

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Brave Construction Ltd. v. Ianovici*,
2024 BCSC 1526

Date: 20240821
Docket: S1912160
Registry: Vancouver

Between:

Brave Construction Ltd.

Plaintiff

And

Nicolai Ianovici, Trustin Construction Ltd. and Bank of Montreal

Defendants

Before: The Honourable Justice Edelman

Reasons for Judgment

Counsel for the Plaintiff:

P.M.B. Samarakoone

The Defendant, N. Ianovici, appearing in
person and as Representative for the
Defendant, Trustin Construction Ltd.:

N. Ianovici

Counsel for the Witness, Amin Sunderji and
his employer, Bank of Montreal:

I. Loten
(April 19, 2024 only)

Place and Dates of Trial:

Vancouver, B.C.
April 15-19 and 22-24, 2024

Place and Date of Judgment:

Vancouver, B.C.
August 21, 2024

Table of Contents

INTRODUCTION 3
OWNERSHIP OF BRAVE 3
FRAUD AND BREACH OF FIDUCIARY DUTY 7
 Civil Fraud 10
 Breach of Fiduciary Duty 12
 Damages 14
COSTS 15

Introduction

[1] This matter began as an action by Brave Construction Ltd. alleging fraud and breach of fiduciary duty against Nicolai Ianovici, who is a director of Brave and against his company Trustin Construction Ltd. The action is being brought by Brave's other director, Roman Portnoy. Over the course of trial, it became evident that one of the central disputes related to the ownership interest in Brave. Mr. Ianovici takes the position that he owns 100% of the shares in Brave while Mr. Portnoy is of the view that he has a beneficial interest in 50% of the shares. At the close of trial, the parties agreed that the pleadings should be amended to add Mr. Portnoy as a party so that the ownership issue could be determined and I have allowed the amendment. I will therefore begin by resolving the ownership issue, before turning to the issues of civil fraud and breach of fiduciary duty.

Ownership of Brave

[2] Mr. Portnoy is a civil and structural engineer with some 35 years experience in the construction industry. He has worked for large construction firms and managed very large construction projects. Since 1993, Mr. Portnoy has been the principal of Avion-Multiplex, a company which manages construction projects.

[3] In 2014 or 2015, Mr. Portnoy met Mr. Ianovici through Mr. Ianovici's father in law, who was doing tiling work on a project Mr. Portnoy was managing. In late 2015 or early 2016, Mr. Portnoy was invited to have dinner with the family. Mr. Ianovici was trained as a lawyer and worked for several years in a bank in Moldova, ultimately as director of the credit department. He arrived in Canada in 2010 and started doing work as a tiler, gradually coming to take on various projects as a subcontractor.

[4] The testimony of Mr. Portnoy and Mr. Ianovici diverged somewhat on how they came to work together, with each minimizing the role of the other party. They agree that in 2016, Mr. Ianovici came to work in an office in the building owned by one of Mr. Portnoy's companies. Mr. Portnoy helped Mr. Ianovici to learn how to bid on contracts for tiling work with larger contractors. Mr. Ianovici was provided with an

office, office equipment and some level of guidance from Mr. Portnoy. Mr. Portnoy describes spending between two and four hours a day for upwards of a year training Mr. Ianovici. Mr. Ianovici suggests it was much less time than that, but accepts that Mr. Portnoy spent time teaching him about the tendering, bidding and construction process.

[5] On May 13, 2016, Mr. Ianovici incorporated Brave with the British Columbia registrar of companies. He was listed as the incorporator and sole director of the company. Mr. Portnoy says that Mr. Ianovici told him he could not register the company in both their names at the time because he did not have Mr. Portnoy's social insurance number.

[6] Brave initially took on some smaller projects, was able to set up a website and started bidding on other projects.

[7] On July 21, 2016, Mr. Ianovici and Mr. Portnoy attended at the Bank of Montreal to open a bank account for Brave. The documents signed by both of them included an "Ownership Attestation" that listed both Mr. Ianovici and Mr. Portnoy as managers and owners of 50% of the business. A "Certificate and Authorization" signed by Mr. Ianovici certified that a resolution had been passed by Brave appointing the Bank of Montreal as banker of the corporation. The resolution lists both Mr. Ianovici and Mr. Portnoy as authorized signatories, specifying for each that they are "director, authorized signatory – all to sign". An "Agreement for Business Banking" signed by Mr. Ianovici and Mr. Portnoy, both of whom were identified as "Director, Authorized Signatory" under their respective signatures. In the "signature requirements" section, the box for "both" was ticked. They agree that the intention was for both Mr. Portnoy and Mr. Ianovici to be required to sign any cheques drawn on the Brave account. Both Mr. Ianovici and Mr. Portnoy were issued debit cards for the account that could be used to make deposits. The relevant form listed a number of restrictions on the debit cards, including no withdrawal at an ATM, no transfer to or from the account and no online bill payments.

[8] On August 19, 2016, a Notice of Change of Directors was filed with the registrar of companies, signed by Mr. Ianovici, adding Mr. Portnoy as a director of Brave.

[9] Mr. Ianovici testified that he did not review the banking documents but just signed what was put in front of him. I found Mr. Ianovici's selective level of sophistication remarkable disingenuous. When it suits him, Mr. Ianovici presents as an educated, sophisticated individual which is consistent with his legal training, work in banking and ability to supervise large construction projects. However, when it suits him he pretends not to understand even the most basic of legal or corporate concepts. I do not accept that Mr. Ianovici went to the bank and had Mr. Portnoy added as a signatory to the Brave account without understanding what he was doing.

[10] I find that Mr. Ianovici and Mr. Portnoy represented to the bank that they were each 50% owners of Brave because that was the agreement between them. The structure of the partnership is confirmed by several other witnesses. The office manager Mila Khait (who is also Mr. Portnoy's spouse) was present when Mr. Portnoy and Mr. Ianovici met in the office for many conversations between them. She confirmed that the arrangement was that they were 50/50 partners in Brave. This was confirmed by Brave's accountant Michael Bingham and bookkeeper Indika Marasingha who both testified that they understood that Mr. Portnoy and Mr. Ianovici were 50% partners in Brave. When asked in cross examination whether he had said to Mr. Marasingha that he and Mr. Portnoy were 50% partners, Mr. Ianovici said he did not recall.

[11] Mr. Ianovici sought to minimize the amount of assistance he received from Mr. Portnoy in starting up Brave. While I accept there is some conflict in the evidence, I find that Mr. Portnoy provided substantial assistance in the first stages of starting up the company. I find that Mr. Portnoy assisted in providing access to the forms, procedures and contact lists of general contractors to whom bids could be sent. I find that Mr. Portnoy established a set of procedures to ensure oversight of

payments to subcontractors and to monitor the costs on projects. Those procedures included written invoices, purchase orders and cheques signed by both Mr. Ianovici and Mr. Portnoy. The role of Mr. Ianovici and Mr. Portnoy as equal partners in Brave would be further confirmed by subsequent actions and communications.

[12] In August 2017, Brave secured a contract for just over \$95,000 to install tiling and waterproof membrane at the West Vancouver Aquatic Centre. Some issues arose with the installation and between October and December 2017. Mr. Portnoy sent several pieces of correspondence to address those issues, of which some were copied to Mr. Ianovici. Mr. Portnoy identified himself as “President and CEO” of Brave in the correspondence and Mr. Ianovici as the “General Manager”. It is evident from the correspondence that Mr. Portnoy had knowledge of the project and was actively engaged with the general contractor.

[13] In February 2018, Brave secured a contract for tiling work at the New Westminster Public Library for just over \$35,000. Mr. Portnoy signed as the subcontractor and Mr. Ianovici as a witness.

[14] On May 11, 2018 Mr. Ianovici sent an email to Mr. Portnoy saying that Mr. Portnoy failed to pay the subtrades and that Mr. Ianovici was removing all his contacts and subtrades from Brave’s remaining active projects. The email said Mr. Portnoy should arrange his own labour to complete the projects. Mr. Portnoy responded saying that Mr. Ianovici could not just drop the work Brave had taken on as he was a 50% active partner and shareholder. Mr. Portnoy further said that they needed to ensure completion of the outstanding projects and then there would be “no more projects as agreed”. Mr. Portnoy testified that they had agreed they would complete the five outstanding projects, not bid on any further work and go their separate ways.

[15] As the incorporator of Brave, Mr. Ianovici is by default the only shareholder as defined in the *Business Corporations Act*. However, I find that throughout Brave’s existence, Mr. Ianovici has held 50% of the shares of Brave in trust for Mr. Portnoy. I prefer Mr. Portnoy’s evidence to that of Mr. Ianovici that there was an express

agreement and understanding between them that they were 50/50 owners of Brave. I will therefore make an order determining the ownership ratio of shares in Brave to be 50% to each of Mr. Ianovici and Mr. Portnoy.

Fraud and Breach of Fiduciary Duty

[16] On November 30, 2016, Mr. Ianovici incorporated the defendant Trustin Construction Ltd. He said the initial purpose was to have a corporation to receive management payments from Brave. For a period, Trustin did invoice Brave on a monthly basis for Mr. Ianovici's management services.

[17] By January 2019, there was only one active Brave project for tiling work on the St. Paul's Parish church. This was the largest project taken on by Brave, with an initial subcontract for \$178,000 which eventually grew to almost \$228,000. The contracting documents were signed and initialed by Mr. Portnoy in November 2017. Brave's work on the project did not begin in earnest until January 2019 as other components of the project had to be completed before the tiling could be done.

[18] In February 2019, Mr. Portnoy attended the bank expecting to find \$250,000 or \$300,000 in the Brave account but there was almost nothing. It was at that point Mr. Portnoy learned that Mr. Ianovici had been e-transferring money and had set up a company credit card in his name. Until November 2017, all payments out of the Brave account were made by cheque which required two signatures. The procedure that was followed required a purchase order, written invoice and cross referencing with the master budget for the project. In November 2017, Mr. Ianovici had applied for a Brave company credit card and I find that he deliberately did not inform Mr. Portnoy about the credit card. In total, Brave paid some \$235,916.44 on the credit card.

[19] Over the course of the ensuing months, Mr. Portnoy would follow up with complaints to the bank about the authorizations on the account. In the interim, the account and cards were frozen. Mr. Ianovici says that as a result of the Brave account being frozen, he was no longer able to pay the subcontractors on the St. Paul's church project. He therefore approached the general contractor to have them

pay the subcontractors directly. Mr. Ianovici generated a list of the workers on the project. Many of the workers were purportedly working for a company called Artebuz Holdings who would receive the largest payment.

[20] During his examination for discovery in 2021, Mr. Ianovici initially feigned not to recognize the name Artebuz Holdings. I find Mr. Ianovici's answers about Artebuz at his examination for discovery were a deliberate and knowing series of lies that were directly contradicted by his testimony at trial. In fact, over the course of many months Trustin was receiving funds from Brave projects funnelled through Artebuz.

[21] In February 2018, Mr. Ianovici had moved all his documents from the Brave office in Richmond to an office at 6939 Hastings St. in Burnaby. When asked at the examination for discovery if he shared office space with anyone, he initially said no and more specifically that he did not share the rent with anyone. It was only when he was asked specifically if Artem Buzulan (apparently the owner of Artebuz) had been in the space that his testimony shifted to saying that Mr. Buzulan was there for a "couple of months" and paid half the rent. In the course of further questioning, Mr. Ianovici explicitly said that at no point did Artebuz transfer any money to Trustin. This was clearly a lie.

[22] On April 21, 2018, Artebuz invoiced Brave \$4,410.00 for installation of waterproof membrane and six new showers. Brave paid Artebuz by cheque on July 25, 2018. The next day, Trustin invoiced Artebuz \$4,410.00 for "Estimating and project management" on the Fitness Centre project.

[23] On May 23, 2018, Artebuz invoiced Brave \$11,836.13 for "installation of tiles" on the TD Wealth Bank project. The address for Artebuz was listed as 208-6939 Hastings in Burnaby. Brave paid Artebuz by cheque on August 8, 2018. The same day, Trustin invoiced Artebuz \$11,836.13 for "Estimating and project management" on the TD Wealth Bank project.

[24] In addition to the transparent nature of the artifice deployed by Mr. Ianovici, I would note that "estimating and project management" is what he (through Trustin)

was also being paid \$4,000 per month to do on these very projects for Brave. Starting in July 2017, Mr. Ianovici was paid a monthly management fee of \$4000 through Trustin. In total, Brave paid some \$40,000 in management fees to Trustin.

[25] It would appear that sometime around October 2018, Mr. Ianovici realized that the bank would allow him to make e-transfers from the Brave account without the need for a second signature. This would have avoided the need for Mr. Ianovici to get Mr. Portnoy's signature on a cheque. Between December 2018 and January 2019, Mr. Ianovici transferred a total of \$22,183.35 in increments of \$3,000 or less. Those payments all appear to have been made to Artebuz.

[26] On October 25, 2018, Artebuz invoiced Brave \$6,879.60 for TD Bank tile and grout installation. In December, three separate e-transfers were sent from the Brave account to Artebuz totalling \$6,879.60. On January 7, 2019 Trustin invoiced Artebuz for \$7,644.00 for "Tile installation" on the TD Washrooms project. On December 12, 2018, Vuacheslev Demenkov had invoiced Trustin \$2,897.28 for "Tile Installation" on the TD Bank project.

[27] A purchase order dated November 7, 2018 for Artebuz with a total of \$55,566.00 had been prepared and signed by Mr. Ianovici for work on St Paul's parish in Richmond. An invoice purporting to be from Artebuz was generated and dated November 24, 2018 for "Richmond church tile installation" for \$15,303.75. Between January 19 and February 2 2019, a total of six e-transfers were made from Brave to Artebuz on separate days, totalling \$15,303.75. On February 8, 2019 Trustin invoiced Artebuz \$15,330.00 for "Tile installation" on the St. Paul Church project.

[28] An invoice purporting to be from Artebuz was generated and dated January 25, 2019 for a total of \$42,000. At that time, the address for Artebuz continued to be listed as 208-6939 Hastings St. in Burnaby, much longer than the "couple months" Mr. Ianovici suggested he shared space with Artebuz in his examination for discovery.

[29] Trustin also began taking on projects of its own at the same time it was working on Brave's projects. Mr. Ianovici was evasive about when and how many projects Trustin had taken on while working on Brave projects, but it is clear there was at least one major project, a development in Port Coquitlam called New Haven. Mr. Ianovici says he was approached by a friend to bid on work for the project sometime in 2017. Trustin took on the contract and was first paid for work at the end of March 2018. Limited documentation was provided by Trustin in general, and little of it relates to the New Haven project. It is clear from the documents and the testimony of Mr. Ianovici that Trustin was working on the New Haven project at the same time as it was receiving funds from Brave projects through Artebuz. Some of the same subcontractors who had invoiced Brave directly on projects were at other times providing invoices to Trustin. One invoice from June 2018 charged Trustin for tiles for both the Brave TD Bank project and the New Haven project.

Civil Fraud

[30] The elements of civil fraud were set out in *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at para. 21:

- (1) a false representation made by the defendant;
- (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness);
- (3) the false representation caused the plaintiff to act; and
- (4) the plaintiff's actions resulted in a loss.

[31] I have little hesitation in finding that the elements of civil fraud have been made out on the evidence before me. Mr. Ianovici made numerous false representations to Brave, its employees and his co-director Mr. Portnoy.

[32] In particular, Mr. Ianovici made numerous representations through purchase orders and invoices that Artebuz was doing work for Brave. Without question, Mr. Ianovici knew this to be a blatantly false representation as Artebuz was simply a front for Trustin. If there was any doubt about his awareness this was a significant falsehood, his obfuscation and lies during examination for discovery removed that doubt. The false representation caused Brave to act by paying the invoices purporting to be from Artebuz. I am also satisfied there was a loss, as Mr. Ianovici

himself effectively admitted that Trustin made a profit by subcontracting the work it invoiced through Artebuz. The “estimating and project management” that Trustin was charging Brave for through the artifice of Artebuz was precisely the work that Mr. Ianovici and Trustin were expected to perform for Brave. Mr. Ianovici effectively admits he even used the same subcontractors on behalf of Trustin that Brave would have used.

[33] I also find that Mr. Ianovici made false representations to Mr. Portnoy starting in November or December 2017 that he had no intention of leaving Brave and that he was not competing with Brave.

[34] Veslav Cotet worked as a subcontractor installing flooring for Brave starting around May or June 2016. In October 2017, he says he was approached by Mr. Ianovici who offered to open a new company with Mr. Cotet. Mr. Cotet says Mr. Ianovici told him he was initially happy to gain experience but that Mr. Portnoy doesn’t do much work and he didn’t need him any more. In cross examination, Mr. Ianovici was asked about the conversation and simply said he did not want to comment. I found Mr. Cotet to be a disinterested and credible witness and I accept his uncontradicted testimony that Mr. Ianovici approached him to open a company competing with Brave.

[35] Mr. Portnoy says Mr. Cotet told him about the conversation he had with Mr. Ianovici. Sometime in November or December, Mr. Portnoy had a discussion with Mr. Ianovici. Mr. Ianovici said that he had no intention of leaving Brave to start another company and that he was not competing with Brave. Mr. Portnoy had suggested that they could complete their active projects and each go their separate ways but Mr. Ianovici insisted he wanted to work for Brave and was not interested in another company. Mr. Portnoy was convinced to continue working with Mr. Ianovici and they decided they would move the Brave office to another location in Richmond. The office manager Ms. Khait described looking for new space and moving in January. Mr. Ianovici assisted in the move and attended the new offices, continuing

to work on Brave projects. I find his conduct part of an ongoing representation that he was dedicated to Brave and not competing with Brave's business.

[36] These representations were blatantly false. There is little question that at the time Mr. Ianovici had the conversation with Mr. Portnoy in November or December that he was considering taking on work through Trustin that competed directly with Brave's business. Mr. Ianovici was deliberately vague and evasive in his testimony about the timing or nature of his first projects with Trustin. The one project for which there was documentary evidence that limited his ability obfuscate was New Haven. In cross examination he accepted that Trustin's first payment on the New Haven project in March of 2018 would have been for work performed in January or February of that year. New Haven was a significant project with a large, established developer. Mr. Ianovici was evasive about when he would have bid on the project, but conceded that a general contractor on such a project would have their trades in place well in advance. I find on a balance of probabilities that Trustin had at least tendered for the New Haven project and most likely secured it by the time Mr. Ianovici had the conversation with Mr. Portnoy in November or December 2018. In the overall context of his conversation with Mr. Cotet and his subsequent conduct, I find the representations made to Mr. Portnoy were blatant lies. I also find Mr. Ianovici's conduct in the following months to be a continuation of those knowingly false representations. Brave relied on those representations in continuing its business relationship with Trustin and Mr. Ianovici, securing and moving to new offices. It was also those false representations which allowed Mr. Ianovici to pursue further falsehoods to Brave's detriment.

[37] I therefore conclude that the elements of civil fraud have been made out.

Breach of Fiduciary Duty

[38] Fiduciary duties of directors are set out in the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA] as well as at common law. Section 142(1)(a) of the BCA requires that a director or an officer of a company "act honestly and in good faith

with a view to the best interests of the company”. The duties of directors were discussed in *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68 in the following terms:

35 The statutory fiduciary duty requires directors and officers to act honestly and in good faith *vis-à-vis* the corporation. They must respect the trust and confidence that have been reposed in them to manage the assets of the corporation in pursuit of the realization of the objects of the corporation. They must avoid conflicts of interest with the corporation. They must avoid abusing their position to gain personal benefit. They must maintain the confidentiality of information they acquire by virtue of their position. Directors and officers must serve the corporation selflessly, honestly and loyally: see K. P. McGuinness, *The Law and Practice of Canadian Business Corporations* (1999), at p. 715.

[39] There is little question that Mr. Ianovici breached his fiduciary duties to Brave by engaging in the civil fraud set out in the previous section. Even if his actions had not been outright fraudulent, his failure to disclose the relationship between Trustin and Artebuz was a clear breach of his fiduciary duties and placed him in a clear conflict of interest when approving purchase orders and payments to Artebuz. The elements of a conflict of interest are set out in s.147(1) of the BCA and are clearly all established in relation to Mr. Ianovici’s conduct with the Artebuz payments.

[40] I also find that Mr. Ianovici breached his fiduciary duties by tendering on and working on projects in direct competition with Brave while fraudulently representing to Brave that he was not doing so. I do not accept any of Mr. Ianovici’s testimony about how he came to secure the New Haven project, testimony which was in any event devoid of any meaningful details or documentation. In particular, I do not accept Mr. Ianovici’s testimony that he was personally approached by a friend to tender on the project. I find it more likely than not that Mr. Ianovici used knowledge and contacts obtained through Brave to tender on and secure the New Haven contract for Trustin. Mr. Ianovici suggested in his testimony that because Brave and Trustin were both his companies, he could pursue opportunities with either one as he saw fit. I find this to be a complete failure to understand his fiduciary obligations to Brave. In my view, the New Haven contract ought to have been, at the very least,

brought to Brave's attention. I find that Mr. Ianovici breached his fiduciary obligations in failing to do so.

Damages

[41] Brave seeks an order for damages against Mr. Ianovici and Trustin in the amount equivalent to Trustin's net profits as set out in its tax filings from December 2017 to November 2019, a total of \$72,509. In my view, this is a reasonable amount to be awarded in damages.

[42] First of all, I consider that \$72,509 is likely a very conservative assessment of the net income for Trustin during the relevant timeframe. The number comes from a document prepared at Mr. Ianovici's behest, and it was clearly in his personal interest to minimize the tax liability for Trustin. I heard evidence from both Mr. Portnoy and Ms. Khait that Mr. Ianovici had repeatedly inquired about how to avoid paying GST and WorkSafeBC despite being told it was a legal obligation. Given his conduct before this court, I find there is little reason to believe Mr. Ianovici would be honest in reporting income to CRA. I find on a balance of probabilities that the amounts reported as income to CRA are at the very most an extremely conservative estimate of Trustin's actual income during the relevant period.

[43] I also find that \$72,509 is justified on the evidence before me. Mr. Ianovici caused Brave to make payments of \$235,916.44 on the credit card. Brave's accountant was unable to account for some of the payments as they had not been entered through the Brave bookkeeping system at all. Even for those that were entered through Brave's bookkeeping system, it would almost be impossible to sort out the extent to which payments on the Brave credit card were in fact legitimate Brave expenses given Mr. Ianovici's propensity to lie and obfuscate. Some of those expenses may be related to Trustin projects or items that Trustin indirectly recovered from Brave through Artebuz or in some other manner. As an example, only Mr. Ianovici would know if a shipment of tile was actually used on a given Brave project rather than on another site. Even in his own evidence, Mr. Ianovici saw Brave and

Trustin as interchangeable and, in relation to each company, he felt entitled to do whatever he felt benefitted him personally.

[44] There were also payments \$78,429.48 in payments made to Artebuz on Brave projects in those years. Again, it would only be through representations from Mr. Ianovici that the amount Trustin profited from its fraudulent scheme could be ascertained. He has notably not provided such an accounting, and began this litigation denying under affirmation that there were any transfers at all between Artebuz and Trustin.

[45] Finally, I have found that there was a breach of fiduciary duty in relation to the work taken on by Trustin that was in direct competition with that of Brave. The only evidence before me indicates that Trustin's income was derived either directly or indirectly from Brave, or from work in direct competition with Brave. Moreover, it is Mr. Ianovici's fraudulent conduct and the breach of his fiduciary duties has undermined any ability to sort Brave's finances from those of Trustin. Notably, Mr. Ianovici made no attempt to do so before the court. I am satisfied that Trustin's profits during the relevant period ought to be attributed to Brave.

[46] I am therefore satisfied on a balance of probabilities that Brave has established damages in the amount of \$72,509.

Costs

As Brave has been successful at trial, it is presumptively entitled to its costs. However, should either party wish to make submissions on costs they may arrange to do so within 30 days of the issuance of these reasons.

“Edelmann J.”