these proceedings. No such application was brought before me by Mr. Li, nor has Huge Rise requested this.

Conclusion

[82] In conclusion, I grant the defendants application to dismiss Mr. Li's action. I do so on the merits on this summary trial application on the basis that Mr. Li (on behalf of Huge Rise) signed the Termination Agreement settling all claims as against Mr. Oei in relation to the DCPA, in exchange for the return of the $12.5M deposit. I find that Huge Rise, and through Huge Rise, Mr. Li, took the benefit of the Termination Agreement, to the detriment of Mr. Oei, by receiving those funds and by not producing the further $50M and other funds to purchase Mr. Oei's shares. I find that Huge Rise thereby ratified the Termination Agreement, even it had a claim that it was voidable on the basis of duress.

[83] I also dismiss Mr. Li's claim on the basis of a lack of standing to claim damages for the breach of the DCPA. Although Huge Rise could have brought that claim, Huge Rise has not permitted to assign that claim to Mr. Li personally. Nor was the attempt by Huge Rise to effect the assignment done within the required limitation period.

[84] The defendants are therefore entitled to their costs on this application, subject to any further submissions.

"Marzari J."