COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bao v. Welltrend United Consulting Inc.,* 2025 BCCA 3

Date: 20250102
Docket: CA49391

Between:

Lihua Bao

Appellant
(Plaintiff)

And

Welltrend United Consulting Inc., Beijing, Limin Wang, Rong Huang, Hai Huang, Welltrend Canada Consulting Inc.

Respondents
(Defendants)

Before: The Honourable Madam Justice Fenlon
The Honourable Justice Dickson
The Honourable Justice Fleming

On appeal from: An order of the Supreme Court of British Columbia, dated September 6, 2023 (*Bao v. Welltrend United Consulting Inc.*, 2023 BCSC 1566, Vancouver Docket S151501).

The Appellant, appearing via videoconference: L. Bao

No other appearances.

Place and Date of Hearing: Vancouver, British Columbia
October 3, 2024

Place and Date of Judgment: Vancouver, British Columbia
January 2, 2025

Written Reasons by:
The Honourable Madam Justice Fenlon

Concurred in by:
The Honourable Justice Dickson
The Honourable Justice Fleming

Summary:

The appellant, an immigration lawyer, appeals an order awarding him $400,000 in damages against an immigration consulting company, Welltrend Beijing, that forged his signature on applications to a provincial immigration program. The parties had an agreement that the appellant would act as their lawyer for applications to the federal government only. The appellant sued Welltrend Beijing, as well as an affiliate company and the president and shareholders of both corporate respondents, for breach of contract, fraud, conspiracy to injure, and unjust enrichment. The trial judge found that the appellant could not make out fraud, conspiracy, or unjust enrichment, but found Welltrend Beijing liable for breach of an implied contractual term not to forge the appellant's signature. In the alternative, he would have upheld the award on the basis of breach of the tort of misappropriation of personality. The appellant appeals the judge's dismissal of the claims against the individual respondents, and refusal to award punitive damages. Held: Appeal dismissed. The judge did not err in dismissing the claims in fraud and conspiracy. Although he erred in finding an implied contractual term that the respondent would not forge the appellant's signature, and in his alternative finding that the respondent was liable for the tort of misappropriation of personality (a tort that is not available at common law in B.C.), the award should be upheld on the basis of unjust enrichment. There is no basis to interfere with the judge's refusal to award punitive damages given his finding that the compensatory award of $400,000 was sufficient to denounce and punish Welltrend Beijing's conduct in forging the appellant's signature.

Reasons for Judgment of the Honourable Madam Justice Fenlon:

[1] The appellant Lihua Bao is an immigration lawyer. The trial judge awarded Mr. Bao $400,000 in damages against the respondent Welltrend United Consulting Inc., Beijing [“Welltrend Beijing”] for its wrongful conduct in forging Mr. Bao’s name on immigration applications. The primary issue on the appeal is whether the judge should have found all of the respondents liable for the damages. Mr. Bao also appeals the judge’s order denying him punitive damages.

[2] The respondents did not participate in this appeal.

Background

[3] Mr. Bao was called to the Ontario bar in 1996. For the next five years, he worked in Beijing, China, providing legal services to Chinese citizens seeking to immigrate to Canada. During that time, Mr. Bao met the respondent Limin Wang, who was the principal (and later sole shareholder) of the respondent Welltrend

Canada Consulting Inc. and the president of Welltrend Beijing. Mr. Wang's wife, the respondent Rong Huang, and his sister, the respondent Hai Huang, are the sole shareholders of Welltrend Beijing, which at one time had 11 offices in China.

[4] Canada passed legislation in 2000 to regulate the immigration consulting business. As a consequence, only lawyers certified to practice in Canada, or registered immigration consultants, were permitted to advocate on behalf of persons applying for immigrant or refugee status in Canada. In 2004, Welltrend Beijing entered into a contract with Mr. Bao to represent its clients applying for Canadian visas (the "2004 Agreement"). Pursuant to the 2004 Agreement, Welltrend Beijing agreed to pay Mr. Bao 5,000 yuan per month (then worth about $800 CAD). Significantly, the contract pertained to applications to the Government of Canada only; it did not cover applications to provincial nominee programs. The judge explained the connection between provincial and federal immigration approvals this way:

> [20] … an applicant seeking to immigrate to Canada can apply to a provincial nominee program for a nomination certificate. The applicant is required to make some commitment to the province, such as making a certain investment in the province. If the applicant is approved by the province they will receive a nomination certificate from that province. With the benefit of that certificate, the applicant may then apply to Immigration Canada for a visa, relying on the strength of the provincial nomination. The nomination certificate does not guarantee federal approval and many applicants are not approved but … the provincial certificate provides some support for the application.

[5] In 2011, Welltrend Beijing wanted to retain Mr. Bao to represent clients applying to the Saskatchewan and Prince Edward Island nominee programs. However, they could not agree on terms, and Mr. Bao continued to provide immigration services only for applicants to the federal immigration program under the 2004 Agreement. He was therefore greatly surprised when, in November 2014, the Nova Scotia Immigration Office ("Nova Scotia") contacted him about commissions for five immigration applications on which he was listed as the authorized immigration representative for Welltrend Beijing. Under the Nova Scotia program, authorized immigration representatives were entitled to a commission of

$20,000 when an applicant received both a nomination certificate from Nova Scotia and a permanent resident visa from Canada.

[6] Upon further investigation, it became evident that Welltrend Beijing had forged Mr. Bao's signature on 25 applications to Nova Scotia, which had paid Welltrend Beijing the $20,000 commission on 20 of them. Once Mr. Bao told Nova Scotia about the forgeries, it decided to pay the five outstanding commissions to the successful immigrants, rather than to Welltrend Beijing or Mr. Bao.

[7] Mr. Bao pressed Welltrend Beijing to compensate him for its wrongdoing. Negotiations ensued in early 2015, culminating in a tentative agreement the judge described as follows:

> [37] The draft agreement stipulated that Welltrend would offer a written explanation to Nova Scotia for having put Mr. Bao's signature on the applications. The explanation would provide the history and current status of cooperation between Mr. Bao and Welltrend Beijing and it would reveal that Mr. Bao had been signing blank forms for Welltrend's use during their 10-year relationship (I will return to this point later).
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> [38] Mr. Bao was to work with Welltrend in preparing that explanation and he would be required to support this explanation, regardless of whether it had incorporated his advice or not. The explanation, though, was to be drafted in a "true and honest manner."
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> [39] Mr. Bao was to become the legal representative for those persons whose applications were still pending as well as for three or four other applications that were being prepared. If Nova Scotia did not accept Welltrend's explanation for forging Mr. Bao's signature on the applications, Mr. Bao would be obligated to commence a lawsuit against Nova Scotia, presumably seeking an order that it must accept Mr. Bao as a legal representative and pay the commissions. Mr. Bao would be required to pay for that lawsuit.
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> [40] Mr. Bao would receive 1 million Yuan, half of which was to be paid up front and the other half upon the conclusion of the matter even if the lawsuit was not ultimately successful. Mr. Bao would agree to release Welltrend from any further claims in the matter, but, if further forgeries of his signature are discovered, Welltrend would compensate Mr. Bao $50,000 for each occasion.

The agreement was never finalized, however, as Welltrend Beijing walked away from negotiations. On February 24, 2015, Mr. Bao commenced the underlying lawsuit.

[8] I note parenthetically that the parties' efforts to resolve the underlying dispute would normally be inadmissible as subject to settlement privilege. However, Mr. Bao led the evidence, and ultimately the judge used it only against Mr. Bao's interest in assessing his claim for punitive damages.

At Trial

[9] The respondents filed substantive responses to the notice of civil claim, thereby attorning to the jurisdiction of the Supreme Court. They retained counsel (both of whom eventually withdrew) and attended examinations for discovery (although they refused to complete them). The respondents ultimately elected not to appear at trial. The judge was satisfied that they had received notice of trial while represented by counsel, and the trial proceeded in their absence.

[10] Mr. Bao sued the respondents for breach of the 2004 Agreement, conspiracy to injure, fraud, and unjust enrichment. He sought disgorgement of $1.25 million from Welltrend Beijing: the full $50,000 fee it received for each of the 25 clients it helped apply to Nova Scotia using Mr. Bao's forged signature. Mr. Bao also sought disgorgement of the $400,000 Welltrend Beijing received from Nova Scotia in commissions for the 20 clients who had succeeded in obtaining both nominee certificates and residency permits before the forgeries were discovered.

[11] The judge concluded that the claims in conspiracy to injure, fraud, and unjust enrichment could not succeed on the record before him. However, he found that Welltrend Beijing breached an implied term of the 2004 Agreement "that Welltrend Beijing would not forge Mr. Bao's signature on any document and certainly not the provincial nominee applications": at para. 62. In addition, on his own motion, the judge held that if he were wrong about the breach of the contract, in the alternative, Welltrend Beijing was liable for the tort of misappropriation of personality.

[12] Turning to damages, the judge rejected Mr. Bao's plea for disgorgement of all fees paid to Welltrend Beijing, finding that sum would be disproportionate to the economic value of the right that was breached: at paras. 88, 94. He also took into account Mr. Bao's willingness to work with Welltrend Beijing to retroactively validate

the forged applications, and his questionable practice of routinely providing Welltrend Beijing with signed blank application forms in his capacity as a lawyer, allowing others to fill in the contents above his signature—a practice the judge found "likely contributed to an atmosphere in which Welltrend felt more at ease with forging his signature on the Nova Scotia applications than it might have otherwise": at para. 92.

[13] Ultimately, the judge assessed damages based on the $20,000 commissions Nova Scotia paid to Welltrend Beijing, saying:

> [98] A third approach to assessing the appropriate measure of damages is to consider the fact that the Nova Scotia government pays the $20,000 commission to the authorized immigration representative identified on the application. It is not payable to an immigration consulting firm that is not registered with the Government of Canada. In other words, by inserting Mr. Bao's name on the application forms, Welltrend Beijing essentially acknowledged that Mr. Bao was the person entitled to the commission and not Welltrend Beijing. Had it entered into some agreement with Mr. Bao to obtain his consent to act as the immigration representative in his capacity as a lawyer, it would likely have reached an arrangement with Mr. Bao to share that commission. Mr. Bao had already done many applications for Welltrend Beijing's clients for considerably less money than the $20,000 commission that Nova Scotia would potentially pay.
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> [99] However, since Welltrend Beijing did not enter into any agreement with Mr. Bao to this effect and simply used his name and copied his signature without consent, it relinquished any ability to claim a share of the $20,000 commission that Nova Scotia would pay to the authorized immigration representative.
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> [Emphasis added.]

The judge therefore awarded Mr. Bao $400,000 in damages, plus costs against Welltrend Beijing. He dismissed the claims against Welltrend Canada Consulting Inc. and the individual defendants, saying:

> [68] As breach of contract is the basis on which I find liability, the claims against the remaining defendants, including Welltrend Canada must be dismissed. Mr. Bao's contract was with Welltrend Beijing. It is not known who falsified Mr. Bao's name on the immigration application documents but that person did so on behalf of Welltrend Beijing thereby causing the breach of contract. Since Mr. Bao's contract is with Welltrend Beijing, that is the only party that can be liable for the breach. Mr. Bao has not pleaded or made any submissions that Welltrend Beijing's corporate veil can be pierced to impose personal liability on any of the individually-named defendants.

[Emphasis added.]

On Appeal

[14] Mr. Bao raises four grounds of appeal, which I would reframe as follows:

1. The judge erred in failing to impose liability on the individual respondents on the basis of conspiracy and fraud; and

2. The judge erred in refusing to award punitive damages.

[15] I turn now to the first ground of appeal.

1. Liability of the Individual Respondents

Fraudulent Misrepresentation and Conspiracy

[16] Mr. Bao submits that the individual respondents should be found jointly liable with Welltrend Beijing on the basis that the company was merely a puppet or agent of the individual respondents, who used it to perpetrate a fraud. He contends that in these circumstances it is open to the Court to pierce the corporate veil: *Salomon v. Salomon & Co Ltd*, [1897] AC 22; *Scotia McLeod Inc. v. Peoples Jewellers Ltd.,* 1995 CanLII 1301 (ON CA). This argument was not raised at trial, so we do not have the benefit of the judge's assessment of the issue based on the record before him. However, even if we were to grant leave to Mr. Bao to raise the new argument on appeal, in my view it could not succeed. That is so because the judge expressly rejected the claim in fraud that Mr. Bao relies on to hold the individual respondents liable for the acts of Welltrend Beijing. I agree with his conclusion in this regard.

[17] The elements of fraudulent misrepresentation, also known as civil fraud, are as follows:

1. The defendant makes a false representation to the plaintiff;

2. Knowing the representation is false or reckless as to its truth;

3. The false representation causes the plaintiff to act; and

4. The plaintiff suffers a loss in so doing.

(*Bruno Appliance and Furniture, Inc. v. Hyrniak*, 2014 SCC 8 at para. 21)

[18] There is no doubt that Welltrend Beijing's action in forging Mr. Bao's signature amounted to a fraudulent representation that an immigration lawyer represented the applicants and authored the applications. However, as the judge noted, Welltrend Beijing made that misrepresentation to Nova Scotia, not to Mr. Bao, and Nova Scotia, not Mr. Bao, relied on it. There is no evidence that Nova Scotia suffered harm thereby, but it is not necessary to resolve that issue. Put simply, Mr. Bao cannot establish the elements of civil fraud. I therefore find no error in the judge's conclusion that Mr. Bao could not succeed in a claim for fraudulent misrepresentation against the respondents.

[19] I reach the same conclusion with respect to the tort of conspiracy to injure or unlawful means conspiracy—the second basis Mr. Bao relies on to hold the individual respondents liable for damages. The judge observed, again correctly, that an agreement between two or more persons is an essential element of the tort of conspiracy: *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 72. He found there was no evidence that two or more of the respondents agreed with one another to do something unlawful or to otherwise harm Mr. Bao: at para. 57. Mr. Bao contends the judge erred by requiring direct evidence of a conspiracy, when such agreements must in most cases be inferred from circumstantial evidence—such as the family relationships among the individual respondents and the closely-held nature of the corporate respondents.

[20] I would not accede to this argument. The judge was alive to the fact that someone at Welltrend Beijing forged Mr. Bao's signature but found nothing to suggest that two or more respondents had worked together to that end. The existence of evidence from which such an inference could have been drawn does not establish a palpable and overriding error of fact. It was open to the judge to

weigh the evidence before him and to decide not to draw that inference. I see no basis to disturb his finding on this point.

[21] Having so far concurred with the judge's analysis, I must respectfully part company with him on his assessment of the claims for breach of contract, unjust enrichment, and misappropriation of personality. In doing so I am mindful that the judge did not have the benefit of submissions from the respondents, and that Mr. Bao, although a lawyer, was self-represented.

Breach of Contract

[22] As I noted earlier, the judge found that Welltrend Beijing breached an implied term of the 2004 Agreement "that Welltrend Beijing would not forge Mr. Bao's signature on any document and certainly not the provincial nominee applications": at para. 62. The judge addressed the breach of contract claim without referring to the law governing implied contractual terms. In my respectful view, he thereby fell into error.

[23] Terms cannot be implied into a commercial agreement merely because it seems fair or convenient. The terms must be necessary to give efficacy to the contract, or to avoid the contract being incoherent. In *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.*, [1999] 1 S.C.R. 619, Justice Iacobucci, for the Court, set out the three ways in which a term may be implied into a contract:

> (1) based on custom or usage;
>
> (2) as the legal incidents of a particular class or kind of contract; or
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> (3) based on the presumed intention of the parties where the implied term must be necessary "to give business efficacy to a contract or as otherwise meeting the 'officious bystander' test as a term which the parties would say, if questioned, that they had obviously assumed".

[24] The 2004 Agreement was a straightforward one. Mr. Bao agreed to provide services to Welltrend Beijing's clients applying to the Government of Canada for

Canadian immigration status, and Welltrend Beijing agreed to pay him for this work. In my view, it cannot be said that a term requiring Welltrend Beijing not to forge Mr. Bao's signature on documents submitted to other governments was necessary to give efficacy to that agreement. Nor could it be said that "it went without saying" that such a term was intended.

Unjust Enrichment

[25] I would also respectfully disagree with the judge's conclusion that a claim in unjust enrichment was not available to Mr. Bao on the record before the Court. On this issue, the judge said:

> [61] I also find that the claim of unjust enrichment does not help Mr. Bao. Unjust enrichment requires an enrichment by the defendant, a corresponding deprivation on the part of the plaintiff, and the absence of a juristic reason for the enrichment: *Moore v. Sweet*, 2018 SCC 52 at para. 37. Welltrend Beijing has certainly been enriched by the use of Mr. Bao's signature but Mr. Bao has not suffered a deprivation. He and Welltrend reached no agreement on Mr. Bao providing services for Welltrend clients applying to provincial nominee programs and thus Mr. Bao had no entitlement or expectation to be remunerated for such applications. As stated in *Moore* at para. 43:
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> > [43] … Even if a defendant's retention of a benefit can be said to be unjust, a plaintiff has no right to recover against that defendant [in unjust enrichment] if he or she suffered no loss at all, or suffered a loss wholly unrelated to the defendant's gain.
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> [Emphasis added.]

[26] In my respectful view, the judge has construed unjust enrichment too narrowly. It is an equitable remedy. At the heart of the doctrine "lies the notion of restoring a benefit which justice does not permit one to retain": *Kerr v. Baranow*, 2011 SCC 10 at para. 31, citing *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762 at 788. The judge found that Mr. Bao did not suffer a deprivation because he and Welltrend Beijing had not reached an agreement on Mr. Bao providing services for Welltrend Beijing's clients applying to provincial nominee programs "and thus Mr. Bao had no entitlement or expectation to be remunerated": at para. 61 [emphasis added]. However, if Mr. Bao had reached an agreement pertaining to provincial applications, he would have had a contractual remedy and would not need to rely on equity at all.

[27] I conclude that Mr. Bao did suffer a deprivation when Welltrend Beijing used his signature on the provincial nominee applications to Nova Scotia. The framework of unjust enrichment "is a flexible one that allows courts to identify circumstances where justice and fairness require one party to restore a benefit to another": *Moore v. Sweet*, 2018 SCC 52 at para. 38 [*Moore*]. Although there must indeed be enrichment of the defendant and a corresponding deprivation of the plaintiff, it is not necessary that the disputed benefit be one conferred directly by the plaintiff on the defendant: *Moore* at para. 45, citing Prof. McInnes, *The Canadian Law of Unjust Enrichment and Restitution* (Ontario: LexisNexis Canada, 2014) at 155. The plaintiff must simply "demonstrate that the loss [they] incurred *corresponds* to the defendant's gain, in the sense that there is some causal connection between the two": *Moore* at para. 43. What is required is that the defendant was enriched at the plaintiff's expense: *Moore* at para. 43.

[28] Here, Welltrend Beijing had no right to use Mr. Bao's name and credentials to enable its clients' applications to be processed by Nova Scotia without engaging Mr. Bao's services and paying him for that benefit. Welltrend Beijing's actions deprived Mr. Bao of a share of the commissions from Nova Scotia upon the successful completion of the applicant's nominee process in return for using his name and credentials.

[29] The judge found that Mr. Bao would not have received the entire $20,000 commission for each client, but he assessed the deprivation on that basis nonetheless, finding Welltrend Beijing had "relinquished any ability to claim a share of the $20,000 commission" by forging Mr. Bao's signature: at para. 99. In my view, it would have been preferable to base compensatory damages on the share of the $20,000 commission Mr. Bao likely would have received, and to address the Court's disapprobation of the forgery through an award of punitive damages, a point I will return to in addressing the second ground of appeal.

Misappropriation of Personality

[30] Having concluded that the judge's order can be upheld on the basis of unjust enrichment, I wish, nonetheless, to address the judge's finding that Mr. Bao's claim against Welltrend Beijing could also succeed based on the tort of misappropriation of personality. For the following reasons, I am of the view that the judge erred in so finding.

[31] Mr. Bao did not plead the tort of misappropriation of personality. It was not raised at trial. The judge undertook the analysis on his own motion, without the benefit of any submissions. In so doing, he departed from the sound principle that cases are to be decided on the pleadings as framed or amended at trial. Otherwise, as the Ontario Court of Appeal observed in *Moore v. Sweet,* 2017 ONCA 182 at para. 39, there is a risk of unreliability and procedural unfairness. Although the judge in the present case concluded there could be no prejudice to the respondents because they chose not to participate in the trial, I would not agree. It is true that the risk was attenuated, but the risk of prejudice remained. The respondents were served with and responded to the notice of claim as pleaded. They decided not to attend to contest those claims at trial. It is possible that decision was a strategic one, based on the causes of action in play.

[32] Further, and more importantly in the circumstances of this case, because the judge embarked on the assessment of the tort on his own motion, he did not have the benefit of submissions even from the plaintiff—submissions that could have alerted him to the problem to which I now turn.

[33] The judge relied on Ontario and Alberta cases in assessing whether the tort of misappropriation of personality could be established on the facts of this case: *Gould Estate v. Stoddart Publishing Co.*, 30 O.R. (3d) 520, 1996 CanLII 8209 (S.C.), *Konstan v. Berkovits*, 2023 ONSC 497 and *Hay v. Platinum Equities Inc.*, 2012 ABQB 204. However, Ontario and Alberta do not have a statutory civil cause of action for breach of privacy, such as that found in the *Privacy Act*, R.S.B.C. 1996, c. 373 [*Privacy Act*]. This Court has determined that, in light of those statutory

provisions, there is no common law tort for breach of privacy in British Columbia: *Mohl v. University of British Columbia*, 2009 BCCA 249 at para. 13.

[34] Although recently this Court in *Tucci v. Peoples Trust Company*, 2020 BCCA 246 at paras. 55, 64–68, suggested that it may be time to reassess whether B.C. needs a common law tort of privacy to address personal data breaches, that is a problem distinct from appropriation of someone's personality for commercial gain—a cause of action arguably covered by section 3 of the *Privacy Act*. In any event, the question of whether the statutory cause of action for breach of privacy in B.C. precludes recognition of a common law tort is a challenging one: *Situmorang v. Google, LLC*, 2024 BCCA 9 at para. 88. As Justice Horsman observed in that case, its resolution "would at least require an analysis of whether the *Privacy Act* evidences a legislative intent to create a comprehensive and exclusive code": at para. 88). Not surprisingly, given the absence of any submissions, the judge did not undertake this analysis. In my view, it would not be appropriate to address the issue on appeal in these circumstances.

[35] In summary on the first ground of appeal, I would uphold the judge's order awarding Mr. Bao $400,000 in damages payable by Welltrend Beijing but would do so on the basis of unjust enrichment.

2. Punitive Damages

[36] Mr. Bao submits the judge erred in refusing to award an additional $600,000 in punitive damages. This ground of appeal can be addressed summarily.

[37] Punitive damages engage a judge's discretion. They are reviewed on a highly deferential standard, based on the appellate court's estimation as to whether the award serves a rational purpose: *Hill v. Church of Scientology of Toronto,* [1995] 2 S.C.R. 1130 at para. 197 [*Hill*]. Punitive damages are awarded in exceptional cases for malicious, oppressive and high-handed misconduct that offends the court's sense of decency: *Hill* at para. 196. They are non-compensatory in nature, intended to punish the defendant rather than reward the plaintiff. If the compensatory damages are sufficient to adequately achieve the objectives of retribution, deterrence and

denunciation, punitive damages should not be awarded: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 87.

[38] The judge applied this principle in the present case, finding the award of $400,000—which was more than Mr. Bao would have received if retained to assist with the 20 applications—was sufficient to achieve the objectives of retribution, deterrence and denunciation: at para. 106.

[39] In declining to award punitive damages, the judge also considered Mr. Bao's role in signing numerous blank application forms for Welltrend Beijing, which he found "contributed to an environment in which Welltrend Beijing likely felt some ease in forging his signature": at para. 107. Mr. Bao argues the judge erred in considering this conduct, which he says is an irrelevant factor. I do not agree. Punitive damages reflect the court's disapprobation of the defendant's misconduct. That conduct is necessarily assessed in the circumstances of the particular case. If the plaintiff's conduct in some way lessened the moral culpability of the defendant, it can be put into the mix in determining the severity of the misconduct and the corresponding need for denunciation and punishment.

[40] The judge recognized that the general award of damages of $400,000 overcompensated Mr. Bao given that he would have received only part of the $20,000 commission paid by Nova Scotia for each client: at paras. 100, 106. As I have already noted, it would have been preferable to assess damages for unjust enrichment based on the "market value" of the benefit Mr. Bao should have received, and to make a separate award of punitive damages to bring the total award to the $400,000 the judge found to be sufficient to both compensate Mr. Bao and deter and punish Welltrend Beijing. However, on either basis the award remains the same. No cross-appeal has been filed challenging the quantum of the award, and I would not interfere with it.

Disposition

[41] For the reasons given, I would dismiss the appeal.

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Justice Dickson"

I AGREE:

"The Honourable Justice Fleming"