IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Johnston v. Goodwin,*
2024 BCSC 1384

Date: 20240731
Docket: S234951
Registry: Vancouver

Between:

Tanner Johnston

Plaintiff

And

Marcus Goodwin

Defendant

Before: The Honourable Justice MacNaughton

Reasons for Judgment

Counsel for the Plaintiff:	P. Sheppard
Counsel for the Defendant:	J.M.W. Cudmore
Place and Date of Trial/Hearing:	Vancouver, B.C. June 27, 2024
Place and Date of Judgment:	Vancouver, B.C. July 31, 2024

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Introduction

[1] This civil action involves a financial dispute, between two former romantic partners, over investment returns on a substantial sum that was won by the defendant in an online slot game. Broadly, the plaintiff, Tanner Johnston, seeks the enforcement of alleged investment agreements between him and the defendant, Marcus Goodwin, which he says entitle him to a share of the investment returns.

[2] Mr. Goodwin applies for summary judgment under R. 9-6(4) of the *Supreme Court Civil Rules*, for an order dismissing Mr. Johnston's claim on the basis that the terms of the alleged investment agreements run contrary to a written cohabitation agreement between the parties and that, as a result, Mr. Johnston's claims have no chance of success.

The History of the Relationship

[3] Marcus Goodwin and Tanner Johnston began a romantic relationship in June 2013, when they were both 29 years old. Mr. Goodwin is a visual effects producer, and Mr. Johnston is a chartered accountant and entrepreneur who advises high net-worth investors with respect to investments.

[4] In about August 2016, using their own funds, Mr. Goodwin and Mr. Johnston bought separate, neighbouring units in a newly-built condominium building on Keefer Street in Vancouver, BC.

The Winnings

[5] In November 2016, Mr. Goodwin won close to $12 million in an online slot game (the "Winnings"). The Winnings were non-taxable. Over the following months, Mr. Goodwin and Mr. Johnston sold their respective condos and, on February 25, 2017, moved into a detached home that Mr. Goodwin purchased on West 19th Street in Vancouver (the "Shared Home"). The purchase of the Shared Home completed on February 17, 2017, and title was registered in Mr. Goodwin's sole name.

[6] It is not disputed that Mr. Goodwin deposited the remaining Winnings in a bank account he opened with private wealth managers at the Bank of Montreal ("BMO").

[7] Mr. Johnston says in his affidavit that Mr. Goodwin informed his BMO investment advisors that Mr. Johnston was his partner and would be involved in his financial planning and decision making. Over the next seven months, Mr. Johnston says he accompanied Mr. Goodwin to BMO meetings and gave Mr. Goodwin a second opinion on BMO's recommendations. Mr. Johnston says that Mr. Goodwin asked him to help him manage his money and to invest it as opportunities arose from Mr. Johnston's network.

Cohabitation Agreement

[8] Due to the Winnings, in early 2017, the parties began discussing entering into a cohabitation agreement to deal with their legal entitlements.

[9] A first draft of a cohabitation agreement was prepared by Mr. Goodwin's counsel in about March 2017, and, after exchanging drafts, both parties signed the cohabitation agreement on August 16, 2017 (the "Cohabitation Agreement"). Both had the benefit of independent legal advice before signing.

[10] According to the terms of the Cohabitation Agreement, Mr. Goodwin paid about $4,300,000 for the Shared Home. The Cohabitation Agreement provided that the parties had a financially independent relationship, sharing only one joint bank account, into which they each deposited $2,500 a month. The Cohabitation Agreement stated that the parties intended their relationship to continue to be one of financial independence, but, in Recital L of the Cohabitation Agreement the parties recognized that:

> a. Marcus' Winnings will permit Marcus and Tanner to enjoy certain improvements to their lifestyle earlier than they might otherwise have been able to do so, such as living in the West 19th Home, furnishing it with higher-end furnishings, and taking luxury vacations;

b. While the West 19th Home, and perhaps other property, may be acquired solely by Marcus' Winnings, Tanner may thereafter make direct or indirect financial contributions to such property;

c. At a certain point in time, pursuant to BC's Family Law Act [defined in Recital R as the *Family Law Act*, S.B.C. 2011, c. 24, as amended from time to time [*FLA*], and successor legislation thereto, absent a cohabitation agreement, they will become entitled to claim against one another for a share of each other's property in the event of a later breakdown of their relationship;

d. In the longer term, although Tanner's income from employment is likely to considerably exceed Marcus', the Winnings may permit Marcus to accumulate considerably more property than Tanner over the course of their relationship.

[11] Despite the recognition of issues in Recital L, Mr. Goodwin and Mr. Johnston agreed and wished the Cohabitation Agreement to confirm the matters set out in Recital M, as follows:

a. The Winnings belong to Marcus, and should be preserved for his benefit in the event of a future breakdown of their relationship;

b. They want their relationship to continue to be a financially independent relationship, characterized by an expectation that each party will keep their own property in the event of a breakdown of the relationship, and an expectation they will share only those assets that have been explicitly designated as "Shared Property", defined below;

c. They do not want the law to override or interfere with their expectations for their relationship; and

d. They therefore do not want to claim an entitlement to the other's property, save and except for as provided for in this Agreement.

[12] Recital N expressed that the intention of the Cohabitation Agreement was:

a. [To ensure] that each party's "Separate Property", defined below, shall be protected from any claim by the other that may arise pursuant to the provisions of the Family Law Act, or pursuant to any other law or equity; and

b. To prescribe that "Shared Property", defined below, shall be divided in accordance with the parties' proportionate ownership as reflected in the instrument of registration.

[13] Shared Property was defined in Recital R(d) to mean:

> … any asset registered in both parties' names, or otherwise designated in writing by both parties to be owned by both parties by execution of an

> acknowledgment of joint ownership in the form attached hereto as Schedule C.

[14] Mr. Goodwin's Separate Property was defined in Recital R(a) to mean:

> a. … all property owned beneficially by Marcus, and includes, without limiting the generality of the foregoing:
>
> i. All assets listed in Schedule A hereto, including but not limited to the Winnings;
>
> ii. The West 19th Home, save and unless Marcus transfers a portion of ownership of it to Tanner in the future, in which case it shall become Shared Property;
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> iii. Any other property Marcus may acquire or receive in the future;
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> iv. Any gift received from Tanner;
>
> v. Any gift or inheritance received from any third party; and
>
> vi. Any increase in value of any of the above;
>
> But excludes Shared Property.

[15] Mr. Johnston's Separate Property was defined in Recital R(b) to mean:

> i. All assets listed in Schedule B hereto;
>
> ii. Any other property Tanner may acquire or receive in the future;
>
> iii. Any gift received from Marcus;
>
> iv. Any gift or inheritance received from any third party; and
>
> v. Any increase in value of any of the above;
>
> But excludes Shared Property.

[16] Schedules A and B to the Cohabitation Agreement list Mr. Goodwin's and Mr. Johnston's significant assets and liabilities. When the Cohabitation Agreement was executed, the respective schedules recorded that Mr. Goodwin had an estimated net worth of $11,707,000 and no liabilities, and Mr. Johnston had an estimated net worth of $379,000 and a student debt liability of $12,000.

[17] Recital O of the Cohabitation Agreement provided that the parties were aware that the *FLA* provides that a court may intervene to vary the agreement under certain circumstances but that the parties wished to confirm that:

> a. The importance to each of them of being able to rely upon Agreement outweighs the risk that it may operate unfairly at some future date;

> b. Although either of them may choose not to pursue economic opportunities in the future because of their relationship, and each party recognizes that certain sacrifices may be made within, and because of, the relationship, the financial consequences of those choices will not be used to avoid the terms of this Agreement; and
>
> c. The impossibility of returning the parties to the positions they occupied before they entered into this Agreement would make any variation, however fair viewed solely in the changed circumstances, unfair on the whole because all dealings with their property during the course of their relationship will have been based on the binding nature of this Agreement.

[18] Both parties warranted and represented that their significant assets and liabilities were as set out in their respective schedules.

[19] When the Cohabitation Agreement was executed, the only Shared Property was a 2017 Volvo SUV.

[20] In the body of the Cohabitation Agreement, both parties warranted and represented that the statements of fact in the recitals and in the schedules were true and accurate and that the recitals formed part of the Cohabitation Agreement, intended to have contractual effect. The effective date of the Cohabitation Agreement was August 16, 2017.

[21] The operative sections of the Cohabitation Agreement provided that the parties intended to live in a separate property regime. They each had the full and exclusive power to manage and control their respective Separate Property, including selling, encumbering, leasing or disposing of it at their sole discretion: para. 6(a)–(b). Each party's Separate Property was to remain theirs, free and clear from any claim by the other, and neither party was to acquire any interest in the other's Separate Property notwithstanding a direct or indirect contribution to the preservation or maintenance of that property: para. 6(c).

[22] Paragraph 6(d) of the Cohabitation Agreement provided that neither parties' Separate Property "shall in any event be considered 'family property' within the meaning of the FLA" and that under no circumstance would the growth in value of either party's Separate Property become "family property" within the meaning of the FLA.

[23] In para. 12, the parties agreed that if they married or had a child, the Cohabitation Agreement would be reviewed. Paragraph 16 provided that the Cohabitation Agreement did not prevent either party from making a gift to the other, or making a testamentary disposition to the other, in excess of their entitlement under it.

[24] In paras. 17–18, both parties waived and released any claims they had to the other's Separate Property including under: the *FLA*; the *Wills*, *Estates and Succession Act*, S.B.C. 2009, c. 13; under an express, resulting, or constructive trust; or any claims for unjust enrichment.

[25] In para. 22, the parties agreed that the Cohabitation Agreement would only be amended by a written agreement executed in the same procedural manner required under s. 93 of the *FLA.*

[26] Paragraph 23 is of significant importance to the parties' dispute and to this application. It was referred to by the parties as an "entire agreement clause". It provides:

> This Agreement constitutes the entire Agreement between the parties and supersedes all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter of this Agreement.

[27] In para. 26, the parties acknowledged that they received independent legal advice in respect of their present and prospective rights and obligations under the law, and as modified by the Cohabitation Agreement. They had read the agreement carefully and understood its content.

Oral "Fee Agreement"

[28] Mr. Johnston says that when the parties were celebrating their anniversary on June 27, 2017, they discussed the Winnings, and he explained to Mr. Goodwin the steps required to effectively manage and grow his wealth. He offered to provide Mr. Goodwin with investment management advisory services, as that was what he did for others. Mr. Johnston says that they agreed that it was fair for him to be

remunerated for his work and that they entered into what Mr. Johnston refers to in his affidavit as a “Fee Agreement” with respect to investment opportunities that he would seek out, through his network and contacts, and recommend to Mr. Goodwin. In exchange, Mr. Johnston would receive a fee of 50 percent of the growth in any investment made by Mr. Goodwin between the date of the initial investment and the available distribution date.

[29] It is not disputed that the Fee Agreement was never reduced to writing. It is also not disputed that Mr. Johnston sourced and recommended investment opportunities to Mr. Goodwin, and Mr. Goodwin invested in, and profited from, those opportunities. In particular, both parties invested in a candy company called Smart Sweets. Those investments occurred both before and after the Cohabitation Agreement. Smart Sweets was acquired by a US Private Equity Firm, and both parties made a profit. In addition, and in the same timeframes, both parties invested in LM Asset Management and, again, made a profit.

[30] In Mr. Goodwin’s affidavit, he denies entering into an oral agreement “anything like the Fee Agreement” as Mr. Johnston particularizes it in his notice of civil claim. He says that the parties did not have any sort of a deal that Mr. Johnston would get half of his returns.

Genie Boots Investments Ltd.

[31] In about June 2018, the parties incorporated Genie Boots Investments Ltd. (“Genie Boots”). They disagree about the purpose for which Genie Boots was incorporated.

[32] Mr. Goodwin said in his affidavit, made on June 12, 2024, that Genie Boots was to be used for joint investments. He also says that he fronted all of the capital for those joint investments.

[33] Mr. Johnston says that Genie Boots was set up after the Fee Agreement for the purpose of creating an investment holding company in order to formalize the parties’ Fee Agreement. It was “to capture the essence of the agreement and our

intentions". Mr. Johnston says that they formalized the oral agreement by ensuring that Mr. Goodwin's capital investments were recorded as shareholder loans owing to him and they both held 50 percent of the common shares of Genie Boots to ensure that profits were shared equally.

The Subsequent Agreement

[34] Mr. Johnston also alleges that in either August or September 2020, the parties entered into another agreement under which he would retain 100 percent of the growth on his own half of the joint investments they were making under the Fee Agreement in addition to the 50% growth on Marcus' investments (the "Subsequent Agreement").

Separation and Division of Property

[35] In December 2020, Mr. Johnston's name was added to the title of the Shared Home. Mr. Goodwin says in his affidavit that Mr. Johnston made it clear that he resented the fact that Mr. Goodwin had more money than he did, and he transferred a half interest in the Shared Home for their relationship and because he cared for Mr. Johnston. The Cohabitation Agreement was never amended.

[36] As a result of Mr. Goodwin's transfer of a half interest in the Shared Home, pursuant to Recital R(a)(ii) of the Cohabitation Agreement, it became "Shared Property".

[37] The parties separated in October 2022. The Shared Home has since been sold, and the proceeds divided approximately equally.

Issues in the Claim and Counterclaim

[38] This is not a family claim. Neither party seeks to set aside or vary the Cohabitation Agreement.

[39] Instead, this is a civil action in which Mr. Johnston claims for: specific performance of the Fee Agreement and Subsequent Agreement; or, in the alternative, for damages for breach of contract, for his share of the increase in value

of the investments he brought to Mr. Goodwin under the alleged Fee Agreement and the Subsequent Agreement; or in the further alternative, for reasonable compensation for the investment advisory services he provided to Mr. Goodwin, and the expenses he incurred, on a *quantum meruit* basis. Mr. Goodwin details the nature of those advisory services at para. 18 of his affidavit.

[40] Mr. Goodwin defends against the claims, denying that he entered into the alleged Fee Agreement or the Subsequent Agreement. He pleads that he did not breach a contract with Mr. Johnston and that Mr. Johnston is estopped from claiming entitlement to any of the growth of his Separate Property by reason of the Cohabitation Agreement.

[41] Mr. Goodwin filed a counterclaim, seeking return of approximately $355,000 he says he loaned to Mr. Johnston between June 2020 and April 2022. Mr. Johnston acknowledges receiving the money but pleads that it was a gift from Mr. Goodwin to him.

Application for Summary Judgment

[42] Mr. Goodwin applies for summary judgment under R. 9-6(4) of the *Supreme Court Civil Rules*, for an order dismissing Mr. Johnston's claim on the basis that the terms of the alleged Fee Agreement and Subsequent Agreement run contrary to the written Cohabitation Agreement and that, as a result, Mr. Johnston's claims have no chance of success.

[43] The issue is whether, as a matter of law, the oral Fee Agreement and the Subsequent Agreement alleged by Mr. Johnston would be enforceable even if the parties entered into them. If the answer to that question is "no", as Mr. Goodwin submits it must be, Mr. Johnston's claims must be dismissed.

Applicable Law

[44] Under R. 9-6, the Court may pronounce judgment if satisfied that there is "no genuine issue for trial", and, under R. 9-6(5)(a), once satisfied, the Court must

dismiss the claim. If satisfied that the only genuine issue is a question of law, the court may decide the issue of law and render judgment accordingly.

[45] The threshold for summary judgment is high. A defendant who seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial": *Charbonneau Estate v. Charbonneau*, 2021 BCCA 206 at paras. 23–24, citing to *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 11 [*Lameman*].

[46] The purpose of summary judgment is to weed out and prevent, promptly and inexpensively, meritless claims or defences from proceeding to trial. To succeed on this summary judgment application, Mr. Goodwin must show there is no genuine issue of material fact that requires a trial for determination.

[47] To succeed on a summary judgment application against a plaintiff, the essential question is whether the plaintiff is bound to lose. If so, summary judgment should be granted to avoid unnecessary waste of time and expense. This means that the proposition of law on which the plaintiff relies must have a *bona fide* foundation in fact.

[48] When seeking or opposing a summary judgment application, each party must "put its best foot forward": *Lameman* at para. 11. As a result, to the extent reasonably possible, each party must provide evidence that the other's claim is factually, in whole or in part, without merit. Where there is conflicting evidence, summary judgment is unlikely to be granted because the Court's role under R. 9-6 is not to weigh evidence to reach factual conclusions. Rather, it is to determine whether there is a *bona fide* triable issue. However, uncorroborated "bald assertions" of fact will likely not prevent summary judgment, unless the facts in question are not within the asserting party's knowledge or control and there is a real possibility that they will be discovered as the trial process proceeds: *Balfour v. Tarasenko*, 2016 BCCA 438 at para. 43 and the cases cited therein.

[49] Rule 9-6 was considered by the BC Court of Appeal in *Beach Estate v. Beach*, 2019 BCCA 277 at paras. 48–49 [*Beach*]. Then Chief Justice Bauman, on behalf of the Court, wrote:

> [48] … Rule 9-6 is a challenge on a limited review of evidence. A defendant can succeed on a Rule 9-6 application by showing the case pleaded by the plaintiff is unsound or by adducing sworn evidence that gives a complete answer to the plaintiff's case: *B & L Holdings Inc. v. SNFW Fitness BC Ltd.*, 2018 BCCA 221 at para. 46, quoting *Progressive Construction Ltd. v. Newton* (1981), 25 B.C.L.R. 330 at 335*; International Taoist Church of Canada v. Ching Chong Taoist Association of Hong Kong Ltd*., 2011 BCCA 149 at para. 14. Such evidence generally is adduced in the form of an affidavit. If the court is satisfied that the plaintiff is bound to lose or the claim has no chance of success, the defendant must succeed on the Rule 9-6 application: *Canada v. Lameman*, 2008 SCC 14 at paras. 10–11. Conversely, if the plaintiff submits evidence contradicting the defendant's evidence in some material respect or if the defendant's evidence in support of the Rule 9-6 application fails to meet all of the causes of action raised by the plaintiff's pleadings, the application must be dismissed: *B & L Holdings Inc.* at para. 46, quoting *Progressive Construction Ltd.* at 335.
>
> [49] Although an application under Rule 9-6 invokes the court's consideration of evidence, it is not a summary trial: *Century Services Inc. v. LeRoy*, 2015 BCCA 120 at para. 32. The judge is not permitted to weigh evidence on a Rule 9-6 application beyond determining whether it is incontrovertible: any further weighing may only be done in a trial: *Tran v. L*e, 2017 BCCA 222; *Skybridge Investments Ltd. v. Metro Motors Ltd*., 2006 BCCA 500 at paras. 8-12.

[50] In overturning the trial judge's conclusion in *Beach*, Bauman J. wrote:

> [67] … On an application under Rule 9-6, if the evidence needs to be weighed and assessed, then the test of "plain and obvious" or "beyond a doubt" has not been satisfied and the application is to be dismissed.

Conclusion

[51] For the reasons that follow, I conclude that it is not plain and obvious that Mr. Johnston's claim is bound to fail.

[52] In my view, it is arguable that the oral Fee Agreement, dealing with an alleged business arrangement between Mr. Goodwin and Mr. Johnston, is separate and distinct from the terms of the Cohabitation Agreement, an agreement that was intended to address and contract out of the application of the *FLA* and trust principles to the parties' relationship. The Cohabitation Agreement was entered into

when the parties' relationship was soon to exceed two-years, beyond which they would be "spouses" under s. 3(1)(b)(i) of the *FLA.*

[53] As I see it, the Subsequent Agreement is not really a new agreement; rather, it is an extension of the Fee Agreement. In any event, the same analysis applies to the Subsequent Agreement.

[54] I accept that the entire agreement provision at para. 23 of the Cohabitation Agreement, as set out above, is broadly worded but it does not, on its face, provide that it is the only agreement between the parties and supersedes all previous communications, representations, and agreements, verbal or otherwise, between them. It provides that it supersedes all previous communications, representations and agreements, verbal or otherwise, "with respect to the subject matter of this Agreement" (emphasis added).

[55] The subject matter of the Cohabitation Agreement is, arguably, the establishment and continuation of the parties' financially independent relationship as it related to their respective entitlements as "spouses" under the *FLA* and at common law. The subject matter, or intent, of the Cohabitation Agreement was, arguably, not to preclude earlier or subsequent *business* arrangements between the parties.

[56] Determining the scope of the entire agreement provision and whether the parties intended it to supersede the Fee Agreement and to preclude the Subsequent Agreement involves contractual interpretation issues that require evidence about the surrounding factual matrix.

[57] Arguably, nothing in the Cohabitation Agreement prevented the parties from entering into separate contracts for services. Whether the existence of a Cohabitation Agreement precludes prior or subsequent transactional agreements between the parties is, in my view, a genuine issue for trial.

[58] In this case, it is arguable that Mr. Johnston is not directly claiming an interest in the increase in value of the Winnings in his capacity as a spouse, but rather under a business contract pursuant to which he agreed to provide services, that would

otherwise have been provided by another person or entity. The measure of the value of the services, or the method of calculating those services, was tied to the investment gains accruing to Mr. Goodwin but is not a share in that increase under the *FLA* or at common law.

[59] In that respect, it may be argued that the oral agreements alleged by Mr. Johnston are not contradictory to the Cohabitation Agreement but separate agreements. A similar argument was successful in *Chrispen v. Topham*, 28 D.L.R. (4th) 754, 1986 CanLII 3568 (Sask. K.B.) at paras. 20–21, aff'd 39 D.L.R. (4th) 637, 1987 CanLII 4616 (Sask. C.A.).

[60] Mr. Johnston's affidavit attaches text communications in which he alleges that Mr. Goodwin acknowledged the Fee Agreement after the Cohabitation Agreement was signed. He also provided an affidavit from a non-party, who deposes that she was advised of the Fee Agreement by Mr. Johnston in 2017. The admissibility and weight of that evidence should be considered at trial, or in the context of a summary trial application. Of course, at this stage, there has been limited document production, the parties have not been examined for discovery, and the facts are very much in dispute.

[61] In Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto: LexisNexis, 2020) at Chapter 9, Section 11, the author states:

> Entire agreement clauses – provisions that specify that the written text agreed by the parties constitutes the whole contract and that exclude all representations made outside the document – are one of the most confusing areas of the law of contractual interpretation in Canada. There appears to be no overarching theory of how the courts should or do approach such provisions, so it is difficult to predict in any particular case whether an entire agreement clause will be enforced or not. This outcome is ironic given that entire agreement clauses are designed to provide "certainty and clarity" by limiting the expression of the parties' intentions to the written agreement. ...
>
> As a result of these contradictions, a number of seemingly unrelated principles seem to be at play. An entire agreement clause will in general not be interpreted to be forward-looking, but rather will only be considered to apply to events occurring prior to contracting. An entire agreement clause will not prevail over an oral agreement where the parties did not intend the written contract to encompass their entire relationship, although since this principle is

> easier to state in the abstract than it is to apply in practice, the application of this principle has been quite inconsistent.

[62] The difficulty discussed by Mr. Hall in his text was at play in *Turner v. Visscher Holdings Inc*., 23 B.C.L.R. (3d) 303, 1996 CanLII 1436 (C.A). There, the Court considered whether an oral agreement that a bonus would be paid was precluded by an entire agreement clause in a written employment agreement after the sale of the assets of a business. Justice Finch wrote:

> [11] … [I]t all comes down to a question of intention. Is it reasonable to infer a mutual intention in Turner and Visscher that the entire agreement clause of the written contract should apply to the oral bonus agreement? I think clearly not. Turner's signature to the contract was in a limited capacity as covenanter. The parties did not consider the clause of any consequence so far as the employment contract was concerned. Moreover, the bonus was a subject of discussion between Turner and representatives of Visscher in the two year period of his employment. The trial judge found that in July 1990 Visscher's general manager, Mr. Ratzlaff, enquired of Turner indirectly as to whether he would agree to a postponed payment of the bonus. Turner agreed. A similar request was made and agreed to in the summer of 1991.
>
> [12] In these circumstances, I do not think Visscher can be heard to rely on the entire agreement clause as a bar to the bonus agreement.
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> [13] Turner was induced both before and after the written contract was signed on 2 October 1989 to believe that the oral agreement for the bonus would be honoured. He acted on Visscher's representations by allowing Spindaleer to enter into the agreement for the sale of assets, by taking up employment with Visscher pursuant to his oral contract for that purpose and by agreeing to defer on two occasions payment of the bonus after he was employed. Turner worked for Visscher on the clear understanding that both oral contracts were valid and binding. Visscher's activities induced Turner into holding that belief. It would be completely inequitable, in my view, to permit Visscher now to raise the entire agreement clause as a defence.

[63] In my view, the facts in this case raise a genuine issue for trial. I find that Mr. Goodwin has not met the high bar required to obtain summary judgment under R. 9-6. If, after a trial or a summary trial, Mr. Goodwin is successful with respect to his arguments about the entire agreement clause in the Cohabitation Agreement, there remains the issue of Mr. Johnston's alternate claim to compensation on a *quantum meruit* basis.

[64] Mr. Goodwin's affidavit does not preclude an alternate claim on this basis. In fact, arguably, he left it open when he deposed:

> 10. It is certainly true that [Mr. Johnston] sources (*sic*) the investments for Smart Sweets and the LM Asset fund. We did not have ay (*sic*) sort of a deal about that where [Mr. Johnston] would get half of my returns. [Mr. Johnston] made his own significant return on both of these investments.

[65] Mr. Goodwin's summary judgment application is dismissed.

Costs

[66] Although costs were not argued before me, I am of the view that costs of this application should be in favour of Mr. Johnston in the cause.

"MacNaughton J."