

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dracco Holdings Ltd. v. Liu*,
2024 BCSC 1617

Date: 20240904
Docket: 222454
Registry: Vancouver

Between:

Amir Pasha Pourdad

Plaintiff

And

Luanjiao Liu

Defendant

And

**Dracco Holdings Ltd. dba Dracco Pacific Realty, Zi Ya Yang aka Layla Z.Y.
Yang, Ziaomu Peng aka Frank Peng, and Kevin Gurniak**

Third Parties

Docket: 225572
Registry: Vancouver

Between:

Dracco Holdings Ltd. dba Dracco Pacific Realty

Plaintiff

And

Luanjiao Liu

Defendant

Before: The Honourable K. Loo

Reasons for Judgment

Counsel for Dracco Holdings Ltd:

D. Cayley

Counsel for Luanjiao Liu:

F. Ju

Counsel for Zi Ya Yang, Ziaomu (Frank)
Peng, and Kevin Gurniak

S.B. Twining

Place and Date of Hearing:

Vancouver, B.C.
August 6-7, 2024

Place and Date of Judgment:

Vancouver, B.C.
September 4, 2024

Table of Contents

INTRODUCTION 4

CHRONOLOGY 4

ISSUES..... 6

DISCUSSION..... 6

 Is Ms. Liu’s claim against Dracco and the realtors under the *Negligence Act* barred by the settlement agreement entered into among the parties? 6

 Did Dracco or the realtors breach duties owed to Ms. Liu, and did those breaches, if any, cause damages? 10

 Does Ms. Liu owe commission to Dracco for the sale of the property, which did not complete? 10

 Is Dracco liable to Ms. Liu for damages in tort or under a contract of indemnity made between Ms. Liu and Ms. Yang? 15

CONCLUSION AND SUMMARY..... 17

COSTS 17

Introduction

[1] In this proceeding, the purchaser of a residential property in West Vancouver, Amir Pourdad, sued the vendor, Luanjiao Liu, for failing to complete the purchase. The purchase failed because a certificate of pending litigation (“CPL”) registered against the property by Ms. Liu’s estranged husband was not removed.

[2] Mr. Pourdad and Ms. Liu settled the claims between each other, but disputes between Ms. Liu, her realtors, and their brokerage firm remain. The brokerage firm is Dracco Holdings Ltd dba Dracco Pacific Realty, and the realtors are three individuals: Zi Ya Yang, Ziaomu (Frank) Peng, and Kevin Gurniak.

[3] This summary trial involves two actions.

[4] In action no. S222454 (the “Pourdad action”), Ms. Liu seeks contribution and indemnity by way of a third party claim against Dracco and the realtors for \$160,000 that she paid to Mr. Pourdad under the settlement agreement between her and Mr. Pourdad. In response, Dracco and the realtors submit that they entered into a “BC Ferries” agreement with Mr. Pourdad, to the knowledge of Ms. Liu, which precludes Ms. Liu’s claim for contribution or indemnity under the *Negligence Act*, R.S.B.C. 1996, c. 333.

[5] In action no. S225572 (the “commission action”), Dracco advances a claim for commission against Ms. Liu. Ms. Liu submits that Dracco is not entitled to commission because the realtors fundamentally breached the terms of the listing agreement. Further, in the commission action, Ms. Liu advances a counterclaim against Dracco, for damages in tort and for indemnification pursuant to a contract of indemnity allegedly made by Ms. Yang.

Chronology

[6] Although the facts of the case will be discussed in greater detail where necessary, I will set out a brief chronology of the events giving rise to this action.

[7] In a family law proceeding between Ms. Liu and her spouse, Yanming Guo, Mr. Guo caused a CPL to be registered against the subject property on Kings Avenue in West Vancouver in October 2021.

[8] On November 29, 2021, Ms. Liu and Dracco entered into a listing agreement in respect of the property.

[9] On or about December 3, 2021, the realtors became aware of the CPL.

[10] On December 3, 2021, the realtors listed the property for sale.

[11] On December 21, 2021, Mr. Pourdad made an offer for the purchase of the property. His offer was accepted by Ms. Liu that day.

[12] On December 27, 2021, Mr. Pourdad, through Mr. Peng, sought an addendum to the contract of purchase and sale requiring Ms. Liu to remove the CPL by March 1, 2022.

[13] That same day, Ms. Liu agreed to the addendum.

[14] In February 2022, Ms. Liu, through counsel, sought to remove the CPL from title but was initially unsuccessful because short leave to bring an application advanced on February 24 was denied. Subsequently, no further application was ever advanced.

[15] The CPL was not removed, and the sale did not close on March 15, 2022, as required by the contract of purchase and sale.

[16] On March 17, 2022, Mr. Pourdad commenced an action against Ms. Liu seeking specific performance of the contract of purchase and sale, and damages.

[17] On May 16, 2022, Ms. Liu filed a third-party notice against Dracco and the realtors seeking contribution and indemnity.

[18] At a mediation on March 13, 2023, Mr. Pourdad reached a settlement with Ms. Liu, Dracco, and the realtors under which Ms. Liu agreed to pay him \$160,000, and Dracco and the realtors agreed to pay him \$150,000.

Issues

[19] Neither party takes issue with the proposition that this dispute is suitable for resolution by summary trial under Rule 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. The issues to be determined on this application are:

- a) Is Ms. Liu’s claim against Dracco and the realtors under the *Negligence Act* barred by the settlement agreement among the parties?
- b) If not, did Dracco and the realtors breach duties owed to Ms. Liu, and did those breaches, if any, cause damages?
- c) Does Ms. Liu owe commission to Dracco for the sale of the property, which did not complete?
- d) Is Dracco liable to Ms. Liu for damages in tort or under a contract of indemnity made between Ms. Liu and Ms. Yang?

Discussion

[20] I will address the issues set out above, in order.

Is Ms. Liu’s claim against Dracco and the realtors under the *Negligence Act* barred by the settlement agreement entered into among the parties?

[21] As indicated above, Mr. Pourdad’s claims against Ms. Liu and his claims against Dracco and the realtors were settled at the same mediation.

[22] At that time, written minutes of settlement were agreed to by the parties (the “Settlement Minutes”). In the Settlement Minutes, Mr. Pourdad is referred to as the “plaintiff,” Ms. Liu as the “defendant,” and Dracco and the realtors as the “third parties.” The Settlement Minutes state, in part:

[1] The defendant agrees to pay to the plaintiff the sum of \$160,000, all inclusive, payable within 21 days....

[3] The third parties agree to pay to the plaintiff the sum of \$150,000, all inclusive, on a BC Ferries basis, payable within 21 days....

[5] The plaintiff agrees to amend its pleadings to remove any claims against the defendant in respect of any liability attributable to the third parties, and that he does not seek to recover in respect of those claims against the defendant....

[7] The third parties agree that the defendant is [at] liberty to apply to advance a claim against the third parties for contribution and indemnity in respect of her payment to the plaintiff.

[8] The defendant agrees that the third parties are at liberty to apply to strike the third party proceedings.

[23] In addition, there is a written agreement between Dracco, the realtors, and Mr. Pourdad entitled “Settlement Agreement and Covenant not to Sue.” In my view, however, this agreement is of little relevance to the issues on this application, as Ms. Liu was not a party to it. That document was part of the implementation of the settlement between Dracco, the realtors, and Mr. Pourdad.

[24] The parties disagree as to whether the agreement set out in the Settlement Minutes between Dracco, the realtors, and Mr. Pourdad was a “BC Ferries agreement.”

[25] Such agreements are well-known in British Columbia. They are typically made when some but not all of the defendants or third parties in an action settle with the plaintiff. In order to preclude the non-settling defendants from pursuing claims against the settling defendants or third parties, the plaintiff agrees to abandon all of its claims for damages, which are attributable to the fault of those settling defendants or third parties. As a result, the plaintiff is subsequently limited in the damages that it can seek, but the non-settling defendants are correspondingly precluded from seeking contribution and indemnity against the settling defendants and third parties.

[26] The Settlement Minutes have three key components.

[27] First, clause 3 states that the “third parties agree to pay to the plaintiff the sum of \$150,000, all inclusive, on a BC Ferries basis, payable within 21 days.”
[emphasis added]

[28] All parties at the mediation were represented by counsel. They are taken to understand what a BC Ferries agreement is.

[29] Second, clauses 7 and 8 appear to address directly the question of whether Ms. Liu would continue to have claims over against Dracco and the realtors. Clause 7 suggests that she would, and clause 8 suggests the opposite.

[30] In the course of the hearing, Ms. Liu sought to enter an affidavit tendered by George Lee, who was counsel for Ms. Liu at the mediation. In this regard, she relied on the decision in *Union Carbide Canada Inc. v. Bombardier Inc*, 2014 SCC 35, for the proposition that settlement privilege does not prevent a party from producing evidence of confidential communications in order to prove the existence of a disputed settlement agreement arising from mediation or to assist in the interpretation of such an agreement.

[31] Further, she submits that the confidentiality clause in the mediation agreement is fairly narrow. It provided that the parties may not rely on or introduce into evidence in any subsequent litigation, arbitration, or other proceeding:

- a) Another party’s views, suggestions, or willingness to accept a settlement proposal;
- b) Any admissions made by any other Party in the course of the Mediation;
- c) All documents submitted or prepared in the course of the Mediation.

[32] In my view, much of the affidavit is inadmissible because it falls within settlement privilege and clause (a) of the confidentiality clause, or irrelevant because it deals with communications solely between Ms. Liu, her counsel and the mediator, and the subjective understanding of Ms. Liu and her counsel. However, parts of the affidavit do shed light on the insertion of clauses 7 and 8.

[33] Mr. Lee deposes that a draft of the Settlement Minutes was first prepared without clauses 7 and 8. Clause 7 was inserted at the request of Ms. Liu and then clause 8 was inserted at the request of Dracco and the realtors.

[34] The Court's task in this case is to interpret the Settlement Minutes in light of the evidence described above and the applicable legal principles. The well-known decision of *Sattva Capital Corp. v. Creston Moly Corp.* 2014 SCC 53 provides that when interpreting contracts, the decision maker's task is to discern the mutual and objective intentions of the parties as expressed in the words of the contract: para. 57. The parol evidence rule precludes evidence of the subjective intentions of the parties, and although the surrounding circumstances can be considered, consideration of the surrounding circumstances "must never be allowed to overwhelm the words" of the agreement: paras. 57, 59.

[35] In my view, the evidence of Mr. Lee together with the words used in the Settlement Minutes support the third parties' submission that clauses 7 and 8 are simply procedural entitlements. While clause 7 could be a procedural right or a substantive right on its face, the only way that clauses 7 and 8 can be read together harmoniously is to read them as conferring procedural entitlements only.

[36] Put another way, if clause 7 gave Ms. Liu an unequivocal right to make claims over against the realtors, then clause 8 would be meaningless. If clause 8 gave Ms. Liu an unequivocal right to strike, then clause 7 would be meaningless. In my view, it is reasonable to infer from the evidence described above that the parties discussed the issue as to whether Ms. Liu was entitled going forward to make claims over against Dracco and the realtors, and that they "agreed to disagree." Ms. Liu would be entitled to seek to advance a third-party claim, and the realtors would be entitled to seek to strike it out.

[37] Ultimately, that issue has fallen to be determined by this Court on this summary trial. The question is whether the parties intended that Ms. Liu would continue to have claims against Dracco and the realtors for the amount she paid to Mr. Pourdad.

[38] On that issue, when Ms. Liu’s lawyer signed the Settlement Minutes, he must have been aware of clause 3. In my view, clause 3 is sufficient in itself to demonstrate, both to the Court on this application and to Ms. Liu at the mediation, that Mr. Pourdad and the realtors had agreed that their settlement was on a “BC Ferries basis.”

[39] In view of the foregoing, I find that the parties’ intention was that Ms. Liu would pay \$150,000 to Mr. Pourdad, and Dracco and the realtors would pay \$160,000 to Mr. Pourdad, and that these payments would bring an end to the matter for all parties.

[40] If the settlement between Mr. Pourdad and Ms. Liu had fallen apart, Mr. Pourdad would have had a claim against Ms. Liu, but he would not have been entitled to claim against her for any amount attributable to the fault of Dracco and the realtors. In turn, Ms. Liu would not have had a claim against Dracco and the realtors for any amount she was required to pay Mr. Pourdad.

[41] For these reasons, Ms. Liu’s claims against the Dracco and realtors for contribution or indemnity in respect of the \$160,000 are barred by the Settlement Minutes, and are therefore dismissed.

Did Dracco or the realtors breach duties owed to Ms. Liu, and did those breaches, if any, cause damages?

[42] As I have found that Ms. Liu’s third-party claim is barred by the Settlement Minutes, it is not necessary to determine these issues.

Does Ms. Liu owe commission to Dracco for the sale of the property, which did not complete?

[43] As indicated above, Dracco claims commission from Ms. Liu under the listing agreement between it and Ms. Liu. The commission amount claimed is \$203,941.50, and there were no submissions or evidence from Ms. Liu contesting the quantum.

[44] The listing agreement is the standard form “Multiple Listing Contract” maintained by the B.C. Real Estate Association. At clause 5A, it provides that the

seller agrees to pay the listing brokerage a gross commission as set out in clause 5D if “a legally enforceable contract of sale between the Seller and the Buyer is entered into during the term of this Contract” (my emphasis).

[45] Clause 5B provides that “The Seller will pay the remuneration due to the Listing Brokerage under this Clause 5 on the earlier of the date the sale is completed, or the completion date ...” (my emphasis).

[46] Clause 5A has been the subject of past decisions of this Court - for example, *Century 21 Seaside Realty Ltd v. Armstrong*, 2022 BCSC 646 (“*Century 21*”), which involved a dispute over the enforceability of a property sale agreement. Reading clauses 5A and 5B together, the claim for commission under clause 5A is founded on the existence of a “legally enforceable contract” and there is no requirement for the purchase and sale agreement to actually complete: *Century 21* at para. 73.

[47] On this application, Ms. Liu does not contest the applicability of clause 5A or that the contract between her and Mr. Pourdad was a “legally enforceable contract.” Rather, the only argument advanced by Ms. Liu regarding Dracco’s claim for commission is that the realtors fundamentally breached the listing agreement.

[48] Her allegations, which are similar to those advanced in the context of her claim for damages (dismissed above as barred by the Settlement Minutes), largely arise from communications between the realtors and others in December 2021. Although there are other allegations of breach of duty, the primary complaints advanced by Ms. Liu relate to the following communications:

- a) On December 21, 2021, in a text exchange between Mr. Peng and Ms. Liu, Mr. Peng advised Ms. Liu, “the other party is aware [of the CPL]. Let the lawyer handle it.” Then, Ms. Liu wrote:

“okay, here I have no problem just being afraid of him, anyway the fact of what it is, I am not liable if closing fails to happen”.

To this, Mr. Peng responded: “that’s right”.

- b) Also, on December 21, 2021, in a text exchange between Ms. Yang and Mr. Pourdad's lawyer, the lawyer asked, "can you please confirm that the CPL will be removed?" Ms. Yang's answer was: "Yes it will be before subjects [sic] removal."
- c) On December 27, 2021, Mr. Peng and Ms. Liu exchanged messages regarding the addendum to the contract of purchase and sale sought by Mr. Pourdad, which required Ms. Liu to remove the CPL by March 1, 2022. Ms. Liu asked, "Isn't closing said to be okay?" and Mr. Peng answered:
- It's not your responsibility, let the lawyer handle these things, closing won't happen even without cancellation of cpl. The lawyer says there's no problem.

[49] In these exchanges, it is my view that the realtors gave assurances that they ought not to have given. Much of the advice was either incorrect or unreasonably optimistic. The realtors should have declined to answer the questions and advised Ms. Liu to obtain the advice of a lawyer.

[50] As indicated, Ms. Liu's submission is that Dracco ought to be denied its commission because it fundamentally breached the listing agreement. Fundamental breach requires a breach so severe as to deprive the innocent party of substantially the whole benefit which the parties intended should be obtained from the contract: *Parker Cove Properties Limited Partnership v. Gerow*, 2023 BCSC 1397 at para 32, citing *Bahry v. Lindell Beach Holiday Resort Ltd.*, 2009 BCSC 632 at para. 22.

[51] Counsel also suggested that a real estate agent may be denied commission in circumstances involving a complete failure of consideration. A complete failure of consideration occurs when one of the contracting parties fails to receive the benefit or valuable consideration which springs from the root, and is the essence, of the contract. The test is whether or not the party claiming total failure of consideration has in fact received any part of the benefit bargained for under the contract or purported contract: *Palcic v. Sadek*, 2012 BCSC 1651 at paras 133 and 134.

[52] Assuming that commission can be denied on the basis of either a fundamental breach or complete failure of consideration, it is my view that this case does not meet the thresholds set out in the authorities.

[53] Broadly speaking, the realtor's obligations under the listing agreement fall into two categories. The listing agreement sets out specific obligations and steps to be taken by the realtor to attract and ultimately find a buyer. Second, the listing agreement sets out duties owed by the realtor to the client, including duties set out in rules made under the *Real Estate Services Act*, S.B.C. 2004, c. 42, and a general duty to exercise reasonable care and skill in their performance of the listing agreement.

[54] While I agree with Ms. Liu's submission that the realtors breached the duty they owed to her to exercise reasonable care and skill in their performance of the listing agreement, Dracco and the realtors did attract and ultimately find a buyer. Specifically, Mr. Pourdard made an offer that was financially acceptable to Ms. Liu.

[55] It is emphasized that commission was due and payable under the listing agreement upon the making of a legally enforceable contract of purchase and sale. Therefore, Dracco and the realtors accomplished the very task that entitled them to commission, which was to obtain a legally enforceable contract for Ms. Liu.

[56] In my view, since commission is payable upon the making of a legally enforceable contract, it is reasonable to conclude that obtaining such a contract for Ms. Liu was the realtors' primary obligation, or at least one of the core obligations, under the listing agreement. Given that they successfully completed this core obligation, it cannot be reasonably said that Ms. Liu was deprived of substantially the whole benefit of the contract or that she never received any part of the benefit for which she bargained.

[57] Further, and in any event, it is my view, that in assessing the magnitude and severity of the alleged fundamental breach, it is appropriate to examine Ms. Liu's conduct and how that conduct contributed to her loss of the contract's benefit. In

order to prove fundamental breach, Ms. Liu must establish that she was deprived of substantially the whole benefit of the contract *as a result of the realtors' actions*. In my view, the advice given by Dracco and the realtors was not the only cause of Ms. Liu's loss, as the loss could have been reasonably avoided by her.

[58] A few months prior to signing the contract of purchase and sale with Mr. Pourdad, Ms. Liu had been represented by a solicitor with respect to the removal of a CPL from another property which had been registered by Mr. Guo. That CPL was successfully removed. Therefore, it can be inferred that she understood when she signed the contract of purchase and sale with Mr. Pourdad that she could retain a lawyer to obtain the removal of a CPL.

[59] Even if that inference cannot reasonably be drawn, the evidence is clear that by January 20, 2022, Ms. Liu was aware that she needed to retain a lawyer to deal specifically with the CPL on the property and that she in fact did so. On that date, she received a letter from Mr. Guo's lawyer serving a notice of family claim and advising that the sale of the property would not complete without their agreement and that they would not agree to it. She deposes that after receiving this letter she sought and retained counsel.

[60] In my view, she had sufficient time—from January 20, 2022 until at least March 1, 2022, and perhaps until the completion date on March 15, 2022—to negotiate or obtain a court order for the removal of the CPL.

[61] As indicated above, she applied for short leave on February 24, 2022, but that application was denied. Inexplicably, she did not advance a further application to remove the CPL or seek an extension of the CPL removal date set out in the addendum to the purchase and sale contract with Mr. Pourdad. In my view, the application to remove the CPL would have been a straightforward one, as Ms. Liu was prepared to have the proceeds from the sale paid into trust for the benefit of the family action with Mr. Guo if the CPL were removed to permit the sale to Mr. Pourdad to complete.

[62] I find that Ms. Liu knew she was responsible for the removal of the CPL by January 20, 2022, that she was aware that she needed to obtain the assistance of counsel by that date, and that she, acting reasonably, would have been able to avoid the loss in this proceeding by advancing an application to remove the CPL in a timely way.

[63] Given that I have found that Ms. Liu could have avoided the loss by acting reasonably, I am unable to find that she has been deprived by the realtors' conduct of substantially the whole benefit of the contract.

[64] For all of these reasons, I have concluded that Dracco and the realtors did not fundamentally breach the listing agreement and there was not a complete failure of consideration in respect of that agreement. The realtors attracted and ultimately found a buyer with whom Ms. Liu entered into a legally enforceable agreement. Additionally, the loss suffered by Ms. Liu could have been avoided if she had acted reasonably.

[65] Dracco's claim for commission is allowed.

Is Dracco liable to Ms. Liu for damages in tort or under a contract of indemnity made between Ms. Liu and Ms. Yang?

[66] Ms. Liu's counterclaim in the commission action has a number of different aspects that I will address separately.

[67] First, Ms. Liu advances a claim arising from alleged breaches of duty by Dracco and the realtors. However, to the extent that she claims, as damages, indemnification for the settlement payment that she made to Mr. Pourdad, her counterclaim is duplicative of the third-party claim. Accordingly, it is dismissed on the same basis as the third-party claim in that it is barred by the Settlement Minutes.

[68] Second, although it is theoretically possible that the counterclaim could support a claim for damages against Dracco and the realtors other than the settlement payment made to Mr. Pourdad, and that such a claim would not be barred by the Settlement Minutes, no such damages have been proven.

Accordingly, any additional claims in tort advanced in the counterclaim are also dismissed.

[69] Third, the counterclaim includes a claim for punitive damages. However, Ms. Liu has not demonstrated that the facts of this case rise to the level that would warrant such a remedy. In *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, the Supreme Court of Canada held:

[36] Punitive damages are awarded against a defendant in exceptional cases for “malicious, oppressive and high-handed” misconduct that “offends the court’s sense of decency”: *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, at para. 196. The test thus limits the award to misconduct that represents a marked departure from ordinary standards of decent behaviour. Because their objective is to punish the defendant rather than compensate a plaintiff (whose just compensation will already have been assessed), punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment).

[70] In my view, the realtors’ actions in this case were not malicious, oppressive, high-handed or reprehensible. Therefore, the claim for punitive damages is dismissed.

[71] Fourth, the counterclaim contains a claim for indemnification under a contractual indemnity alleged to have been made between Ms. Yang and Ms. Liu.

[72] The evidence of the contractual indemnity is a single text exchange between Ms. Yang and Ms. Liu on February 26, 2022:

Ms. Yang: My dear sister, we are life-long friends, whatever I did wrong, I will be responsible for it. I am not afraid of anything. Anyhow, you live your life, and we will iron out everything!

Ms. Liu: Sounds good, sister Yang.

[73] In my view, this text exchange is insufficient to constitute a binding contractual indemnity. It is well known that to create an enforceable contract there must be an offer, acceptance, and consideration. The agreement must be clearly manifested, expressly or by implication: *Bougainville Investment Corp v. Semple*, 2013 BCSC 1919 at para. 146. There must be an intention to contract; the essential

terms must be agreed; and the terms must be sufficiently certain: see *Oswald v. Start Up SRL*, 2020 BCSC 1730, rev'd on other grounds in 2021 BCCA 136.

[74] In my view, the text exchange on February 26, 2022, does not demonstrate an intention to contract. It was at most a casual assurance. Further, the terms of the alleged indemnity are unclear and there was no consideration for the promise.

[75] Finally, I note that the contractual indemnity is pled only as a counterclaim in the commission action, and the individual realtors are not parties to that action. Therefore, on the pleadings, Ms. Liu is entitled to advance a claim only that Dracco is contractually required to indemnify her, but the text exchange does not suggest that a promise of indemnity was made by Ms. Yang on Dracco's behalf. The text exchange contains, at most, a personal promise by Ms. Yang that *she* would be responsible for what *she* "did wrong."

[76] For these reasons, Ms. Liu's claim for indemnification under the alleged contractual indemnity made February 26, 2022, is dismissed.

Conclusion and summary

[77] For the reasons stated above:

- a) Ms. Liu's third party claims against the realtors under the *Negligence Act* are dismissed.
- b) Ms. Liu is liable to the brokerage firm for commission in the sum of \$203,941.50.
- c) Ms. Liu's counterclaims in the Pourdad action are dismissed.

Costs

[78] Although the realtors and Dracco have been substantially successful, and although I have found that their conduct did not rise to a level that constitutes fundamental breach or that would warrant punitive damages, I am troubled by their careless communications. Both Mr. Peng and Ms. Yang were negligent in the

manner in which they advised Ms. Liu. On the other hand, I have found that Ms. Liu could have avoided the loss by acting more diligently to have the CPL removed, before the completion date for the transaction with Mr. Pourdad.

[79] Taking the conduct of all of the parties into account, I have concluded that no costs of this action shall be payable by any party.

“The Honourable Justice K. Loo”