

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Oscar Wong

Plaintiff

– and –

Jennifer Li, also known as Jennifer Ho,
Raymond Ho also known as Ray Ho,
Jasmine Yu, also known as Jasmine Kit
Man Yu, also known as Kit Man Yu, also
known as Jasmine Shum, also known as
Jasmine Kit Man Shum, Grace Lee, also
known as Grace Man Chen Lee, also known
as Man Chen Lee also known as Grace Man
Chen Chan, Maureen French, also known as
Maureen Theola French, Ragavan Thamby
and Carlton Stewart, also known as Carl
Stewart

Defendants

)
)
)
) Steven Bellissimo and Yuchen Song, for the
) Plaintiff

)
)
)
)
) Richard J. Worsfold and Reshma Kishnani
) for the Defendant, Jasmine Yu, also known
) as Jasmine Kit Man Yu, also known as Kit
) Man Yu, also known as Jasmine Shum, also
) known as Jasmine Kit Man Shum

)
) Daniel Lawson, for the Defendants, Jennifer
) Li, also known as Jennifer Ho, Raymond Ho
) also known as Ray Ho

)
)
) **Heard: November 18, 19, 20, 21, 25, 26,**
) **27, 28, 29, December 2, 3, 4, 2019 and**
) **January 16, 2020**

TRIAL DECISION

SUTHERLAND J.:

Introduction

[1] The plaintiff, Oscar Wong (“Wong” or “the plaintiff”) is a lawyer. He has been practicing law in the Province of Ontario over 40 years. He was called to the bar in April 1977. He first worked in a law firm in downtown Toronto and then in 1996 he left that firm to open

his own practice located in Richmond Hill, Ontario. His practice is a general practice doing corporate/commercial law, purchase and sale of businesses, residential and commercial real estate and civil litigation. In 2007, Wong's law practice became a professional corporation: Oscar C. Wong Professional Corporation.

- [2] The defendants, Jennifer Li ("Li"), Jasmine Yu ("Yu") and Raymond Ho ("Ho") are the remaining defendants in this proceeding and at trial, defended the action of Wong.¹
- [3] Li and Yu were real estate clerks who worked for Wong for approximately 7 years and Ho is the married spouse of Li (collectively "the Defendants").
- [4] In 2007, Wong was investigated by the Law Society of Upper Canada (LSUC), now the Law Society of Ontario which resulted in an application being commenced for his failure, as the principal lawyer, to supervise 24 transactions involving 12 residential properties². He admitted to facts that he failed in his obligation to supervise and on August 30, 2012 was suspended for four months from the practice of law and was ordered to pay \$10,000 in costs.
- [5] The LSUC appealed. On September 9, 2013, the appeal tribunal did not vary the suspension time but increased the amount of costs ordered to pay to \$50,000. Wong's suspension ended and he returned to practicing law on April 2, 2013.
- [6] Wong's action is for damages suffered due to the conduct of the Defendants, which pertain to 6 residential properties³, 14 transactions of the 12 residential properties, 24 transactions that involved the LSUC. Wong claims that Li and Yu owed him a fiduciary duty and they breached that duty. He further claims that Li, Yu and Ho's actions against him amounted to fraud and deceit/fraudulent misrepresentation. Wong also claims that the defendants conspired against him and seeks punitive damages.
- [7] For the reasons to follow, I dismiss the action against, Yu, Li and Ho.

The relationship between Wong, Yu and Li

- [8] In 2003, Wong was seeking additional staff for his residential real estate practice. The market for real estate was strong and his practice was growing.

¹ The other defendants were either had the action discontinued against them or obtained an order dismissing the proceeding against them.

² The properties were: 292 Port Royal Trail, Toronto; 370 Balkan Road, Richmond Hill; 27 Cartier Crescent, Toronto; 170 Galbraith Crescent, Markham; 560 Sewells Road, Toronto; 38 Lee Centre Drive, Unit 1707, Toronto; 21 Raspberry Road, Toronto; 3986 Ellesmere Road, Toronto; 19 Myrna Lane, Toronto; 55 Dylan Street, Toronto; 148 Olive Avenue, Oshawa; and 65 Leitch Avenue, Toronto.

³ The properties were: 292 Port Royal Trail, Toronto; 27 Cartier Crescent, Toronto; 38 Lee Centre Drive, Unit 1707, Toronto; 55 Dylan Street, Toronto; 148 Olive Avenue, Oshawa; and 65 Leitch Avenue, Toronto.

- [9] Wong testified that in early 2003, Yu called him and asked if he was seeking real estate law clerks. He indicates that Yu told him that she and another clerk were both experienced. He met with both, Li and Yu. He did not review their respective resumes that intently. Wong testified that he does not believe in resumes. He indicated that he wishes to sum people up. Are they trustworthy and can they learn? He indicated that Li worked for a real estate lawyer he knew, Shirley Yee. Yu worked in a related industry. He was confident that it would take no more than 2 years for them to become very competent in real estate work.
- [10] Wong acknowledged in cross-examination that in 2003 Yu had very little real estate clerk experience. Li did have around four years of experience from working at another real estate's lawyer's office, Steven Chan.
- [11] The agreement between Wong, Li and Yu were that they would receive compensation on a percentage basis on the fee paid per transaction. He initially offered 50% but agreed on 60% to them and 40% to him.
- [12] Wong stated that their primary purpose was to do residential real estate work. They would be on "probation" for a few months for him to observe their work. He indicated that during this probation period, he would work with them very closely in order to assess them and their work.
- [13] The system that was implemented was that:
- a. Wong would review files brought in and would assign the file with a file number and designate who brought in the file.
 - b. All deposits on their files would be processed through one deposit book. Li and Yu were given an independent deposit book for their files.
 - c. All deposits would be deposited to the trust account.
- [14] Wong testified that he believed in a system of delegation. He let his clerks do the work. If they had any questions or concerns on any of their files, they could come to him. If there was any question on drafting, his staff could go to him. He had an open-door policy with his staff. He would at time to time send memorandums to his staff to highlight office process and concerns on real estate transactions such as badges of fraud including mortgage fraud.
- [15] Yu started working at the firm first and Li came on board later. Wong testified that after the three-month period he had no concerns with Li and Yu or their work. Each continued to work for him until the beginning of 2010 when Li left, and then Yu left later in 2010.
- [16] Neither Yu nor Li had signing authority on any cheques. They could sign standard letters for title searches, request for information from municipalities, utilities and condominium corporations. Wong would sign most of the title requisition letters, mortgage financing

instruction confirmations, undertakings, requisition for funds, reporting letters, accounts for services and trust ledgers.

- [17] After the probation period, Wong was satisfied with both Li and Yu and both started working independently. As Wong put it: "Both had full delegation of him."
- [18] There was no written contract or written terms setting out of the terms of their business relationship.
- [19] Li in her testimony did not dispute much of Wong's testimony as it pertains to the interview, her work experience and that Wong allowed her to work independently. She testified that she did work 9-10 years with Ms. Yee (not Mr. Chan) as a clerk. Ms. Yee had a family and real estate law practice. As her experience increased, she worked more independently at Ms. Yee's office. Ms. Yee, Li testified, did 99% residential real estate. Li indicated that she left Ms. Yee's office and went to work with Wong.
- [20] Li indicated that Yu told her about the opportunity to work as a contractor at Wong's office. Yu set up the interview with Wong and they both attended for the interview.
- [21] At the interview, Li testified that Wong asked questions concerning her experience, her duties at her previous places of employment and where she worked. Li indicated that she brought a resume, but Wong did not look at it. She agreed that the compensation was a 60% for 40% split. She and Yu would receive 60% of the fees paid per transaction. She characterized the compensation as very generous.
- [22] After the interview and the job offer from Wong, Li submitted her resignation at Ms. Yee's office and joined Wong's office three weeks later. Li testified that Yu had commenced work at Wong's office just prior to her start. Li testified that a few years after commencing work with Wong, she incorporated, and that Wong would pay her corporation the compensation. She characterized her relationship with Wong as an employer/employee one with Wong being her boss.
- [23] Li confirmed that she worked independently. She had no authority to sign cheques. Wong would sign the cheques, reporting letters, mortgage instructions and title requisition letters. Li would prepare the letters and the letters would be presented to him for his review and signature. Wong signed the statement of adjustments and the trust ledgers were completed by others in the office, not her. She agreed that Wong had an open-door policy and if there were any questions or issues with a file, she would go to him for directions. Li agreed that Wong gave her and Yu a deposit book to deposit cheques in the firm accounts.
- [24] Yu's testimony of the interview with Wong, her work expectations, and compensation is very similar to that of Wong and Li.
- [25] Yu testified that her experience as a clerk in residential real estate was limited. She indicated that she received a Business Administration Diploma from Mohawk College with no formal training or education with respect to working as either a law clerk or legal

assistant. She indicated that she worked at the law office of Shirley Yee for approximately two to three years. Her job responsibilities were administrative and in her last year of her employment with Ms. Yee, she began to assist in real estate transactions. Yu explained that she used the software program Conveyancer and taught herself the program. She then left Ms. Yee's office and worked for Stephen Chan's law office in Mississauga, as a real estate assistant for approximately two years. Again, she explained that she used Conveyancer program to prepare documents and relied upon Mr. Chan to provide instructions with respect to title searches, requisition letters and mortgage instructions.

- [26] After Mr. Chan, she worked at a friend's condominium as an assistant condominium manager. While working at the condominium, she was approached by an individual who worked for a client of Wong who told her that Wong was looking for assistants to provide assistance with growing his real estate practice.
- [27] Yu indicated that at the interview she did not provide Wong with a resume because he did not request one. He asked her questions about her work experience and asked questions concerning her knowledge of residential real estate.
- [28] She was offered the job and started working about a month before Li.
- [29] Yu confirmed that Wong had an open-door policy and if there was any issue or question about a file, she could go to him. She testified that Wong's office did not use Conveyancer. She and Li bought Conveyancer for themselves and started using that program, for they were both most familiar with Conveyancer.
- [30] Yu testified she would sign letters to municipalities and condominium corporations for information but did not sign reporting letters, title requisition letters, mortgage instructions, accounts or with trust ledgers. This was signed by Wong. She confirmed that she would sign mortgage requisition letters if it was not an unusual financing transaction. If it was more than a typical one mortgage transaction, Wong would sign. She agreed that she and Li had the use of a deposit book to deposit cheques into Wong's trust account but all cheques were signed by Wong.
- [31] The undisputed evidence is that Li and Yu had no authority to sign cheques. But both were able to print cheques from the accounting software, PC Law.
- [32] Both Li and Yu testified that they did not have work hours per se. They would normally get into work before 10:00 a.m. Some days they would not go into Wong's office because would have no real estate closings to work on. They further testified that they did not receive any benefits from Wong except for their pay per transaction. Li testified that the work week was approximately 20-30 hours per week. This evidence was not disputed by Wong.
- [33] Li agreed that Wong had an open-door policy and if there were any issues or questions on a transaction, she could talk to him.

- [34] Yu, like Li, after a few years doing work for Wong, incorporated and their respective company thereafter was paid by Wong.
- [35] Wong testified he monitored Li and Yu's work at the beginning and concluded that Li and Yu knew were competent and passed probation. Thereafter, he let them work independently. He trusted both and delegated to them the authority to process real estate transaction independently. This was part and parcel of his management style: delegate and let his clerks work independently. If there was an issue on any of the transactions they were handling, they would come to him. Both Li and Yu terminated their relationship with Wong in 2010. Li terminated in early 2010. Yu terminated months later. On June 11, 2010, Wong sent a letter, by email and mail, to Li alleging fraud, conspiracy and putting her notice of a claim for compensation. No such letter was sent to Yu. The second paragraph of the letter to Li states:

It has come to my attention that there is a strong basis to conclude that at the time when you were working in my office, you were involved in activities deemed to be fraudulent and/or amounting to conspiracy.

The LSUC

- [36] The LSUC started investigating Wong's practice in 2007. Over the time period of the investigation, the LSUC requested and reviewed 55 residential real estate files of Wong.
- [37] As indicated, the LSUC commenced an application against Wong's failure to supervise on 12 property files, 24 transactions. During this investigation, Wong was interviewed by LSUC investigators.
- [38] A hearing was commenced on the application which resulted in an admission of professional misconduct. Wong and the LSUC agreed on Admitted Facts (the "Admitted Facts").
- [39] In the Admitted Facts⁴, Wong's admissions included:
- i. His failure to disclose to lending institutions failure to receive deposits or receive the full amount of the deposit as indicated in the purchase agreement.
 - ii. His failure to disclose to lending institutions significant increase in price of property in a matter of weeks.
 - iii. Failure to advise lending institutions of the number of parties he acted for in a transaction, that there was no purchase

⁴ The Agreed Statement of Facts and Wong's response was marked as Exhibit 19.

agreement on a transaction or that the property had an existing mortgage registered on the property.

- iv. Failure to advise a lending institution that a purchaser did not advance any funds to complete the transaction.
- v. Failure to advise a lending institution that there was a surplus of funds on closing. Or that the purchaser received funds from the purchase of the property.
- vi. Failure to advise a lending institution that receipt of deposit which was originally to be paid to the lawyer but was paid to the vendor because the term in the purchase agreement was changed.

[40] On August 30, 2012, the Hearing Panel, in determining the appropriate sentence, stated:

[15] The duration and extent of Mr. Wong's lack of supervision is troubling. It lasted from 2003 to 2007. While there were 12 complaints or incidents that were the subject of evidence and admissions during that period, all the complaints arose out of the lack of supervision, which can be viewed as a systemic and continuing failure on Mr. Wong's part. He answered that over 30 years of practice his method of operating had been successful and had been without incident for over 20 years. Mr. Wong's failure to supervise multiple transactions over a three years period is a serious failure, which deserves more than a one-month suspension.⁵

[41] The Hearing Panel further stated they were not persuaded that Mr. Wong acted dishonestly:

[27] ...On the other hand, Mr. Wong did not review individual files or close real estate transactions in any meaningful way. He relied entirely upon his staff - an abdication of his professional responsibility. Although Mr. Wong's hands-off system operated successfully for many years, this was not professional conduct. Mr. Wong's practice was an accident waiting to happen. The accident occurred and Mr. Wong is paying the price. The price is not fairly based on a finding of dishonesty. There was an egregious degree of abdication, but the abdication was not total.⁶

⁵ Ibid, tab 4.

⁶ Ibid.

- [42] The Hearing Panel imposed a penalty of a four-month suspension and ordered Wong to pay \$10,000 in costs.
- [43] The LSUC appealed. The appeal was allowed in part. The Appeal Panel decision dated November 19, 2012 increased the award for costs to \$50,000 but did not change the period of suspension.
- [44] The Appeal Panel did not disturb the Hearing Panel's finding that there was no dishonesty on the part of Wong. The Appeal Panel did however disagree with the Hearing Panel's imposition of a four-month suspension. The Appeal Panel agreed with the Hearing Panel and found the abdication of responsibility by Wong as "troubling" and "systematic". The Appeal Panel would have imposed a suspension "within the range of 7 to 12 months."⁷
- [45] The Appeal Panel stated:

[57] That being said, we are mindful of the fact the Mr. Wong has already served the four-month suspension imposed on him. He has resumed practice. Imposing a further suspension on him at this stage would mean that he would have to close down his practice, through no fault of his own, for a second time. The hearing panel was satisfied that Mr. Wong took steps to rectify his practice prior to being charged with professional misconduct and is highly unlikely to re-offend. The misconduct ended six years ago. In the very particular circumstances, while we find that the hearing panel's penalty fell outside of the range of reasonable outcomes, we exercise our discretion not to impose an additional suspension at this time.⁸

Burden of Proof and Reliability

- [46] It is trite to state that in a civil action the burden of proof is on the plaintiff. The onus is on the plaintiff to prove, on the balance of probabilities, the wrongs he claims were committed against him by the defendants.
- [47] In assessing whether the plaintiff has met the onus, the court assesses not only the credibility of witnesses but also the reliability of their evidence. Wong has admitted at the LSUC hearing and in his evidence at trial that he did not supervise the processing of a real estate transactions as the work was being performed. Wong's evidence at trial was very much akin to that of an expert witness reviewing documentary evidence of each real estate transaction in question years after their completion. I am mindful of this fact when assessing the evidence of Wong with that of Li, Yu and Ho.

⁷ Exhibit 14, tab 6 at para. 49.

⁸ Ibid, at para. 57.

Issues

[48] The issues for the court to decide are:

- i. Did a fiduciary duty exist between Li and/or Yu and Wong?
- ii. If either Li or Yu or both owed Wong a fiduciary duty, did they breach that duty?
- iii. Did the conduct of Li, Yu and/or Ho amount to fraud or deceit/fraudulent misrepresentation against Wong?
- iv. Did Li, Yu or Ho conspire against Wong?
- v. If Li and /or Yu breached a fiduciary duty owed to Wong or if the conduct of Li, Yu and/or Ho amounted to fraud and/or deceit/fraudulent misrepresentation and/or conspiracy, did Wong suffer damages?
- vi. If Wong did suffer damages, does the defence of illegality or *ex turpi causa non oritur actio* apply?
- vii. Is Wong's claim against Yu barred by the *Limitation Act, 2002*⁹?
- viii. If Wong did suffer damages and the defence of illegality does not apply, what is the quantum of those damages?
- ix. Did Li and Yu commit a fraudulent conveyance on the transfer of ownership of their matrimonial home?
- x. Should Wong be awarded punitive damages?

I: DID A FIDUCIARY DUTY EXIST BETWEEN LI AND/OR YU AND WONG?

[49] There are two forms of fiduciary duty relationships: *per se* and *ad hoc*. *Per se* fiduciary duties involve limited form of relationships such a solicitor-client, doctor-patient and trustee-beneficiary. *Ad hoc* fiduciary duty encompasses an expanding form of relationships based on the circumstances of each specific case.¹⁰

⁹ S.O. c. 24, Sched. B

¹⁰ *Elder Advocates of Alberta Society v. Alberta*, 2001 SCC 24 at paras. 27-36; *Galambos v. Perez*, 2009 SCC 48 at paras. 68-78; *Stirrett v. Cheema*, 2020 ONCA 288 at paras. 47-56 and *The Catalyst Capital Group Inc. v. Dundee Kilmer Developments Limited*, 2020 ONCA 272 at paras. 61-65.

[50] *Ad hoc* fiduciary relationship is pertinent to the circumstances of this case. *Per se* fiduciary relationship is not.

[51] *Ad hoc* fiduciary relationship exists when three elements are demonstrated:

- i. an undertaking, express or implied, by the alleged fiduciary to act in the best interests of a beneficiary. The claimant must be able to point to a forsaking by the alleged fiduciary of the interests of all others in favour of those of the beneficiaries in relation to the specific legal interest at stake;
- ii. the identification of a defined person or class of persons who are vulnerable to the alleged fiduciary in the sense that the alleged fiduciary has a discretionary power over them; and
- iii. the alleged fiduciary's power may affect the legal or substantial practical interests of the beneficiary.¹¹

[52] For an *ad hoc* fiduciary relationship, all three elements must exist.

An undertaking, express or implied, by the alleged fiduciary to act in the best interests of a beneficiary.

[53] The alleged beneficiary must point to an undertaking, expressed or implied, that the alleged fiduciary has done that relinquishes self-interest.¹² The circumstances of the parties' relationship is relevant to the enquiry of whether there is such an implied undertaking by the alleged fiduciary.¹³

[54] In the circumstances of this case, the plaintiff has not directed the court to an act/undertaking that implies that Li or Yu act selfless and in the best interest of the plaintiff. Li and Yu were paid per transaction by the plaintiff. They were paid for work performed to close residential real estate transactions. They were not contracted to work exclusively for the plaintiff. Though the evidence indicates that both Li and Yu worked for only the plaintiff. But there is no evidence that the plaintiff can point the court to that indicates that Li or Yu were prevented from working for others.

[55] The overall evidence indicates that the relationship between Li, Yu and Wong was that akin to an independent contractor paid per transaction. Li and Yu were not subject to strict hours of working. They were able to attend when they deemed it necessary to do so. There would be days that neither would attend Wong's office for they did not have pending real estate closings to work on. There was no evidence that either received any benefits from

¹¹ *The Catalyst Capital Group Inc. v. Dundee Kilmer Developments Limited*, supra, footnote 10 at para.65.

¹² *Galambos*, supra, footnote 10 at para. 78.

¹³ *Ibid*, at para. 79.

Wong, outside of their pay per transaction. They were not always present during Wong's meeting with staff.

- [56] The substance of the relationship, akin to an independent contractor, did not forsake Li and Yu from their own respective self-interest for the interest of Wong. The extent of their relationship with Wong was to perform real estate transactional work that was monitored by Wong.
- [57] Hence, I am not satisfied that the first element exists. I do not find that Li and/or Yu provided an undertaking, express or implied, to act in the best interests of Wong.

The alleged fiduciary has a discretionary power over the beneficiary

- [58] The alleged fiduciary must have the scope of discretionary power which affects the beneficiary's legal or practical interests and the fiduciary must be entrusted with such power in order to perform their functions.¹⁴
- [59] The plaintiff has not presented evidence that indicates that Li and /or Yu have delegated discretionary power of him. Li and Yu were akin to independent contractors. Neither one of them had authority to make decisions pertaining to Wong's law practice nor did they have any authority to withdraw monies from Wong's law practice delegated to them from Wong. Their authority was limited to performing residential real estate transactions to close such transactions. Their delegated authority, through the evidence of the plaintiff, was the closing of real estate transactions. However, this delegated authority presented by the plaintiff was fully reviewable by and subject to the plaintiff. The closing of real estate transactions was subject to the supervision and authority of the plaintiff. I accept the evidence of Li and Yu that if they had issues with respect to transactions arose, they went to Wong to obtain his direction and approval.
- [60] Moreover, I do not accept the testimony of Wong that he delegated authority to Li and Yu as if they were him. He did not do such a thing. He signed the mortgage instructions letters. He signed reporting letters and the trust statements on most of the real estate files presented. He signed all cheques. He opened the residential real estate files. Li and Yu did not. He had the reins and authority. He was the one in control of the residential real estate files.
- [61] In the circumstances of this case, I am not persuaded that the plaintiff delegated authority to Li or Yu. He abdicated his authority. He failed or refused to perform his responsibility to supervise the residential real estate transactions. This in my opinion is not delegation or transfer of discretionary power to the Li or Yu.
- [62] Hence, I am not satisfied that the second element exists.

¹⁴ Ibid, at paras. 83 and 84.

The alleged fiduciary's power may affect the legal or substantial practical interests of the beneficiary

[63] Given that I have found that Li and/or Yu had no delegated discretionary power over Wong, there is no such power that may affect the legal or substantial practical interest of Wong.

[64] Hence, the third element does not exist.

[65] Consequently, I am not satisfied that the plaintiff has proven on the balance of probabilities a fiduciary duty exists between either Li or Yu and the plaintiff.

II: DID LI OR YU BREACH THEIR FIDUCIARY DUTY?

[66] Due to my conclusion that Li and Yu did not owe a fiduciary duty to Wong, I did not consider this issue.

[67] I will now turn to the conduct of Li, Yu and Ho on the six properties in question.

III: DID THE CONDUCT OF LI, YU AND/OR HO AMOUNT TO FRAUD OR DECEIT/FRAUDULENT MISREPRESENTATION AGAINST WONG?

[68] Wong has claimed the conduct of Li, Yu and/Ho on six real estate properties and the transactions pertaining to those properties were fraudulent and deceitful. I will deal with each property separately grouped to the defendant that performed the work.

Properties that pertain to Yu

38 Lee Centre Drive, Unit 1707, Toronto

[69] Wong was retained to act for the purchaser of condominium 35 Lee Centre Drive, Unit 1707, Toronto (35 Lee Centre).

[70] The purchase was a newly constructed condominium unit from the Convention Plaza Ltd. (Convention) pursuant to an Agreement of Purchase and Sale dated June 23, 2001. This purchase was a referral from Grace Lee (Lee), a real estate agent that is known by Yu, Li and Wong. Ms. Lee has referred numerous real estate closings to Wong. The unadjusted sale price for the unit was \$171,700.

[71] Yu was the real estate clerk who was responsible to handle the interim occupancy closing on November 2, 2004. The final closing and transfer of title of the unit was handled by Lee months later, January 2005. At the time of the transfer of title and final closing, Yu was not in the country. She was in Hong Kong due to illness and funeral of her father.

[72] At the interim occupancy stage there were issues with respect to this transaction. Yu discovered that there was an issue concerning the name of the purchaser. The Agreement of Purchase and Sale has the name of Thayarani Ragavan (Thayarani) with a date of birth

of March 9, 1965. However, the individuals who retained Wong and provided instructions was Thamby Ragavan (Thamby) with a date of birth of April 2, 1961 and Mary Tharani Anthonipolai (Mary) with a date of birth of March 9, 1965.

- [73] Yu testified that she sought Wong's instructions on what to do. She indicated that Wong told her to advise the vendor's lawyers, Miller Thompson LLP. This evidence is not disputed by Wong. The name of the prospective purchaser was changed to Thamby and an amending agreement was executed to this effect.
- [74] Wong in his evidence indicates that there were several issues concerning the interim occupancy closing. He testified that at reviewing the documentation in the interim occupancy closing file that:
- i. It appears that Thamby signed the Agreement of Purchase and Sale when the Agreement of Purchase and Sale was not in his name.
 - ii. A different lawyer drafted a power of attorney in favour of Grace Lee.
 - iii. Yu wrote to Lee on October 19, 2004 to advise of the cheques required from interim closing. Lee was not the purchaser nor was she a person designated by the purchaser to provide instructions on the interim closing. No correspondence was found in the file at this stage which was sent to Mary or Thamby.
 - iv. A promissory note was in the file dated October 2004 from Mary to Grace Lee.
 - v. The promissory note had changes to the amount to \$42,925 from \$9258.30 plus costs which changes were not initialed. The principal amount in the body of the promissory note was not changed.
 - vi. Lee appeared to have signed the promissory note on behalf of Mary.
 - vii. The amended amount in the promissory note appears to be the total of the deposits owed on final closing and not the amount required for interim closing payable to the vendor's lawyer.
 - viii. The cheques provided by the purchaser that were forwarded to the vendor's lawyer for monthly occupancy expenses appear to be from an account that is not that of Mary of Thamby. The cheques appear to be signed by Lee. There are directions regarding title in the file signed by Thamby and by Lee.
 - ix. There are numerous powers of attorney in the file that are amended in writing that do not appear to be initialed by Mary or Thamby. The power of attorney from Lee and Kan M. Tenn. appear to have been signed by Thamby and witnessed by both Yu and Li.

- [75] Wong testified that the means on the processing of the interim closing by Yu show badges of fraud that Yu was a participant. There is no other reasonable explanation on a relatively straight forward transaction of interim closing of a condominium unit.
- [76] Yu testified that many of the documents she received were not prepared by her. She received them from Lee. They remained in the file for she was taught that all documentation on a transaction whether used or not must remain in the file.
- [77] Yu testified that she diligently followed the instructions of Wong. She received identification from the clients including picture identification. She drafted a power of attorney and the content and form was dictated by Wong. The powers of attorney provided by Lee were not used.
- [78] She consulted Wong on the discrepancy on the name of the purchaser on the Agreement of Purchase and Sale. The error was remedied by the vendor by Thamby executing an amending agreement with him as the purchaser.
- [79] Thamby attended at the office of Wong to execute a power of attorney in the form supplied and instructed by Wong and executed the interim closing documents in his name.
- [80] The interim closing was completed in November 2004.
- [81] The Admitted Facts on this property do not relate to the conduct of Yu on the interim closing. Wong admitted to failing to supervise the final closing processed by Lu on an Agreement of Purchase and Sale dated December 30, 2004 as between Lee as purchaser and Thamby as vendor and not the interim closing processed by Yu.

65 Leitch Avenue, Toronto

- [82] This transaction is a purchase by Sarina Wang from Lucy Wang of 65 Leitch Avenue, Toronto (65 Leitch), pursuant to an Agreement of Purchase and Sale dated July 30, 2008 in the amount of \$689,000 with no money for a deposit to close on October 9, 2008 (the Agreement).
- [83] This is a transaction involving daughter (Sarina) and mother (Lucy).
- [84] Wong acted for both the vendor, the purchaser and the mortgagee, Bank of Montreal.
- [85] Yu testified that she sought direction from Wong a few times. Yu states that she realized that this matter was not usual. Yu testified that she spoke with Wong concerning the fact that the transaction was between daughter and mother and that there was no deposit in the Agreement of Purchase and Sale. Yu indicates that the note in the file that no deposit was required was a reminder to her and an indication in the file of the unusual fact of no deposit.
- [86] Yu states that Wong told her to prepare a specific Consent and Acknowledgment confirming that Wong was acting for both purchaser and vendor in a non-arm's length

transaction and Wong was not providing any legal advice on the value of the property or financial/tax advice. Yu stated that she did draft such a document and had both mother and daughter execute the documents, as instructed by Wong. Yu further testified that when the mortgage instructions were received from the Bank of Montreal, she took the file to Wong to have him execute the Request for Mortgage Funds. Yu testified that she specifically requested instruction from Wong on the special instructions of the Bank of Montreal concerning no secondary financing registered. According to Yu, Wong directed her to add a clause to the standard statutory declaration concerning the secondary financing clause in the Request for Mortgage Funds. The clause, as directed by Wong, was added to the statutory declaration. The Request for Mortgage Funds was signed by Wong.

- [87] Further, Yu testified that concerning the Title Insurance application, the title insurer requested a copy of the Agreement of Purchase of Sale and documents from the title abstract. The Agreement was sent along with the title abstract documents requested. Yu indicated a note in the report to the title insurer that the relationship between the buyer and seller was that of daughter and mother.
- [88] Further evidence of Yu is that approximately one month after the closing of this transaction, Wong provided independent legal advice and executed a Certificate of Independent Legal Advice concerning secondary financing, a second mortgage, being registered on title of the property.
- [89] Wong in his evidence did not contradict the evidence on Yu concerning the directions she requested and received from him concerning the Agreement of Purchase and Sale and the property. Wong also testified that it was his signature on the Request for Mortgage Funds and that it would probably had been him that provided independent legal advice on the second mortgage and would have executed the Certificate of Independent Legal Advice on the second mortgage.
- [90] Wong testified that he was not certain but believed the Agreement was the Agreement for this transaction. He testified that in his reviewing the file there was another Agreement of Purchase and Sale which indicated a deposit of \$20,000 and a different closing date. He did not believe this Agreement of Purchase and Sale was the Agreement that governed this transaction.

Properties that pertain to Li

292 Port Royal Trail, Toronto

- [91] There were two separate transactions concerning 292 Port Royal Trail, Toronto (292 Port Royal). The first was a purchase by Lau. The second was a sale by Lau to Huang. The court heard testimony from Wong on both transactions. However, the substance of Wong's claim is with the second transaction, as described in the Admitted Facts from the LSUC

hearing and as pled in his Amended Statement of Claim¹⁵. Hence, the court will focus on the second transaction.

- [92] To provide some context: Pursuant to Agreement of Purchase and Sale dated January 21, 2004, Wendy Lau purchased 292 Port Royal from Kwok-Man Leung and Lilia Leung for the price of \$285,000. This transaction occurred around February 24, 2004. Wong acted for Wendy Lau as purchaser. Wendy Lau is also known as Xiao Ying Lau (Lau).
- [93] Lau then entered into an undated Agreement of Purchase and Sale to sell 292 Port Royal for the price of \$340,000 with a \$15,000 deposit. The purchaser was Kai Yuen Huang (Huang). Huang was to obtain financing for the purchase in the amount of \$289,000. The closing date was March 30, 2004 (292 Agreement).
- [94] Wong acted for the vendor, purchaser and mortgagee, Home Trust Company (Home Trust). The transaction did close but on April 4, 2004.
- [95] The mortgage instructions indicated that Wong was to confirm that the secondary financing of 292 Port Royal did not exceed \$46,200. The purchaser did not provide any funds to complete the transaction.
- [96] Wong testified that the 292 Agreement did indicate that the vendor would finish the basement with one bedroom, living room and one three-piece bathroom, at her costs. The 292 Agreement called for two deposits. The initial deposit of \$15,000 and a further deposit of \$48,000, for a total of \$63,000 in deposits. No such deposits were paid, from Wong's review of the file.
- [97] Lau and Huang did sign a consent and acknowledgement that Wong could act for both.
- [98] Wong indicated that there is nothing in the file to show the mortgagee, Home Trust, was advised that he was acting for both the purchaser and vendor. He further testified that:
- i. It was not appropriate to act for both vendor and purchaser when they were not blood related or spouses.
 - ii. There is no indication that the work performed in the basement was done.
 - iii. There is no indication in the file that Home Trust was advised that the work in the basement was or was not done.
 - iv. There is no indication in the file that Home Trust was advised of the amount of the deposits paid or that the only funds received on closing was the advancement from Home Trust.

¹⁵ See pages 9, 10 and 11 of the Amended Statement of Claim.

- [99] Li testified the vendor and purchaser were related. She testified that they were brother and sister. The vendor was her handyman and Li disclosed this relationship to Wong. Li testified that she did confirm to Home Trust in a fax dated March 31, 2004 that secondary financing of \$45,800 will be registered on title and that a cash down payment in the amount of \$63,000 is confirmed. She confirmed that she signed the Solicitor's Interim Report on title and Request for Funds. She confirmed that she prepared the Statement of Adjustments that \$63,000 of deposits were provided and that the Direction re: funds dated April 2, 2004 was signed by her. Li further testified that the second mortgage cheque was made payable to Bank of Montreal to pay off the mortgage owed to the bank from the purchase by Lau. The monies were supposed to be paid to Wong in trust. These monies were provided by a private lender, Guohucan Zhao.¹⁶
- [100] Li testified that she was told by the clients that the deposits were paid, though she did not obtain any documentation confirming payment. She indicated that she would not have knowledge that Home Trust would know whether the deposits were paid except from her confirmation in the Statement of Adjustments.

27 Cartier Crescent, Toronto

- [101] There were three transactions on 27 Cartier Crescent, Toronto (27 Cartier) that were processed by Wong. The three transactions were:
- i. Agreement of Purchase and Sale dated October 23, 2004 with a scheduled closing on November 10, 2004 for the price of \$345,000.
 - ii. Purchase of 27 Cartier by Kan Ki Chan (Chan) under a power of Sale from Royal Bank of Canada in August 2006 for the price of \$250,500.
 - iii. Sale of 27 Cartier by Chan to Yuk Hong Lam (Lam) and Hua Yin Feng (Feng) pursuant to an Agreement of Purchase and Sale dated October 10, 2006 with a scheduled closing date of November 10, 2006 for the price of \$385,000 (Feng Agreement).
- [102] Wong pled the material facts of the last transaction in his Amended Statement of Claim against Li.¹⁷ I will focus on this transaction, the Feng Agreement.
- [103] The Feng Agreement indicated a deposit of \$10,000 to be paid to the purchaser's lawyer. Wong acted for the vendor. The purchaser's lawyer was Allan B. Shusterman. The deposit was made by the purchaser's lawyer to Wong in trust and those funds were made to Chan.

¹⁶ See exhibit 2, tab 29.

¹⁷ Pages 5 and 6 of the Amended Statement of Claim.

- [104] There was an existing mortgage in favour of the Bank of Montreal in the amount of \$162,386.37 which was discharged on closing. Chan also received a cheque on closing in the amount of \$211,595.65.
- [105] Wong testified that the Feng Agreement was sent to Li directly. The value in the Feng Agreement was 54% more than the price purchased by Chan two months earlier. Wong stated that the conduct of Li on this transaction show the indicia of fraud and conspiracy.
- [106] Li testified that she did nothing wrong. She obtained all the required documents. She had all the required documents signed. She obtained the deposit and the mortgage funds per the mortgage funding instructions.
- [107] She further testified that Wong indicated to her and Yu that he was not concerned with the significant price increase for the lending institutions obtain valuations of the property and satisfy themselves of the price. Further, she testified that the price increase is not unusual given that the property purchased by Chan by way of a power of sale.

148 Olive Avenue, Oshawa

- [108] There were two transactions concerning 148 Olive Avenue, Oshawa (148 Olive).
- [109] The transactions were:
- i. A purchase by Carlton Stewart (Stewart) from Victoria Mink in the sum of \$110,000 with a \$500 deposit with a scheduled closing date of December 14, 2007. Wong acted for the purchaser Stewart (Stewart purchase).
 - ii. A sale from Stewart to Lloyd Turner in the amount of \$248,000 closing on the same day as the first transaction with a deposit of \$10,000. Wong acted for the vendor, Stewart (Stewart sale).
- [110] Wong testified to unusual aspects to these transactions:
- i. There was no financing on the Stewart purchase.
 - ii. Stewart was not the registered owner of 148 Olive when he entered into an agreement to sell 148 Olive.

- iii. The identification that Stewart supplied was not consistent. There were different birth date years for Stewart. 1951 or 1961 on documents in the transaction regarding 55 Dylan Street.¹⁸
- iv. Li sent a reporting letter to Stewart, not signed by Wong, on his purchase on the same day as the closing of both the purchase and sale.
- v. No money was received from Stewart for closing funds on the Stewart sale.
- vi. Monies were lent by Li and/or Ho to Stewart which monies were paid to Ho with interest, from the Stewart sale.
- vii. Monies received from the Stewart sale were used for the Stewart purchase.
- viii. Li failed to respond to the requisition letter of the lawyer for Lloyd Turner and the lending institution, Rebecca Chin dated December 11, 2007¹⁹ where at paragraph 18 of said letter indicates that the property was not owned by Stewart and was purchased in January 18, 2005 for \$65,000 by Victoria Dawn Mink and then Stewart is purchasing from Mink for \$110,000. The transaction appears to be a flip and requested documents which included evidence that the fair market value of the property was \$248,000.

[111] Li testified that the Stewart sale and Stewart purchase, she believed, was a flip transaction - back to back transactions. She testified that these types of transactions, at the time, were not unusual and were permitted as no lender was involved in the Stewart purchase. The deposits into the bank account and the cheques made were all transparent. The documents were all in the real estate files and the bookkeeping records of Wong. The cheques on the purchase and sale transactions were signed by Wong.

[112] Li indicated that she did speak to Wong concerning the transactions. She stated that Wong instructed her on the allegation that the property was damaged by a fire. Li testified on the fact that her husband lent Stewart money. She stated that she was not involved in the negotiation of the loan. She confirmed that she wrote the particulars of the \$10,000 cheque but her husband Ho signed the cheque. She indicated that Ho signed a blank cheque that she had in her possession for a few days and that she filled in the particulars of the cheque after she knew the exact amount of the loan. She testified that the amount paid out on the Stewart sale were paid as instructed by Stewart. Monies were paid to Ho in the amount of \$10,500 to repay the loan plus \$500 in interest. Monies were paid to the lawyer for the purchaser on the Stewart purchase along with monies to Lubna Zefer. Li had no knowledge

¹⁸ This allegation appears not to be of much substance. The Driver's Licence of Stewart (Exhibit 12-tab B-6 and Exhibit 10 tab 12) are difficult to compare as to birthdate. Documents at exhibit 10 tab 15, 19 and 20 have a birthdate of 1951. These appear to be a mistake for all other documents on this transaction and the Dylan Street transaction Exhibit 10 have his birthdate year as 1961.

¹⁹ Exhibit 12-tab B-2.

who Lubna Zefer was. Li also confirmed that the \$10,000 loaned by Ho was deposited into Wong's trust account as a deposit on the Stewart purchase on December 14, 2007. When asked why the \$10,000 was put in the statement of adjustments as a deposit, she had no answer and could not explain.

[113] Li confirmed that the \$10,000 deposit was paid to Stewart by Wong cheque number 30 dated December 14, 2007 on the Stewart sale.

38 Lee Centre Drive, Unit 1707, Toronto

[114] There are two transactions that Li processed:

- i. Purchase by Thamby from Convention, the builder. Yu processed the interim occupancy closing (Thamby purchase). The unadjusted sale price for the unit was \$171,700. The adjusted sale price on closing, January 26, 2005 was \$164,337.67.
- ii. Thamby sale to Grace Lee (Lee) pursuant to an Agreement of Purchase and Sale dated December 30, 2004 for \$210,000 with a \$40,000 deposit, scheduled closing date of January 25, 2005 (Lee purchase). The Agreement of Purchase and Sale was not signed by Thamby but by KT (Kan M Ten), holding a power of attorney.

[115] The facts of the second transaction were included in the Admitted Facts.

[116] The unit transfer date, the final closing of the purchase by Thamby, was scheduled for January 26, 2005.

[117] Li processed these closings. Wong acted for Thamby, Lee and the mortgagee, the Bank of Montreal (BMO), on the Lee purchase.

[118] Wong's evidence was that from reviewing the closing documentation and the Thamby purchase and Lee purchase files, many issues were shown:

- i. This appears to be a further flip transaction between Thamby and Lee.
- ii. Lee did not advance any monies.
- iii. The financed monies for the Thamby purchase came from the Lee purchase.
- iv. The Thamby purchase and Lee purchase transaction completed at the same time.
- v. The Lee purchase closing was extended from January 25, 2005 to January 28, 2005 with no reason why indicated in the file.
- vi. There is no evidence in the Lee purchase that the deposits were paid.

- vii. The statement of adjustments provides a credit for two deposits \$40,000 and \$32,268.01, even though the Agreement of Purchase and Sale only indicates one deposit for \$40,000.
- viii. There is nothing in the Lee purchase file that indicates that BMO was advised of the second deposit.
- ix. There was a surplus on the Lee purchase of \$19,000 and there is no evidence in the Lee purchase file that BMO was advised.
- x. BMO was not advised that Lee received \$15,917.63 on closing.
- xi. Thamby was not the owner of Unit 1707 when he entered into the Agreement of Purchase and Sale on the Lee purchase or that Thamby acquired title to Unit 1707 on January 27, 2005.
- xii. A portion of the mortgage funds from BMO on the Lee purchase, namely, \$137,566.77 was used to close the Thamby purchase.
- xiii. Funds were advanced on the BMO mortgage to close the Thamby purchase before the Thamby mortgage was registered on title of Unit 1707.
- xiv. The reporting letter on the Lee purchase was signed by Li.

[119] Wong testified that he was never approached or advised by Li on the two transactions.

[120] Li testified that when she received the Lee purchase file, she spoke with Wong and he instructed her to proceed with the purchase.

[121] Li did not treat the Agreement of Purchase and Sale between Thamby and Lee as “real” due to the transaction being a flip. She testified that she knew the transaction of the Lee purchase was not a 100% but she spoke to BMO. BMO knew about the transaction that Unit 1707 was a new condominium. Hence, she believed she could proceed with the closings. She testified that these types of transactions have been closed with Wong before and that he was aware of the flip transaction.

[122] Li indicated that when she processed the Thamby purchase she did not have a copy of the complete Agreement of Purchase and Sale and had no knowledge if a flip of Unit 1707 was permitted or not without the consent of Convention. She agreed that it was not usual that a purchaser receives money on a closing. Wong signed the cheque and the trust ledger.

[123] Li confirmed that she did not advise BMO that the Lee purchase was a flip transaction or that the \$40,000 deposit was not paid by Lee. She agreed that the Agreement of Purchase and Sale in the Lee purchase only indicated one deposit. She agreed that the Lee purchase title documents and mortgage was not registered until the next day after the closing of the Thamby purchase and that the mortgage funds were advanced before the mortgage was

registered. She testified that the reason for the delay was because even though the Thamby deed was registered at 2:15 p.m., she did not receive the draft closing documents on the Lee purchase until 4:07 p.m. This did not allow enough time to register the Lee purchase documents. It was done the next day. She testified that she believed she has 72 hours to register on title the documents after closing. Li testified that this was a flip transaction. She closed the transactions with the knowledge of Wong.

55 Dylan Street, Vaughan

[124] With 55 Dylan Street, Vaughan (55 Dylan) there were two transactions:

- i. Purchase by Samantha French-Douglas from Surace Winston Ramjattan for the price of \$354,000 with a deposit in the amount of \$10,000 payable to the vendor's lawyer pursuant to an Agreement of Purchase and Sale dated March 1, 2007 with a scheduled closing date of March 30, 2007 (Douglas purchase).
- ii. Purchase by Carlton Stewart (Stewart) from Samantha French-Douglas (Samantha) for the price of \$420,000 with a deposit of \$10,000 payable to Homelife Winner Realty, pursuant to an Agreement of Purchase and Sale dated July 17, 2008 with a scheduled closing date of August 15, 2008 (Stewart purchase).

[125] On the Douglas purchase, Wong also acted for the lender, Moneyconnect Title Holdings Inc. (the Lender). The Lender agreed to finance the purchase in the sum of \$343,306.²⁰

[126] The actual closing of the Douglas purchase was April 26, 2007, rather than the scheduled closing date of March 30, 2007.

[127] Wong in his testimony, in reviewing the Douglas purchase file stated that:

- i. The completed filed intake sheet completed by Li indicated that Samantha was Carlton Stewart's step-daughter. The vendor's solicitor and the vendor's secretary were the same person as the client contact information that is Samantha's mother, Maureen French (Maureen). Stewart also sent Samantha's contact information to Li.
- ii. Originally the purchaser's lawyer as named in the Douglas purchase was not Wong.
- iii. Closing documents for Samantha were sent to the vendor's lawyer, to the vendor's lawyer's secretary, Maureen.
- iv. The appraised value of 55 Dylan was \$350,000 which resulted in a decrease in the sum for financing.

²⁰ Exhibit 11 tab 33.

- v. Maureen sent a statement of adjustments and draft direction re: funds on April 19, 2007, which included a credit for \$15,000 to the purchaser for repairs to the home. No back up documentation was provided to support the credit. In addition, the statement of adjustments included monies directed to further individuals which included Ho. The amount to Ho kept increasing as shown by the handwritten changes. There was the inclusion of a \$10,000 deposit.
- vi. An amended direction re: funds was sent on April 25, 2007. This direction showed payments to several individuals which included a payment to Ho for \$18,773.82. The statement of adjustments sent April 25, 2007 did not have an entry for the \$10,000 deposit nor did the statement indicate any support for the credit of \$15,000 for repairs.
- vii. Documents signed by Samantha for closing appear to be faxed by Maureen, already signed. The signed documents of Samantha seem to be commissioned from fax signed documents and not originally documents signed in the presence of Li.²¹
- viii. The deposit book indicated a deposit on closing from Samantha in the amount of \$17,067.11. Wong testified that he believes these funds included the funds provided from Ho.
- ix. There was no disclosure to the lender that the purchaser received \$15,000 on closing with no verification and the funds were paid to various third parties in closing.
- x. Ho provided to Stewart the sum of \$16,069.61 on April 27, 2007 which was deposited in Wong's trust account.²² Ho made \$2,704.21 in three days for providing Stewart money.

[128] Li testified that Stewart was the husband of Maureen and that she has dealt with Maureen before. Maureen asked if Li knew someone who could provide a small loan. Li asked her husband Ho if he was interested. Li provided the contact information of Maureen for Ho to contact. Li believes that they contacted each other and the particulars were discussed and agreement upon between Ho, Maureen and Stewart.

[129] Li indicated that Maureen could not act for her daughter, Samantha and referred the file to Li. Li found there were tax arrears and executions against the vendor. The vendor was in financial difficulties. Li dealt with these issues to complete the closing.

[130] All closing documents were sent to the vendor's lawyer for his approval and review. These were sent to Maureen because she was the vendor's lawyer's secretary dealing with the closing. Li testified that she spoke with Theresa about the lender if the lender had any

²¹ Exhibit 11 tab 30.

²² Exhibit 21.

concern with a second mortgage being registered and was told on April 18, 2007 at 3:22 p.m. that the lender had no issue. The lender kept changing the closing date which resulted in the amounts in the direction re: funds changing.

- [131] Li indicated that it was her understanding that the \$15,000 for repairs was part of the deal between the vendor and purchaser. She was advised of this. On April 26, 2007, monies were returned to the lender because the closing date was changed. Li stated that she spoke with Wong about the transaction and the changing closing dates. She said that Wong instructed her to return the monies to the lender. Wong signed the cheque returning the monies to the lender. When the transaction was ready to close, the mortgage funds were requested again, and Wong signed the requisition for funds. Li testified that the documents signed by Samantha that she commissioned were signed in front of her in Wong's office. On April 18, 2007, Wong met with Samantha and signed the Identification Verification Form.²³
- [132] Li confirmed that monies were provided by Ho and came from their joint account and that the cheque was signed by her. The cheque was deposited into Wong's trust account. She does not believe she did anything wrong. The monies were not for the closing but was for the loan to Stewart.
- [133] Concerning the Stewart purchase, Wong testified that Firstlife Mortgages (Firstlife) agreed to provide financing in the amount of \$399,000.
- [134] Wong was indicated as the lawyer for the purchaser Stewart even though Wong, acted for Samantha on her purchase of 55 Dylan.
- [135] Wong further testified that:
- i. The statement of adjustment sent on August 26, 2008 at 1:03 p.m. shows a deposit of \$30,000 even though the Stewart purchase showed a deposit of \$10,000.
 - ii. The statement of adjustment sent August 26, 2008 at 23:28 shows the correct deposit at \$10,000 but includes now a credit for a wet basement of \$7,000. The direction re: funds shows a payment to Maureen in the amount of \$27,932.84 even though she is not the vendor.
 - iii. Documents prepared by Li shows a birthdate of Stewart as August 30, 1951 even though other documents and driver's licence show a birthdate of August 30, 1961 (as indicated in the testimony dealing with 38 Olive).
 - iv. The credit for a wet basement was paid by cheque signed by Wong dated August 28, 2008 to Stewart.

²³ Exhibit 11 tab 30.

- v. There is no indication that Stewart paid any monies for the purchase, except there was a deposit paid to Homelife, as indicated in the Agreement of Purchase and Sale. This deposit payment was not verified.
- vi. There is no documentary proof for the \$7,000 credit.
- vii. There is no indication in the file that Firstlife was notified of the credit for the wet basement or that Stewart received \$7,000 or that Maureen received \$27,932.84.

[136] Li testified that she does not believe she did anything wrong. She spoke with Wong concerning the price increase from the time Samantha purchased 55 Dylan. She indicated that Wong told her that it was over a year ago and it is okay to proceed. She was not concerned about the \$7,000 credit. She knew that this was a transaction between family members. On the direction re: funds she admits that the monies were paid to Maureen and not to Samantha, the vendor. Again, Li indicated that since it was between mother and daughter, she did not see a problem.

[137] The purchaser's lawyer sent Li signed documents for closing. Stewart signed the documents required for closing, which were all standard documents. There was nothing eventful about this transaction, according to Li.

Testimony of Ho

[138] Ho is a finance manager in Pensions Trust in downtown Toronto. He has been a finance manager for 12 years. He is a full-time accountant. He has been a Chartered General Accountant since 1999.

[139] He resides at 3 Atwood with his wife, Li and her parents.

[140] He testified that he was asked by his wife if he would be interested in providing a loan to Maureen and her husband, Stewart. He responded to his wife to have them call him. Ho stated that Stewart called him, and they met at a coffee shop. This is the first time he met Stewart.

[141] Ho testified that it was his understanding that Stewart told him that he was involved in construction and in mortgage financing filed. Stewart told him that they may require a quick cash loan up to \$30,000 for his construction business. Ho indicated that he would be willing to provide a private loan and Stewart to keep him advised if he requires the private loan and the amount required.

[142] Ho indicated that later Stewart had called him and indicated that he required a loan and faxed to Ho the amount required. Ho testified that he had no idea that Stewart required money to close the real estate transaction. Li wrote the contents of the cheque and signed the cheque from their joint bank account. Li wrote the cheque after it was determined the amount required by Stewart. He and Stewart agreed on an interest fee of 10% of the amount

of the loan. This was the first time he met with Stewart and felt comfortable making the loan. As far as Ho was concerned, it was a quick short-term investment.

- [143] On the 148 Olive transaction, Stewart called him and indicated he needed another loan. Stewart did not know the amount and would tell Ho later. The process was like the first loan. The amount would be determined once Stewart knew the amount he required. The interest fee would be 10% of the loan amount. On this cheque, he signed the cheque and Li wrote the contents of the cheque. He confirmed that he did not get the 10% agreed upon. He only received \$500 as the interest fee. He believes Stewart gave this to him because Stewart knew that Ho incurred costs to give the \$10,000 loan to Stewart.
- [144] Like the first loan, Stewart suggested that the cheque be made payable to Wong in trust. Ho testified that he believed the loans were private loans for Stewart's construction business. As far as Ho was concerned, it was a short-term investment.
- [145] Ho stated that he and Li never discussed if Stewart was a purchaser and does not recall if Li told him that Samantha was the purchaser. Ho in his evidence indicated that it was Stewart's request that the monies be paid to Wong in trust for it would be easier and more efficient to pay the monies that way. Ho did not speak to Wong about the loans.

Legal Principles

Fraud

- [146] Fraud may be actual/common law fraud (common law fraud) which is evidence of intentional conduct that is deceitful to the other or constructive/equitable fraud, a doctrine of equity in its supervision of trustees, fiduciaries and contracting parties with an element of immorality.²⁴
- [147] The Supreme Court of Canada in *Bruno Appliance and Furniture Inc. v. Hryniak*²⁵ described the elements of the tort for civil fraud, common law fraud, as follows:
- (1) a false misrepresentation 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

²⁴ *Holley v. The Northern Trust Company, Canada and The Royal Trust Company*, 2014 ONSC 889 (Can LII) at paras. 111-118.

²⁵ [2014] 1 S.C.R. 126; 2014 SCC 8

(4) the plaintiff's actions resulted in a loss.²⁶

[148] There must be fraud. Mere negligence is not enough. "The common law punishes the immorality of lying for an evil purpose with an award of damages."²⁷

[149] As Justice Karakatsanis indicated in *Bruno Appliance*, the motive of the fraud is immaterial. It matters not if there was an intention to cheat or injure the person to whom the statement is made.

[150] The false representation includes misrepresentation by omission, silence, half-truths, inaction or then non-disclosure of material information.²⁸ The evidence may be direct evidence of intentional conduct to deceive or circumstantial evidence where fraud is the only consistent explanation for the facts proven. As Lederer J. quoted in *Royal Bank of Canada v. Boussoulas*: "If fraud is the only consistent explanation for the facts proven, then the case for fraud is made out."²⁹

[151] The false misrepresentation must induce the aggrieved party to act upon the fraudulent misrepresentation. The act of the aggrieved party must result in damages; for "fraud without damages give...no cause of action."³⁰ Thus, proof of loss is required.

[152] Constructive/equitable fraud is founded in equity (hereinafter referred to as equitable fraud). The moral turpitude is not as in common law fraud with the lying and intent to deceive. Equitable fraud is more concerned with "conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other."³¹

[153] Perell J. in *Holley* reviews the decision of Justice Binnie in *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club*³² and quotes paragraph 39:

39. What amounts to "fraud or the equivalent of fraud" is, of course, a crucial question. In *First City Capital Ltd. v. British Columbia Corp* (citation omitted) McLachlin C.J.S.C. (as she then was) observed that "in this context fraud or the equivalent of fraud refers not to tort of deceit or strict fraud in the legal sense, but rather to the broader category of equitable fraud or constructive fraud ... Fraud in this wider sense refers to transactions falling short of deceit but where the Court is of the opinion that it is unconscientious for a person to avail himself of the advantage obtained" (p. 37). Fraud in

²⁶ Ibid, at para. 21.

²⁷ *Holley*, footnote 24, at para. 116.

²⁸ *Borelli v. Chan* 2018 ONSC 1429 at para. 912.

²⁹ *Royal Bank of Canada v. Theodore Boussoulas et al*, 2014 ONSC 2367 (Can LII) at para. 10.

³⁰ *Holley*, supra, at para. 118.

³¹ *Holley*, supra, at para. 120.

³² 2002 SCC 19

the “wider sense” of a ground for equitable relief “is so infinite in its varieties that the Courts have not attempted to define it”, but “all kinds of unfair dealing and unconscionable conduct in matters of contract come within its ken”: [citations omitted]

[154] Thus, equitable fraud appears to relate to conduct that is less than deceit where the Court forms the opinion that the conduct is unconscientious for an individual to avail themselves of an advantage obtained by such conduct. I take it that the idea connotes an idea that the Court is guided by doing what is right and make this equitable but not meeting the evil or moral turpitude of deceitful conduct, such as lying. The scope of equitable fraud is wider in scope to the strict elements of common law fraud and can include many kinds or varieties of unfair and unconscionable conduct.³³

[155] As the summary of Perell J. indicates:

[130] To summarize, at its core, common law fraud involves dishonest and moral turpitude. The fraud elements of common law fraud are that the defendant has an intent to deceive and makes a false statement that he or she knows is false or the defendant makes a false statement that he or she is indifferent to its truth value. Constructive fraud does not necessarily involve dishonesty or moral fraud in the ordinary sense, but a breach of sort that would be enforced by a court of conscience.³⁴

Deceit or fraudulent misrepresentation

[156] Deceit or fraudulent misrepresentation is, as in common law fraud, encompasses elements that must be satisfied on the balance of probabilities. Many of the elements are similar to the elements required for common law fraud. The five elements for fraudulent misrepresentation or deceit are:

- (1) A false statement made by the defendant;
- (2) The defendant knew that the statement is false or being indifferent to its truth or falsity;
- (3) The defendant having an intent to deceive the plaintiff;
- (4) The false statement being material in that it induced the plaintiff to act; and

³³ *Holley*, supra, at para. 123.

³⁴ *Ibid.* at para. 130.

(5) The plaintiff suffered damages due to it so acting.³⁵

[157] The meaning of deceit or fraudulent misrepresentation is the same as in common law fraud. There is a requisite of “immorality of lying for an evil purpose.” The aggrieved party must be induced to act by the deceit or fraudulent misrepresentation and the act must result in damages. For as in common law fraud, if there are no damages there is no cause of action.

[158] I will now analyze the transactions involved in the six properties as processed by the defendants, Li and Yu.

Analysis

False statement or misrepresentation made by Yu on 38 Lee Centre Drive, Unit 1707 and 65 Leitch Avenue?

[159] Wong contends that the conduct of Yu in both properties show the badges of fraud. Yu provided false statements and misrepresented to Wong the transactions processed on both properties.

[160] I do not accept this contention. Wong has not directed the Court to a false statement or representation that Yu made to him.

[161] Concerning 38 Lee Centre, the transaction was an interim occupancy closing. The property was not closed until January 30, 2008 when the undisputed evidence is that Yu was in China at her father’s funeral. Li processed the closing, the transfer on title and registration of the mortgage on title. Not Yu. There is nothing in the evidence that indicates either through direct or circumstantial evidence, Yu provided Wong a false statement or representation.

[162] Concerning 65 Leitch, again, there is no evidence that Wong directed the Court that shows either directly or through circumstantial evidence that Yu misrepresented or gave a false statement to Wong. The process of the closing of 65 Leitch had questionable decision making. Yu indicated in her evidence that she spoke with and received instructions from Wong. This evidence is supported by Wong’s signature on cheques, his signature of the Request for Mortgage Funds and the drafting and signing of the Consent and Acknowledgment along with the Statutory Declaration with respect to secondary financing. Clearly, the terms of the Consent and Acknowledgement and the secondary financing were to protect Wong and clearly were in Wong’s interest to obtain the documents signed by his clients. Thus, I find that Wong was aware that his firm was acting for both sides on the transaction and that the buyer and seller were mother and daughter.

³⁵ *Holley*, supra, footnote 24 at para.111-118. *CMHC v. Hollancid*, 2014 ONSC 911, at para. 72; *PP v. DD*, 2016 ONSC 258, at para. 43, aff’d 2017 ONCA 180 (CA).

[163] Wong did not directly contradict the evidence of Yu in this regard. And if he did, I accept the evidence of Yu on this point. Wong's evidence through the trial relied on the documents contained in the files. In his evidence, he did not have an independent recollection of the events concerning the processing of the real estate transactions. This fact, as I have already mentioned, is not surprising given his accepted Admitted Facts at the LSUC hearing and his evidence at the trial that he did not supervise the processing of the real estate transactions which were the subject matter of this trial. Consequently, the court will be surprised if Wong had an independent recollection of the transaction involving the properties that Yu processed the closing.

[164] Taking all the above into consideration, I am not convinced, on the balance of probabilities, that Wong has proven the first element required for common law fraud and deceit/false misrepresentation.

[165] Given I have found that Wong has failed to prove on the balance of probabilities that a false statement or false misrepresentation was made by Yu to him, I need to deal with the other elements for common law fraud or deceit/fraudulent misrepresentation.

[166] I will turn to equitable fraud.

Equitable fraud

[167] Wong has pled that the conduct of Yu compels the court to exercise its equitable jurisdiction and find that Yu's conduct was wrong to such an extent equitable fraud must be found.

[168] Wong contends that Yu took advantage of her relationship with him. He deferred to her independence to process the real estate transactions properly and in his best interest and she failed to do so. Yu knew, according to Wong, that he had a hands-off approach and she took advantage of his approach. Her conduct, particularly on 65 Leitch, was so gravely wrong, Wong requires a remedy for such conduct and that remedy is equitable fraud.

[169] I am not persuaded by this argument. Equitable fraud is to be exercised by the court in situations where the conduct of the party mandates that the party should not benefit by such conduct and the court is compelled in equity to remedy a wrong. That is not the situation here. Yu was a real estate clerk for Wong. She did seek Wong's directions on issues she was not certain or comfortable in deciding. She did not feel, on 65 Leitch, that acting for mother and daughter was inappropriate. This conclusion is not inappropriate based on the instruction given to her from Wong. Wong instructed her to draft with specific terms the Acknowledgment and Consent and the Statutory Declaration. She did so. She had the mother and daughter execute both, per the direction of Wong.

[170] I adopt the much used quote in *Holley* that equitable fraud is concerned with "conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other."

[171] I do not find that the conduct of Yu reaches an “unconscionable thing” that compels the court to mandate the remedy of a perceived wrong against Wong based on equitable fraud.

[172] Hence, I decline to exercise my discretion to find Wong was wronged by Yu based on equitable fraud.

False statement and false representation made by Li and/or Ho?

[173] Li was involved in the closing of 292 Port Royal, 27 Cartier, 148 Olive, 38 Lee Centre, 65 Leitch and 55 Dylan (the properties). Ho provided monies to Stewart for 148 Olive and 55 Dylan.

[174] Wong contends that Li acted in a fraudulent manner in her work in processing the closings of the properties. Wong argues that the court must find that Li misrepresented to Wong:

- i. Her complying with the procedural guidelines of the Wong law firm;
- ii. That she processed the closings of the properties properly and that Wong should have no concerns about her independently working on those files;
- iii. That she failed to disclosure or advice Wong that her husband provided monies to a client of Wong’s, Stewart on 148 Olive and 55 Dylan;
- iv. Having the \$10,000 deposit categorized in the client ledger, on the day of closing, as a deposit;
- v. On 38 Lee Centre, using the mortgage advance on the Lee purchase to complete the Thamby purchase and providing money to Lee even though she was the purchaser of 38 Lee Centre.

[175] Wong further contends that the conduct of Li with Ho set out a strong indicia of fraud that compels the court to find fraudulent conduct against Li, as assisted by Ho.

[176] The court starts by saying that there is conduct in the closing of the properties that is disconcerting. This conduct appears to directly relate to completing the transaction of the properties to enable the receipt of monies from lenders. As such, the conduct is directly attributable to getting the lender to advance funds by registering security against title of the properties. But this proceeding is not by the lenders. This proceeding was commenced by Wong.

[177] On the properties 292 Port Royal, 27 Cartier, 38 Lee Centre, the court is not convinced that Wong has met his onus in proving that Li made a false statement or false representation to him. Wong has not directed the court to false statements or false representations made to him from Li. The thrust of Wong’s position of the actions of Li on the 292 Port Royal, 27 Cartier and 38 Lee Centre transactions is that the overall conduct of Li in processing these transactions showed the indicia of fraud and were fraudulent. I will deal with those

submissions under equitable fraud. But for the strict compliance of the first element required for common law fraud and deceit/fraudulent misrepresentation, I find that Wong has failed to prove that Li provided him a false statement or representation.

- [178] Regarding 148 Olive and 55 Dylan, these transactions are more problematic. On these two properties, Li and Ho provided “loans” to Stewart. It appears to the court that the “loans” provided were used to meet the obligation for deposits to be paid to purchase the properties.
- [179] It is not disputed that Ho and Wong never met or spoke on the closing of 148 Olive or 55 Dylan. It is further not disputed in the evidence that Li did not advise Wong that she and/or Ho were providing monies to Stewart.
- [180] I do not accept the evidence of Li and Ho that the monies were provided to Stewart were loans for his construction business. That evidence does not make sense since the “loans” were made payable to Wong’s firm in trust. Further, the “loans” were paid back within days of being provided with an amount as an interest fee. It appears to me that Li would have known or should have known that the monies provided were for the purpose of closing the real estate transactions. This, as far as the court can gather, is inconsistent with the terms of the financing, that the purchaser provides certain funds from their own sources for the closing of the real estate transaction.
- [181] There is also the cheque for \$10,000 that was deposited with a notation in the client ledger that the cheque was a deposit from the purchaser’s lawyer, which was not Wong. There is a gap in the evidence. There was no evidence of who put the notation in the electronic client’s ledger. There was evidence that Li did not do the data entries in the PC Law program. This was done by others. There was no evidence from any witness from the Wong firm about who did the data entry into the PC Law program that indicates the representation from Li on how to characterize the deposit. Without this evidence, the court cannot ascertain whether the notation in the client’s ledger was from a statement of Li or was noted by someone else who assumed the \$10,000 was a deposit from the purchaser’s lawyer or that Li was aware of the notation on the client ledger at the time and said nothing.
- [182] So, does the conduct of Li fall within the scope of common law fraud or deceit/fraudulent misrepresentation? It may very well do so as far as the lender would be concerned. But that is not an issue for this court to adjudicate. This issue is, as far as Wong is concerned, did Li provide a false statement or false presentation that amounts to immorality of lying. I cannot conclude that it does. There was no evidence, either direct or circumstantial, that Li lied to Wong, failed to provide information to Wong when requested, provided half-truths or failed to respond to any inquiry of Wong on the transaction that she was processing. I must therefore conclude that Wong has failed to satisfy the first element for common law fraud and deceit/false representation.
- [183] This conclusion of the requirement of in fact false statements or fraudulent misrepresentation is required to be made to Wong is illustrated by cases presented to the court by Wong.

- [184] In *Canada v. Grantile*³⁶, the Government of Canada sued based on perjury of the defendant, Pirruccio, and letters the government categorized as fraudulent that was relied upon by the government to provide funds to the defendants from a federal government program to encourage economic development in Atlantic Canada. Thus, the basis of the fraud were statements made by Pirruccio and documents provided to the government that were alleged to be fraudulent. The advantage is clear, the defendant received monies from the government based on his fraud. There is no such connection in fact in the case at bar.
- [185] In *Royal Bank*³⁷, the Bank commenced proceedings against debtors on loans owed to the Bank. The claim was that the defendants named in the action were fraudulent and deceitful with respect to assets that they owned, security documents signed, and postponements of security documents signed. The Bank claimed that representations were made that were fraudulent and documents were signed with the signatory stating he had authority to sign on behalf of the named corporation, when the signatory did not. The Bank provided funds based on the misrepresentations and statements made concerning assets and security provided. Again, in *Royal Bank* there were documents signed and statements made that were in fact made to the plaintiff. This factual matrix is substantially different then the case at bar.
- [186] *Borrelli v. Chan*³⁸ is a case where the defendant Chan was alleged, among other things, of committing fraud. The Court found that Chan did so commit civil fraud by causing the company, Sino-Forest, where Chan was the chief executive officer and chairman of the board, to record billions of dollars in fictitious assets, and hid assets and ownership interest through companies which he controlled. Further, he concealed the use of non-arm's length entities which he controlled to conduct business with Sino-Forest. He used a deceitful documentation process to conceal his fraud from Sino-Forest and provided information to the company that were half-truths. Again, in *Borelli* the defendant, Chan was found to have provided fraudulent statements and fraudulent misrepresentations which in fact were made to the aggrieved party, Sino-Forest.
- [187] The court must also review the decision of *R. v. Poonai*.³⁹ Wong presented the case arguing that the facts were similar to his claim and in fact, the actions of Li and Yu are more disturbing than that of the accused Joey Poonai. Wong submitted that given that Poonai was convicted strongly supports his claim against Li and Yu. The facts were that Mr. Poonai was a lawyer charged with five counts of fraud over \$5000. He was convicted on his dealing a "flip fraud" which "is described as a fraudulent obtaining of mortgage funds in which a property is purchased at a low price or at market value, re-sold immediately thereafter for a substantially higher price. Mortgage funds are advanced by a lending institution based on the higher price leaving the difference between the funds require to

³⁶ 2008 CanLII 63568 (Ont. SC)

³⁷ Supra, footnote, 29.

³⁸ 2018 ONSC 1429 (CanLII)

³⁹ 2006 CarswellOnt 8463; [2007] O.J. No.126 (SCJ)

close the first deal and the mortgage advance as the profit from the flip”⁴⁰. Not commenting that the proceeding was a criminal one with an entirely different burden of proof, the convictions were based on fraudulent and deceitful conduct the accused did to the lending institutions. It was the lending institutions that were in fact related to the conduct of the accused. The court fails to appreciate how this case aids the plaintiff, as he strongly submitted.

[188] Thus, I conclude that Wong has not proven in fact false statements or fraudulent misrepresentation from Li related to him.

[189] The court will turn to equitable fraud. As stated above, for equitable fraud the court must be compelled to exercise its equitable discretion due to the conduct of Li and/or Ho. The conduct of Li and/or Ho must be unconscionable considering the special relationship between them and Wong. As far as Ho is concerned, there was no relationship, special or otherwise with Wong. So, equitable fraud does not apply to him.

[190] With Li, there was a relationship between her and Wong. Whether that relationship falls with the meaning of a special relationship, I need not determine. The court is not persuaded in the circumstances that the conduct of Li was unconscionable to compel the court to exercise its equitable discretion and find equitable fraud.

[191] The court comes to this conclusion for a variety of reasons. Wong at the time did not find that the conduct of Li amounted to fraud. He made that conclusion after review of the 55 Dylan transaction in April 2007. 55 Dylan closed on April 26, 2007. After closing, Wong received a complaint of fraud from a lawyer, Val Chowbay. In a memorandum to file dated April 30, 2007, Wong reviewed the complete file and the allegation of fraud against Maureen French and determined that there was no fraud. In that memorandum Wong stated: “OCW (Wong) reviewed the file on April 30, 2007 and found nothing wrong but Val alleged that our client did not exist and that his client (the 2nd mortgagee) lost \$90,000 but both confirmed that second mortgage never showed up on the title search.”

[192] In addition, during the investigation by the LSUC, Wong was interviewed and provided answers to questions from the LSUC investigators. A one-page summary was produced in the trial which was an exhibit attached to an affidavit of Wong. In that summary, Wong is quoted as saying: “If you are asking me whether I was negligent in supervision, yes. If you ask me whether I intended to defraud the bank, no. If you ask me whether my sloppiness or my lack of supervision, without it, in the bank being misled, yes. But there is no intention on my part to defraud the bank.” Wong gave similar evidence at the trial. From answers to questions in cross-examination, Wong did not dispute the summary of his statements in the summary of the LSUC investigators. He conceded the contents of the one-page summary.

⁴⁰ Ibid, at para. 9.

[193] In the circumstances of this case, the court is not prepared to exercise its equitable discretion. There is no evidence that the relationship between Wong (a lawyer) and Li (a real estate clerk) along with the conduct of Li resulted in an advantage obtained by Li over Wong. There was no evidence due to the conduct of Li, or that she received an advantage to the detriment of Wong. In other words, to exercise its equitable discretion, the court must be persuaded that the factual matrix and the relationship between Li and Wong meets the threshold of “unconscionable” that compels the court to remedy a wrong and in so doing, disentitle Li of any advantage she obtained to the detriment of Wong. The facts as presented at the trial do not support a conclusion of “unconscionable” conduct at it relates to Wong. Hence, the facts do not compel such an exercise of equitable discretion.

IV: DID LI, AND CONSPIRE AGAINST WONG?

[194] Wong claims damages against Li and Yu based on the tort of conspiracy. Wong claims that Li and Yu, together, conspired to handle and complete real estate files to the detriment of Wong. In substance, Wong pleads that both Li and Yu were joint tortfeasors “working as secretaries and conveyancing clerks in the same office, sharing the same room.”⁴¹

[195] The Supreme Court of Canada in *Canada Cement LaFarge Ltd. v. British Columbia Light Weight Aggregate Ltd.* reviewed the tort of conspiracy. Estey J. at page 471 utilized the definition of conspiracy as: “A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means.”⁴²

[196] Lederer J. in *Royal Bank of Canada v. Boussoulas* noted that in Canadian Law there are two types of conspiracy actions. Conspiracy to injure whereby two or more persons combine in order to affect an unlawful purpose of causing injury to the plaintiff. The second is a conspiracy to use unlawful means which are directed at the plaintiff and cause the plaintiff injury.⁴³

[197] The one operative element for the tort of conspiracy is that there requires “an agreement between two or more persons to act followed by an execution of that agreement.”⁴⁴

[198] The evidence presented indicates that the clerks in the Wong office worked independently. Li and Yu were paid separately per transaction. Li and Yu knew each other. They were friends but not close friends that socialized outside the office setting. They shared an office and would aid each other on files from time to time. They interviewed together to work at Wong’s law office.

⁴¹ Written Submissions of the Plaintiff, at pg. 104, at para. 302.

⁴² [1983] 1 S.C.R.452; 1983 Can LII 23 (SCC); also see *Cruise Connections Canada v. Szeto* 2015 BCCA 363 (CanLII) at pages 18 and 19.

⁴³ *Supra*, footnote 29, at para. 135.

⁴⁴ *Ibid*, at para. 136.

[199] In the court's view, this evidence is not enough. The fact that Li and Yu knew each other, worked in the same office and were friends, in the court's view does not meet the threshold that Li and Yu together agreed to conspire against Wong. Wong has not directed the court to an agreement between Li and Yu supported by direct or circumstantial evidence. Accordingly, I find that there was no evidence presented that indicates that together Li and Yu had an agreement to cause injury to Wong either by an unlawful purpose or by unlawful means.

[200] Thus, the claim for conspiracy by Wong must fail.

V: IF LI AND /OR YU BREACHED A FIDUCIARY DUTY OWED TO WONG OR IF THE CONDUCT OF LI, YU AND/OR HO AMOUNTED TO FRAUD AND/OR DECEIT/FRAUDULENT MISREPRESENTATION AND/OR CONSPIRACY, DID WONG SUFFER DAMAGES?

[201] Since the court has found that there was no fiduciary duty owed, no foundation for fraud, deceit/fraudulent misrepresentation or conspiracy, it is not necessary for the court to determine if Wong suffered damages.

[202] Nonetheless, the court will make some general comments whether any damages suffered by Wong are attributable to the actions of the defendants.

[203] Wong has based his claim for damages on the fact that he was suspended by the LSUC for 4 months. He lost income during those for months which he seeks from the defendants. He also seeks loss of income due to lending institutions and title insurance companies refusing to use his legal services. Wong points the finger at the defendants for his loss of business and income.

[204] For the court to award damages for breach of fiduciary duty, the plaintiff is required to show that the breach was the effective cause of the damages claimed. The damages must be caused by the breach.⁴⁵

[205] In *Stirrett*, the Ontario court of Appeal reviewed the law of causation for breach of fiduciary duty and equitable compensation. The Court stated at paragraphs 69 and 70:

[69] As well explain, when considering equitable compensation, or damages, the fiduciary breach must have been the cause in fact-the effective cause-of the loss in respect of which compensation is sought. There is of course a difference between the right to a remedy, and the assessment of damages. Causation in fact is relevant to the first issue. Legal causation, which incorporates

⁴⁵ *Stirret*, supra, footnote 10; *Plate v. Atlas Copco Canada Inc.*, 2019 ONCA 196 (CanLII) at para. 108; *SFC Litigation Trust v. Chan*, 2019 ONCA 525 (CanLII) at para. 117.

limiting factors such as remoteness, proximity, foreseeability and intervening act, is part of the second issue.

[70] We acknowledge that a source of confusion over the role of causation is in the use of the word “causation” in some of the cases both to describe causation in fact and as part of the test applying common law limiting factors to limit the extent of a damages claim. The two uses should not be confounded.

[206] The Court of Appeal quoted Leonard I. Rotman from his book, *Fiduciary Law* and observed⁴⁶:

[74] As this passage suggest, and as we will discuss below with reference to the case law, cause in fact is required the fiduciary context. This case turns on the cause in fact requirement: did the respondent prove that the appellants breach of fiduciary caused the loss in respect of which the compensation is sought?...

[207] The Court went to discuss factual causation and reviewed the case law and summarized as follows:

[90] To put it succinctly, a plaintiff seeking compensation for breach of fiduciary duty must establish that the losses flowed from the breach.

[91] We add this. While legal causation is not at issue in this appeal, we note that the Supreme Court and other appellate courts have accepted that common law limiting principles may apply to limit equitable compensation in order to treat similar wrongs similarly, but only where: (1) it is necessary to achieve a just and fair result; and (2) doing so does not raise any policy concerns: (citations omitted)⁴⁷

[208] Even if the court found that Li and Yu owed a fiduciary duty to Wong and they breached that duty, I would not have awarded damages as claimed by Wong for the court is not convinced that Wong has proven that the damages claimed flowed from the breach.

[209] Without discussing common law issues of remoteness and intervening act, the plaintiff seeks loss of income damages. The court is of the view that the damages of income loss was not in fact proved to be caused by the breach. Wong was suspended for failing to supervise. The failure included the failure to advise lending institutions of the significant increase of price of properties in a short period of time. The failure to advise the lending

⁴⁶ Supra, footnote 10, para. 73.

⁴⁷ Ibid, paras. 90 and 91.

institutions was admitted and accepted by Wong. This failure cannot be as a result of the breach of fiduciary duty. Wong admitted in cross-examination and to the LSUC investigator in his interview that as far as he was concerned the price or value of any property that a lending institution is going to provide a mortgage is the responsibility of the lending institution because the lending institution obtains third party valuations on the value of the property. This view of Wong was implemented by his staff. So, if his staff failed to advise a lending institution of the increase in value of a property it would not be a surprise given the view of Wong. This failure to advise lending institutions was one of the reasons in numerous of the properties in question that resulted in the suspension of Wong.

- [210] In addition, the LSUC based their suspension on 12 properties, 24 transactions. This proceeding of Wong dealt only with 6 of the properties, 14 of the transactions. Wong submitted that the 6 properties, 14 transaction involved in this proceeding were the “main” reasons for the suspensions. That may or may not be true; but how is the court able to conclude that the other 6 properties, 10 transactions which were subject to the LSUC suspension did not attribute to his suspension and decrease in income, being the substance of the damages claimed by Wong? Quite frankly, on the evidence presented in this trial, the court cannot. There was no evidence presented that indicated that the other 6 properties, 10 transactions, did not fundamentally result in Wong’s suspension or were not an attributable cause to Wong losing work from lending institutions or title insurance companies. The lending institutions and title insurance companies would not accept, his certification, as testified by Wong, and such he could not act on numerous real estate transactions.
- [211] Thus, given the factual basis of the suspension by the LSUC and Wong’s own views, the court cannot find that any breach of a fiduciary duty of Li and Yu were in fact the cause of the damages claimed by Wong.
- [212] Consequently, the court would not have found Li or Yu responsible for the damages claimed by Wong in this action for breach of any fiduciary duty owed by Li and /or Yu to Wong.
- [213] Concerning the claims of fraud and deceit/fraudulent misrepresentation, without a fraudulent statement or fraudulent misrepresentation, the court would not be able to assess if Wong suffered damages. This flows from the advantage that Li and /or Yu received as against Wong. This is illustrated by the cases provided by Wong in support of his claim discussed above: *Canada v. Grantile*, *Royal Bank*, and *Borrelli v. Chan*.
- [214] These cases again illustrate that in the case at bar, there was no evidence that directed the court to find fraudulent statement or fraudulent misrepresentation as against Wong that would have resulted in Wong suffering the damages claimed. There was no in fact connection proven from the evidence presented at trial. Hence, there was no evidentiary basis for an award of damages in favour of Wong.

VI: IF WONG DID SUFFER DAMAGES, DOES THE DEFENCE OF ILLEGALITY OR EX TURPI CAUSA NON ORITUR ACTIO APPLY?

[215] Notwithstanding that the court has not found that Wong is entitled to damages, I will briefly deal with the defendants' defence of illegality.

[216] The defence illegality is a defence based basically on public policy. A plaintiff should not benefit from their own illegal or immoral conduct. This principle can be found in the decision of Justice McLachlin in *Hall v. Herber*⁴⁸, at paragraph 5:

[5] My own view is that the Courts should be allowed to bar the recovery in tort on the grounds of the Plaintiff's immoral or illegal conduct only in very limited circumstances. The basis of this power, as I see it, lies in the duty of the Courts to preserve the integrity of the legal system, and it is exercisable only where this concern is an issue. This concern is an issue where the damage award in a civil suit would, in effect, allow a person to profit from illegal, wrongful conduct or would permit an evasion or rebate of a penalty prescribed by the criminal law.

[217] I would not accept the defendants' submissions that Wong should "be disentitled to bring this action against any party as he seeks to nullify the penalty properly assessed as against him by the Law Society of Upper Canada."⁴⁹

[218] The suspension of Wong, I do not find is one of those "very limited circumstances" that the court should exercise its discretion to forbid a claim of Wong. I do not find a suspension on its own meets the requirement of evasion or rebate prescribed by the criminal law. The suspension is that of a regulatory body. It does not reach to heights of a penalty prescribed by the criminal law. In addition, I do not find that forbidding Wong from seeking damages in the circumstances of this case would offend public policy that would undermine the integrity of the justice system. If Wong was able to prove a fraud or fraudulent misrepresentation or a breach of fiduciary duty against Li and/or Yu, I do not accept that such conduct by Li or Yu or any other defendant should be precluded from any damages the court may award. In my view, to find so would undermine the integrity of the justice system.

VII: IS WONG'S CLAIM AGAINST YU BARRED BY THE LIMITATION ACT, 2002?

[219] Yu argues that the plaintiff amended his statement of claim on January 23, 2013 and pled allegations against Yu related to the processing of transaction on 65 Leitch. Yu argues that

⁴⁸ [1993] 2 SCR 159, at para. 5 and para. 25.

⁴⁹ Brief of Law of the defendant, Jennifer Yu, para.17.

the claim is statutorily barred due to not being brought within the two-year limitation period prescribed by section 4 of the *Limitation Act, 2002*.

[220] For the court to accept this argument of Yu, the court must conclude that the allegations made in the amendment are a new discrete cause of action and as such are subject to the two-year limitation period.⁵⁰ The court does not.

[221] The factual matrix is the same. The factual matrix concerns real estate transactions performed by Yu while working for Wong. There are no new discrete facts relied upon that translates to a new discrete legal claim that results in a new cause of action.

[222] Accordingly, I would not have dismissed the claim against Yu relating to 65 Leitch.

VIII, IX and X: THE REMAINING ISSUES

[223] Given the reasoning of the court outlined above, the court needs not deal with the last three issues concerning quantum of damages, fraudulent conveyance and punitive damages. Specifically with punitive damages, the court already found that the plaintiff did not meet his burden to prove fraud, deceit, fraudulent misrepresentation or breach of fiduciary duty. Consequently, the court determines that there is no conduct that is malicious or highly reprehensible to warrant an award of punitive damages.⁵¹

Conclusion

[224] In the end, the court finds that the plaintiff has failed to meet his burden of proof that:

- i. A fiduciary duty was owed.
- ii. The defendants by their conduct were fraudulent or deceitful/fraudulently misrepresented as against Wong.
- iii. The plaintiff has suffered damages due to any breach of fiduciary duty or conduct of the defendants.

[225] The court also finds that the defendants have failed to show that:

- i. The damages claim of the plaintiff is prohibited due the defence of illegality.
- ii. The *Limitation Act, 2002* applies to the claim concerning 65 Leitch against Yu.

⁵⁰ *Gladstone v. Canadian National Transportation Limited* 2009 CanLII 38789 (Ont Div. Ct), paras. 43 and 44; *Fitzpatrick Estate v. Medtronic*, 1996 CanLII 8118 (OSC).

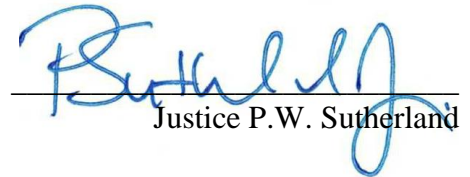
⁵¹ *Whiten v. Pilot Insurance*, (2002) 209 D.L.R. (4th) 257 (SCC); *Borelli*, supra, footnote 28, at para.1048.

Disposition

[226] Based on the above, the court orders that the action be dismissed as against the defendants, Jennifer Li, Jasmine Yu and Raymond Ho.

Costs

[227] If the parties cannot agree on costs, the defendants to serve and file their submissions of costs within twenty-one days from the date of this decision, and the plaintiff will have twenty-one days thereafter to serve and file his submissions. Thereafter, the defendants will have seven days to serve and file any reply. The submissions of the defendants to be no more than five pages, double-spaced, exclusive of any bill of costs, case law and offers to settle. The submissions of the plaintiff to be no more than ten pages, double-spaced, exclusive of any bill of costs, case law and offers to settle. Any reply to be no more than two pages double-spaced. Submissions are to be filed with the court. If no submissions are received within the time period set out herein, an order will be made that there will be no costs.


Justice P.W. Sutherland

Released: July 29, 2020