

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Skyclope Technologies Inc. v. Jia*,
2025 BCCA 178

Date: 20250529
Docket: CA49337

Between:

Skyclope Technologies Inc.

Appellant
(Plaintiff)

And

Junfeng Jia

Respondent
(Defendant/Plaintiff by Counterclaim)

And

**Leyuan Pan, Kunyu Zhang, Qianqi Zhuan and
Bluvec Technologies Inc.**

Respondents
(Defendants)

Before: The Honourable Mr. Justice Willcock
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Donegan

On appeal from: An order of the Supreme Court of British Columbia, dated
July 27, 2023 (*Skyclope Technologies Inc. v. Jia*, 2023 BCSC 1288,
Vancouver Docket S189114).

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Place and Date of Hearing:

Vancouver, British Columbia
December 20, 2024

Written Submissions Received:

April 24, 2025
May 8, 15, 2025

Place and Date of Judgment:

Vancouver, British Columbia
May 29, 2025

Written Reasons by:

The Honourable Mr. Justice Willcock

Concurred in by:

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Justice Donegan

Summary:

This appeal arises out of a dispute between competing companies and related individuals who once worked together at the same company (the corporate appellant). The appellant appeals the trial judge's award of damages equivalent to a 30% equity interest in itself to one of the respondents. It also claims the trial judge erred in failing to order punitive damages.

Held: Appeal allowed in part. The trial judge's finding that there was a binding agreement with respect to the 30% equity interest was unsupported by the evidence and constitutes a palpable and overriding error. However, there is no basis on which to interfere with the trial judge's discretion to refrain from ordering punitive damages.

Reasons for Judgment of the Honourable Mr. Justice Willcock:

Introduction

[1] In August 2018, the appellant Skycope Technologies Inc. (“Skycope”) commenced a civil claim against the respondents Junfeng Jia, Leyuan Pan, Bluevec Technologies Inc. (“Bluevec”) and others. It alleged Mr. Jia had been an employee of Skycope, from its inception in August 2016 until December 13, 2017, and thereafter had breached the terms of his employment agreement and breached fiduciary obligations owed to Skycope by entering into competition with Skycope and soliciting its customers. It alleged Mr. Pan, similarly, had breached his employment contract by misappropriating corporate property and opportunities. It sought damages from Bluevec, said to be an instrument of Mr. Jia’s wrongdoing, in unjust enrichment. It sought punitive damages against Mr. Pan and Mr. Jia.

[2] By counterclaim, Mr. Jia sought, among other relief, damages for wrongful termination of his employment, repayment of a loan to Skycope, an order that 30% of Skycope’s shares vest in him, or in the alternative, compensation for his unpaid work assessed on the basis of *quantum meruit*.

[3] After a lengthy trial, each party was partly successful. In reasons indexed at 2023 BCSC 1288, the trial judge found Mr. Jia and Mr. Pan had breached implied terms of confidentiality in their employment agreements with Skycope and had misused proprietary information and knowledge pertaining to the design and production of anti-drone systems to develop and market competing technology for the benefit of Bluevec. Mr. Pan was found to have written source code for Bluevec and for Mr. Jia while still employed at Skycope, including code for a direction-finding feature that was in development at Skycope. Bluevec, Mr. Jia, and Mr. Pan were found to have attempted to conceal their misuse of Skycope’s source code and Bluevec’s business activities both before and during the litigation. Further, Mr. Jia, Mr. Pan, and Bluevec were found to have breached an interlocutory injunction issued on October 24, 2018.

[4] Mr. Jia, Mr. Pan, and Bluvec were held jointly and severally liable to Skycope for \$800,000 in general damages. A declaratory order that the injunction had been breached was made. Mr. Pan was ordered to pay Skycope’s legal fees in relation to the breach of contract claim on a full indemnity basis, pursuant to a term in his contract of employment.

[5] Despite the critical findings against Mr. Jia and Mr. Pan, Skycope’s claim for punitive damages was dismissed.

[6] Mr. Jia’s counterclaim was successful. He obtained an order requiring repayment of his loan to Skycope and an order for damages equivalent to a 30% equity interest in Skycope as of the date of termination of his employment.

[7] As success was divided in the actions, each party was ordered to bear their own costs (other than the costs attributed to the breach of contract claim against Mr. Pan).

[8] Skycope appeals the order dismissing its claim for punitive damages and the order made in the counterclaim that it must pay Mr. Jia an amount equivalent to a 30% equity interest in Skycope as of the date of his dismissal on December 13, 2017.

Background: The Counterclaim

[9] Mr. Jia’s counterclaim was founded upon an allegation that he reached an oral agreement in the summer of 2016 with Zhenhua “Eric” Liu, a friend and the founder of Skycope, pursuant to which Mr. Jia would leave his cybersecurity job at Fortinet, commence employment with Skycope as its Chief Technology Officer and acquire an equity interest in Skycope.

[10] Mr. Liu testified that there were discussions about Mr. Jia getting an equity interest in Skycope which were never finalized. He asserted that Mr. Jia eventually agreed to receive shares in another company, Shenzhen Shengkong Technologies Co. Ltd. (“Shengkong”), a related company incorporated in Shenzhen, China, rather than Skycope.

[11] On July 23, 2016, months before Mr. Jia left Fortinet, Mr. Liu sent an email to Mr. Jia setting out a proposed equity distribution (the “Equity Distribution Memo”) as follows:

- 1: Equity distribution Zhenhua Liu (CEO) 60%; Junfeng Jia (CTO) 30%; reserved option pool 10%
 - 2: For other partners who joined later, such as market partners, the two founders shall dilute the shares together
 - 3: Vesting agreement: Vesting in 4 years
 - 4: Formulate a reasonable share repurchase agreement
 - 5: The founders shall put the corresponding proportion of initial funds into the company account based on the equity ratio
- Please confirm

[12] Mr. Liu was not asked about that email when he testified in chief or on cross-examination. He agreed with the suggestion put to him in cross-examination that, as of September 6, 2016, Mr. Jia’s employment with Skycope was “still in the air; it was not yet finalized” and Mr. Jia’s position was that he did not want to leave Fortinet until Skycope had secured investors.

[13] Skycope and Shengkong were both incorporated in August 2016.

[14] Mr. Liu testified that until terms of Mr. Jia’s employment were finalized there were continuing discussions about Mr. Jia’s equity interest. There was no controversy that Mr. Jia’s initial salary was to be one dollar per year at Skycope and \$400 per month at Shengkong, and that after investors were found Mr. Jia would earn \$70,000 per year working for Skycope. Mr. Liu appreciated that some equity in addition to those nominal salaries was an essential component of Mr. Jia’s compensation package. As of September 2016, Mr. Jia was earning about \$120,000 per year at Fortinet. In cross-examination, it was suggested to Mr. Liu that, in September 2016, the parties were discussing share ownership in either Skycope or Shengkong, or both, and Mr. Liu agreed.

[15] It was Mr. Liu's evidence that Mr. Jia began working for Skycope on October 1, 2016, pursuant to an employment agreement dated September 1, 2016. Initially the agreement was that Mr. Jia would have the title of Chief Technology Officer ("CTO") of Skycope, a salary paid by Skycope that was "increasable" and some shares in Skycope (although the ratio of shareholding was the subject of negotiation).

[16] Screenshots of messages exchanged on WeChat between Mr. Jia and Mr. Liu record proposed equity interests discussed on September 15–16, 2016. Mr. Liu initially proposed that he would hold 43.3% and Mr. Jia 21.65% of the shares (a 2:1 ratio). The second proposal in that exchange was that Mr. Liu would hold 39% and Mr. Jia 26% of the shares (a 3:2 ratio). Both proposals accounted for only 65% of Skycope's shares.

[17] Mr. Liu understood, at the end of the WeChat exchange, that there was agreement on a 3:2 ratio of shareholding and that if more people joined the team Mr. Liu and Mr. Jia would dilute their shareholding proportionally but the agreement was "not necessarily related to Skycope".

[18] When Mr. Jia was asked at trial if the 3:2 ratio referred to in the last WeChat exchange was the parties' final agreement on shareholding, he testified: "No, eventually, he [Liu] took a little less from his portion and the final ratio we reached was five to three [in Liu's favour]".

[19] In cross-examination it was suggested to Mr. Jia that it was inconsistent for him to claim to be entitled to 30% of the Skycope shares in his counterclaim when the only agreement he claimed to have reached with Mr. Liu was that the ratio of shareholding would be 5:3 in Mr. Liu's favour. He testified:

Yes. Yes, because at the time we focus on the ratio. We only had two founders for the company. The ratio was the most important factor or most key factor.

[20] The trial judge took it, from this, to be Mr. Jia’s evidence that, absent any other shareholders, he would have a 37% equity interest in Skycope (3/8th of the Skycope shares, assuming a 5:3 ratio and no shareholders other than Mr. Liu and Mr. Jia): Reasons at para. 96.

[21] A draft shareholder’s agreement, circulated on December 1, 2016, described the initially subscribed capital of Skycope as follows:

<u>Class A Common Shares</u>		
ZHENHUA LIU	\$12,000.00	(5,000,000 shares)
JUNFENG JIA	\$7,200.00	(3,000,000 shares)
KEN LIN	\$240.00	(100,000 shares)

[22] Mr. Jia described this as a draft shareholder’s agreement prepared by Mr. Liu that reflected the agreed-upon 5:3 shareholding ratio. The agreement was not signed. But, until April 2017, Mr. Jia and Mr. Liu contributed capital to Skycope based on the ratio of 5:3.

[23] Eventually, Mr. Liu testified, Chinese investors were intent upon investing in a Chinese company and insistent upon Skycope becoming a wholly-owned subsidiary of the Chinese company. Shengkong acquired 100% of Mr. Liu’s shares of Skycope on January 16, 2017. Mr. Liu contends continuing negotiations with Mr. Jia resulted in an agreement that Mr. Jia would acquire an equity interest in Shengkong rather than Skycope.

[24] Mr. Jia signed an employment contract with Shengkong in March 2017, effective on April 1, 2017, also becoming that company’s CTO. Mr. Jia then acquired 20.8125% of the shares of Shengkong from Mr. Liu under a Share Transfer Agreement signed April 18, 2017. It was a term of the Share Transfer Agreement that Mr. Jia “shall fulfill his obligation to contribute funds according to the articles of association of the company”.

[25] Mr. Jia testified:

The ratio of the shareholding between us should be five to three. ...

...

... In April of 2017, when the investment was in place, the shareholding was officially registered under Shengkong's company's name and then I realized that the proportion or the percentage was not correct. I had discussion with Mr. Liu and Mr. Liu said that was very easy to be modified. But later on, the same reason, that both of us were quite busy, so it was never changed.

[26] It was Mr. Jia's evidence that his interest as a shareholder of Shengkong was to "map" or "mirror" his interest in Skycope.

[27] Mr. Liu testified the interest in Shengkong described in this documentation was the only equity interest to which Mr. Jia was entitled.

[28] On July 18, 2017, Shengkong, Skycope, Mr. Liu, Mr. Jia and others entered into a "Pre-A Round Investment Agreement" (the "Shengkong Investment Agreement"). It included the following terms and provisions (translated, like all other key documents in this case, from Mandarin into English):

Zhenhua Liu, Junfeng Jia, and Jinsheng Xu are collectively referred to as "founder shareholders", but Jinsheng Xu no longer assumes the obligations of founder shareholders under this agreement after transferring the company's equity held by him in accordance with this agreement.

...

The company [Shengkong] is a limited liability company established in accordance with Chinese laws and is mainly engaged in the research and development, production and sales of relevant technologies and equipment for anti-drone detection and control ("main business"). As of the signing date of this agreement, the company's registered capital is RMB 10 million Yuan, and the existing shareholders hold 100% of the company's equity. The company's equity structure is as follows:

Shareholders	Capital Contribution (RMB/Yuan)	Equity ratio (%)
Zhenhua Liu	4,106,250	41.0625%
Junfeng Jia	2,081,250	20.8125%
Jinsheng Xu	1,312,500	13.1250%
Tianjin Ziniu Foundation Asset Management	1,750,000	17.5000%

Partnership Enterprise		
Lhasa Economic and Technological Development Zone Shunying Investment Co., Ltd.	500,000	5.0000%
Han Wang	250,000	2.5000%
Total	10,000,000	100%

...

Article 5 Statements and warranties of the company and its founder shareholders

Besides the disclosures made by the company and the founder shareholders based on the disclosure checklist questionnaire proposed by the investors in this round, the company, the Canadian company [Skyclope] and the founder shareholders will jointly and individually make the following statements and warranties to the investors in the current round on the date of signing this agreement and the settlement date:

- (1) The company is a legal person legally established and validly existing in accordance with Chinese laws, and Skyclope Technologies Inc. is a company legally established and validly existing in accordance with Canadian laws;
- (2) The company and its holding companies have all the necessary approvals, licenses and permits required to carry out its business. The company and its subsidiaries' operations, finances, subject qualifications, assets (including tangible assets and intangible assets), debts (including contingent liabilities), case disputes, etc., have been fully disclosed to investors. Such disclosures are true, complete and accurate, and there are no false records, misleading statements or major omissions;
- (3) Except for the disclosed equity holdings, the registered shareholder is the legal owner of the company's equity, and the company is the sole shareholder of the Canadian company;

...

7.2 Equity maturity

- (1) The company and the founder shareholders have unanimously agreed that all the company's equity ("founding team equity") held by the founder shareholders will mature in 4 years starting on March 24, 2017 (including this date). In the first year, 25% of the total equity held by them matures, and the remaining 75% matures in equal amounts on a monthly basis for the following three years (except for the incentive equity held on behalf).
- (2) Before the founding team's equity is mature, if one of the following four situations occurs, the founder will pay a price of one (1) yuan (if the law has

other mandatory provisions on the minimum price of equity transfer, follow its provisions), to transfer the immature equity to other founders ... ;

(a) Any founder shareholder (in terms of the equity held by the founder shareholder) voluntarily resigns from the company (except due to serious illness or injury); or

(b) Any founder shareholder (in terms of the equity held by the founder shareholder) is unable to hold a position due to reasons other than force majeure; or

(c) Any founder shareholder (in terms of the equity held by the founder shareholder) is dismissed due to deliberate or gross negligence; or

(d) The founder shareholder (in terms of the founder's own equity) resigns or is dismissed due to behavior that seriously damages the company's interests, or the founder shareholder participates in or joins the company's competitors in any way, then such mature equity will be purchased by the employee stock ownership platform or other founders free of charge.

[Emphasis added.]

[29] The Shengkong Investment Agreement provided that, following a round of capital contributions to Shengkong, Mr. Liu would hold 47.77% and Mr. Jia would hold 18.73% of the shares in Shengkong.

[30] On August 31, 2017, Mr. Liu sent Skycope's accountant a table setting out the shareholding in Skycope. It indicated Mr. Liu held 47.77% of Skycope's shares and Mr. Jia held 18.73%. Mr. Liu testified that this was an error.

[31] In cross-examination Mr. Jia testified that there was agreement on a salary and an equity interest before he started to work at Skycope. The continuing discussions after September 2016 were only about how to "implement" that agreement. Discussions with Chinese investors did not change the plan. The Shengkong shareholding was intended to "mirror" Skycope's.

[32] Mr. Jia did not testify in chief or cross-examination about the July 23, 2016 email that referred to him acquiring a 30% equity interest in Skycope.

[33] On December 13, 2017, Mr. Jia's employment with Skycope was terminated in writing without cause, effective immediately. He was advised:

Your employment with Shenzhen Shengkong Technology Co. Ltd. is governed under Chinese law and will be addressed by separate correspondence. We understand you hold options or shares in Shengkong pursuant to a Vesting Agreement governed by Chinese law. Those options or shares will also be addressed by separate correspondence.

[34] In response, Mr. Jia’s counsel disputed the effect of the notice and sought further and other compensation. With respect to his claim to equity, Mr. Jia’s counsel wrote:

Per your correspondence, our client holds options and/or shares in Shenzhen Shengkong Technology Co. Ltd. and will vigorously pursue his interest in this Chinese corporation and any subsidiaries (including the Company [Skycope]) it owns.

[35] Skycope’s counsel responded, in part:

We reject your request for “continued accounting of the Company and payment of our client’s equity earnings”. Mr. Jia holds no shares in Skycope and at all times he understood (and signed documents to the effect that) Skycope is a wholly owned subsidiary of Shenzhen Shengkong Technology Co. Ltd. Shengkong is the only shareholder of Skycope and Mr. Jia has no rights of ownership in Skycope.

[36] At the time he was terminated from Shengkong, in December 2017, Mr. Jia held 20% of its shares and Mr. Liu held 50%.

[37] After Mr. Jia’s dismissal from Skycope and Shengkong, Mr. Liu brought an application to the Beijing Arbitration Commission claiming that he was entitled to repurchase Mr. Jia’s shares in Shengkong for 1 Yuan pursuant to the Shengkong Investment Agreement. The application was heard by a panel of the Arbitration Commission (the “Panel”) on December 14, 2020. Both Mr. Jia and Mr. Liu were represented and made submissions before the Panel.

[38] Mr. Liu submitted that Mr. Jia had applied for a patent in the name of his wife, Yanqin Wei, with the technology developed by Shengkong during the course of his employment and had refused requests to cede the patent to Shengkong. He alleged that after Mr. Jia left his position with Shengkong he incorporated Bluevec and assumed a position as its Chief Executive Officer in Canada in March 2018. He alleged Mr. Jia stole technology from Shengkong “and its affiliated company,

Skycope” and kept it for himself, becoming involved in the manufacturing and sales of drone defense systems in direct competition with Shengkong. He further alleged Mr. Jia had incorporated Beijing Lizheng Technologies Co. Ltd. (“Lizheng”) in March 2018, and, through that company, engaged in business identical to that of Shengkong—the development, manufacturing and sale of drone defense systems.

[39] Mr. Liu argued that, because Mr. Jia left his position with Shengkong less than one year after March 24, 2017, the shares registered under his name were unmatured shares that he could redeem for the price of 1 Yuan under Article 7.2 of the Investment Agreement.

[40] The Panel apparently considered itself bound by a Civil Judgment [(2018) YUE0306MINCHU NO.13376] to conclude Jia had not been dismissed for “conduct that severely infringes upon the company interests”. However, the Panel found Mr. Jia had violated the non-competition provision in his contract with Shengkong by incorporating Bluevec in Canada, and Lizheng in Beijing, and by taking advantage of technology secrets he obtained during his employment at Shengkong. The Panel held that this conduct fell within the scope of Article 7.2(2)(d), triggering the requirement that Mr. Jia “transfer his unmatured shares to other founding member(s) for the price of RMB 1 YUAN”. By the time of the arbitration, Mr. Liu was the only other founding member of Shengkong.

[41] The Panel then found that all of Mr. Jia’s shares in Shengkong were unmatured. Pursuant to Article 7.2(1), Mr. Jia’s shares would have matured in four separate years, with the first 25% of his shares maturing on March 23, 2018. At the time he left his employment on December 22, 2017, none of his shares had matured and no contractual acceleration provisions were applicable.

[42] The Panel directed Mr. Jia to transfer all the shares of Shengkong held by him to Mr. Liu for 1 Yuan and to pay Mr. Liu’s legal fees and the arbitration costs.

Judgment Below

[43] The trial judge rejected Mr. Liu's contention that Mr. Jia's only claim to equity was in Shengkong shares. She found there was an oral agreement that Mr. Jia was to receive a 30% interest in Skycope. She ordered Skycope to pay damages calculated as the value of that equity interest in Skycope on the date of Mr. Jia's termination, December 13, 2017. The trial judge found, critically:

[94] On July 23, 2016, Mr. Liu sent an email to Mr. Jia entitled "Equity Distribution Memo" setting out the share distribution at 60% for Mr. Liu, 30% for Mr. Jia, and 10% for future shareholders.

...

[104] Mr. Jia would not have left his position at Fortinet without having reached agreement on the key terms of his employment at Skycope. He was married and had a young child. Mr. Liu described Mr. Jia as risk-averse in financial matters. He said he was doing his best to persuade Mr. Jia to leave Fortinet and join Skycope. Documentary evidence supports Mr. Liu's statement. In light of this, it is inconceivable that Mr. Jia would have left Fortinet to join Skycope in October 2016, for half his Fortinet salary and have loaned it some \$10,000 without having reached an agreement about his equity interest in the enterprise.

[105] The evidence does not support Mr. Liu's assertion that Mr. Jia agreed to take an equity interest in Shengkong instead of Skycope. At the time of contract formation, Mr. Liu and Mr. Jia did not know that the Chinese investors would demand that Shengkong own Skycope. I find that they agreed that Mr. Jia would have an equity interest in Skycope.

[106] Skycope also argues that no contract was formed because the amount of Mr. Jia's equity interest was never agreed upon. I disagree. In my view, Mr. Jia has established on a balance of probabilities that he and Mr. Liu agreed that he would have a 30% interest in Skycope. This amount accords with Mr. Liu's July 23, 2016 email to Mr. Jia specifying that amount. I do not accept Mr. Jia's uncorroborated testimony that the parties subsequently agreed he would have a 37% equity interest.

...

[108] The parties' subsequent actions are consistent with a mutual understanding that they had a binding agreement. Mr. Jia made the \$10,000 loan to Skycope sometime between August and October 2016, which Skycope accepted. When Mr. Jia left Fortinet, he immediately became Chief Technical Officer of Skycope.

[109] I conclude that Mr. Jia and Skycope entered into a binding employment agreement ("Oral Contract") at the time Mr. Jia left Fortinet. Its essential terms were that Mr. Jia would leave his current employment and loan Skycope \$10,000. In return, he would become CTO, receive an annual salary of \$60,000 and a 30% equity interest in Skycope.

[Emphasis added.]

[44] Further, she found that the equity Mr. Jia acquired in Shengkong was in consideration of his investment in that company. She held:

[256] Skycope argues that Mr. Jia agreed to take an equity interest in Shengkong instead of Skycope, after Shengkong became the sole owner of Skycope through the Shengkong Investment Agreement in July 2017. That agreement records Mr. Jia as acquiring a 18.73% interest in Shengkong.

[257] However, the Arbitration Decision, discussed above in relation to Mr. Jia’s lack of credibility, is of assistance to him on this point. The tribunal found that he paid approximately \$400,000 CAD for his 18.73% interest in Shengkong. This means that Mr. Jia’s equity interest under the Oral Contract did not become his equity interest in Shengkong.^[6]

[45] In footnote [6], the judge observed:

Contrary to the plaintiff’s submission, I do not read the warranty in the Shengkong Investment Agreement as saying that Mr. Jia acknowledges he never had an equity interest in Skycope. Mr. Liu gave the same warranty and he certainly owned shares in Skycope.

Grounds of Appeal

[46] The appellant claims the trial judge erred in:

- a) finding that Mr. Jia was entitled to a 30% interest in Skycope; and
- b) declining to order punitive damages.

Mr. Jia’s Claim to Equity

Evidence and Argument

[47] The appellant contends there was no evidence to support the finding that there was a binding agreement that Mr. Jia would acquire a 30% interest in Skycope as a term of his employment.

The July 23, 2016 email and “equity distribution memo”

[48] The appellant says the equity distribution memo relied upon by the trial judge as evidence of a binding agreement was a proposal from Mr. Liu to which there was no evidence of a response. Neither party took the position that the equity distribution memo constituted a binding agreement; both testified that an agreement on different terms was agreed upon in September.

The September 15–16, 2016 WeChat exchanges

[49] Mr. Liu and Mr. Jia discussed proposals for percentage and proportionate shareholdings; initially that Mr. Liu would hold 43.3% and Mr. Jia 21.65% of the shares; then that Mr. Liu would hold 39% and Mr. Jia 26% of the shares. At trial, Mr. Liu testified that the parties agreed to hold shares on a 3:2 ratio but he was uncertain whether the agreement pertained to Skycope shares; Mr. Jia testified that this was not a “final ratio” and that he and Mr. Liu agreed to a 5:3 ratio at some later point. He did not assert that there was an existing, binding agreement that he would receive 30% of the shares of Skycope.

The December 1, 2016 draft shareholder’s agreement

[50] Mr. Liu emailed Mr. Jia and Ken Lin a draft agreement pursuant to which Mr. Liu would receive 5,000,000 shares, Mr. Jia would receive 3,000,000 shares, and Mr. Lin would receive 100,000 shares. The draft agreement also included terms requiring the parties to make financial contributions in proportion to their shareholdings, restrictions on share transfer, a right of first refusal, and a redemption clause. It was not signed. Mr. Jia suggested this agreement reflected the agreed-upon shareholding ratio, but the 5:3 ratio was expressly rejected by the trial judge.

[51] Mr. Liu did not deny that Mr. Jia was to receive equity in the enterprise as a term of his employment. But he contends the trial judge’s conclusion that the parties reached a sufficiently certain agreement on essential terms, specifically an agreement that Mr. Jia would obtain a 30% interest in Skycope, is not supported by any evidence.

[52] The appellant further asserts that if there were an agreement that Mr. Jia would acquire Skycope equity, as alleged or at all, it was superseded or modified such that Mr. Jia would instead receive an equity interest in Shengkong. It identifies two errors made by the trial judge in rejecting the assertion that Mr. Jia was entitled to Shengkong shares only. First, it says the judge ignored or misapprehended evidence of the parties’ conduct subsequent to the July 23, 2016 email, specifically,

Mr. Jia's warranty that Shengkong was the sole Skycope shareholder. Second, it contends the judge misapprehended the decision of the Beijing Arbitration Commission when she concluded the Panel found that Mr. Jia paid \$400,000 for his shares in Shengkong, when no such finding was made.

[53] The respondents say the trial judge was entitled to conclude there was an agreement he would acquire a 30% equity interest in Skycope despite the fact he did not testify to that effect. They say the evidence of continuing negotiations after Mr. Jia began working for Skycope does not undermine that finding. They say the judge cited and properly relied upon authority for the proposition that a binding contract may be formed even where negotiation about amending terms continues.

[54] The respondents say the judge considered and properly rejected the argument that Mr. Jia agreed to receive shares in Shengkong rather than Skycope when he first agreed to be employed by Skycope. The rejection of the argument was not founded upon a palpable and overriding error but upon the fact that Chinese investors had not yet demanded that Skycope be a fully-owned subsidiary of Shengkong as a condition of their investment in Shengkong. That did not occur until 2017, well after Mr. Jia had started his employment at Skycope. The respondents say the judge correctly considered the evidence of the surrounding circumstances known to the parties at the time of formation of the contract.

[55] The respondents deny the trial judge ignored or misapprehended the Shengkong Investment Agreement, noting that the judge discounted the warranty with respect to ownership of Skycope shares because she considered it to be inconsistent with the evidence of all the parties.

[56] Further, the respondents say the appellant is advancing a new argument on appeal, not advanced below, that there was a contract to give Mr. Jia equity in Skycope but that it was superseded or modified by a subsequent agreement to receive equity in Shengkong.

Discussion and Analysis

[57] I first note that I disagree with the respondents’ assertion that the appellant is advancing a new argument on appeal which should not be entertained. The question of whether Mr. Jia received shares in Shengkong in lieu of shares in Skyclope was clearly before the trial judge. She expressly considered and rejected this argument at paras. 105, 256–257. The respondents take issue with the framing of the argument on appeal that the agreement to receive Shengkong shares could have “modified” or “superseded” an existing agreement to receive Skyclope shares. In my view, this distinction lacks substance. This Court is not being asked to consider any evidence or argument which was not before the trial judge.

Evidence of an October 2016 agreement

[58] Mr. Liu and Mr. Jia agreed that, when Mr. Jia joined Skyclope, it was contemplated that his compensation would include an equity interest in the enterprise. That was an essential term of his contract of employment. Mr. Liu’s evidence was that there was an agreement that Mr. Jia would receive equity, but it was unclear to him whether Mr. Jia would acquire shares in Skyclope, Shengkong or both. That was not accepted by the trial judge. In any event, Mr. Liu did not clearly deny that there was an agreement (at least an agreement in principle) with respect to Skyclope shares. It is not open to us to interfere with the judge’s finding that the parties agreed that Mr. Jia would acquire some equity interest in Skyclope in 2016.

[59] However, in my view, there is no evidence of an agreement that Mr. Jia would receive 30% of the shares of Skyclope, and that the shares would vest immediately on the commencement of his employment in October 2016, or by December 13, 2017, when his employment was terminated.

[60] The only evidence of an agreement to the effect that Mr. Jia would acquire a 30% interest in Skyclope is the July 23, 2016 Equity Distribution Memo. While the counterclaim asserted a right to 30% of the Skyclope shares, no witness testified that the Equity Distribution Memo accurately set out the terms of Mr. Jia’s employment.

[61] It was open to the trial judge to accept Mr. Liu's evidence that there was an agreement that the shareholding ratio in Skycope would be 3:2 in Mr. Liu's favour (and to reject Mr. Liu's evidence that the agreement was superseded by an agreement that Mr. Jia would receive Shengkong shares); or to accept Mr. Jia's evidence that there was an agreement that Skycope shares would be held on a 5:3 ratio in Mr. Liu's favour. It was not open to the judge, in my view, to find there was an agreement, in October 2016, that Mr. Jia was entitled to 30% of the Skycope shares. The evidence did not support such a finding.

[62] A determination that a binding contract exists is a question of mixed fact and law, reviewable for palpable and overriding error: *Oswald v. Start Up SRL*, 2021 BCCA 352 at para. 31. In the absence of evidence supporting the agreement to a term that Mr. Jia would receive a 30% interest in Skycope, that finding cannot stand.

[63] The judge's rejection of Mr. Liu's argument that the final agreement on equity was reflected in the April 18, 2017 Share Transfer Agreement and the Shengkong Investment Agreement, was founded upon her conclusion that there was a sufficient and effective agreement between Mr. Liu, Mr. Jia and Skycope in October 2016. She specifically held (at para. 104) that Mr. Jia had "reached an agreement about his equity interest in the enterprise" in October 2016, and (at para. 105) that the agreement could not have been to obtain shares in Shengkong because "[a]t the time of contract formation, Mr. Liu and Mr. Jia did not know that the Chinese investors would demand that Shengkong own Skycope." That logic cannot justify the rejection of Mr. Liu's version of events if there was no agreement on equity before the Chinese investors demanded that Shengkong own Skycope (which occurred in March 2017).

[64] Two further reasons were given for rejecting Mr. Liu's argument that the final agreement on equity was for Mr. Jia to receive shares in Shengkong:

- a) The Beijing Arbitration Commission found that Mr. Jia paid approximately \$400,000 for his 18.73% interest in Shengkong and, hence Mr. Jia's equity

interest under the oral contract did not become his equity interest in Shengkong (at para. 257); and

- b) The warranty in the Shengkong Investment Agreement should not be read as evidence that Mr. Jia acknowledged he never had an equity interest in Skycope because Mr. Liu gave the same warranty and he certainly owned shares in Skycope (at footnote 6).

[65] In my opinion, the appellant is correct to say that neither of these conclusions are well founded.

Mr. Jia’s consideration for equity in Shengkong

[66] The appellant says the trial judge was palpably wrong to say the Beijing Panel found Mr. Jia had paid for the Shengkong shares. The appellant says the Panel only noted that Mr. Jia’s proportionate capital contribution for his 18.73% shareholdings after the Shengkong Investment Agreement was 2,081,250 Yuan but made no findings as to whether Mr. Jia had actually made that capital contribution. Mr. Jia did not testify at trial that he made any capital contribution to Shengkong.

[67] At trial, the respondents argued that the Panel had determined that “Mr. Jia had paid the sum of 2,081,250 Yuan (a sum roughly approximate to \$400,000) for 18.73% of the shares in Shengkong”. While the respondents contend the trial judge accepted that submission, they do not identify the finding of the Panel upon which the trial judge might have relied in doing so. They assert only “[t]he language of the Arbitration Decision does not make it clear that the trial judge misapprehended the evidence”.

[68] The Panel’s decision records the parties’ positions on this issue in its discussion of the evidence. It notes the Investment Agreement was tendered by Mr. Liu who argued that it establishes Mr. Jia’s obligation to contribute 2,081,250 Yuan to Shengkong—an obligation he says was never fulfilled. Mr. Jia did not dispute the authenticity of the Investment Agreement but argued that it was not established that he “failed to fulfill his obligation of contributing the funds”. The

Panel’s only reference to the matter is contained under the heading “About the basic facts determined in this case” in which it sets out:

On July 18, 2017, the applicant [Mr. Liu], the respondent [Mr. Jia], and Jinsheng Xu, who is not involved in this case, signed the [Investment Agreement] jointly. ...The respondent [Mr. Jia] obtained 18.73% of the shares in the share structure after the capital increase according to the provision set out in the [Investment Agreement]. His matching contribution of funds was 2081250 YUAN. The [Investment Agreement] sets out the terms regarding representations and guarantees made to the company and the founding shareholder(s), the promises that the company and founding shareholders made to the investing part in this round, the maturity of the shares, and the liabilities for breach of contract etc.

[69] In my view, it cannot be said that the Panel determined that Mr. Jia had contributed the funds according to the Shengkong Investment Agreement. Nothing turned on this question in the arbitration and the above paragraph, in context, reads as merely a description of the Investment Agreement. At best, it is ambiguous.

[70] In my opinion, given that Mr. Jia did not testify at trial to having made any capital contribution to Shengkong, and given that the question is not expressly addressed in the arbitration decision, there is no evidence upon which to find Mr. Jia paid \$400,000 for his Shengkong shares.

The Warranty

[71] The trial judge discounted Mr. Jia’s warranty in the Shengkong Investment Agreement that, as of the date of the agreement, Shengkong was the “sole shareholder of the Canadian company”. She did so, in part, because Mr. Liu gave the same warranty “and he certainly owned shares in Skycope”. The appellant says the judge misapprehended the evidence and the submissions with respect to Mr. Jia’s warranty. No one argued that the warranty was a representation that neither Mr. Liu nor Mr. Jia had ever owned shares in Skycope. It was, rather, Mr. Liu’s position that, on the date of the agreement, both expressly warranted and represented that Shengkong was the sole shareholder of Skycope. Mr. Liu says that was true. On January 16, 2017, he had transferred his Skycope shares to Shengkong, and Mr. Jia never owned shares of Skycope, no final agreement having been concluded. Shengkong was, in fact, the sole shareholder of Skycope.

[72] In my view, in light of the January 16, 2017 share transfer, the reason given for discounting the warranty cannot stand.

Conclusion with respect to Mr. Jia’s claim

[73] For the reasons I have given, I would allow the appeal and set aside the award to Mr. Jia of damages in an amount equal to the value of a 30% equity interest in Skyclope as of the date of termination of his employment. In my view, while the evidence supports the finding that the parties agreed that Mr. Jia would be compensated by receiving shares in the enterprise, it does not support the finding that the terms were settled when he began his employment on October 1, 2016.

[74] In my opinion, having concluded that Mr. Jia’s entitlement to Skyclope shares was settled when he began to work at Skyclope and having concluded that Mr. Jia paid for his Shengkong shares, the judge did not adequately address the claim that the promise to compensate Mr. Jia with shares for his work at Skyclope was fulfilled when he acquired Shengkong shares.

[75] Counsel for Mr. Jia contends the trial judge’s finding that Mr. Jia held a 30% equity interest in Skyclope precluded her from granting a remedy founded upon the existence of a constructive trust or unjust enrichment. He says, in the event we find the evidence does not support the finding there was an agreement Mr. Jia would earn a 30% interest in Skyclope, the question whether Mr. Jia has made out any equitable claim should be remitted to the trial judge. He says the trial judge is best placed to decide these questions based on her “greater exposure to the entire factual nexus of the case before her”.

[76] Counsel for Skyclope says once the trial judge’s finding that Mr. Jia paid \$400,000 for his interest in Shengkong is set aside, “the only available inference is that Mr. Jia obtained an equity interest in Shengkong in satisfaction of any agreement with respect to equity interests found to exist between Mr. Liu and Mr. Jia”. He suggests that if he did not pay for the Shengkong shares, Mr. Jia’s acquisition of those shares must stand as compensation for his work at Skyclope.

[77] In my view, that conclusion is not the only available inference. The trial judge was not satisfied Mr. Jia had disclaimed any interest in Skycope when he acquired shares in Shengkong. She did not expressly address his claim to an equitable interest in Skycope.

[78] In my view, it is neither appropriate nor practical for us to address the claim to an equitable interest in Skycope on the record and on the submissions we have heard. I would remit to the trial court for reconsideration two questions:

- a) Whether there is a basis in fact and law other than contract to find that Mr. Jia has an equitable claim to Skycope shares; and,
- b) Whether any such claim, if established, is superseded or replaced by the agreement that Mr. Jia would receive equity in Shengkong.

Punitive Damages

[79] The appellant says the trial judge erred in declining to order punitive damages and failing to provide sufficient reasons for her dismissal of that claim.

[80] The trial judge addressed the punitive damages claim succinctly, as follows:

[291] The well-settled law on punitive damages is succinctly summarized in *Cruise Connections Canada v. Cancellieri*, 2012 BCSC 53 at para. 390:

[390] Punitive damages are awarded in exceptional circumstances to punish high-handed, malicious, arbitrary or vindictive misconduct that departs substantially from ordinary standards of decent behaviour. An award of punitive damages is not intended to compensate the plaintiff. Rather, it serves the objectives of retribution, deterrence and denunciation. Punitive damages will only be awarded where compensatory damages are insufficient to accomplish these objectives, and should be awarded in an amount that is no greater than necessary to rationally achieve their purpose: *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595 at para. 94.

[292] The bar for such an award is high. Skycope relies on the conduct of the defendants in *GEA*. Although the trial judgment in that case is sealed, the Court of Appeal's judgment referred to the trial judge's findings about that conduct. Among other things, she found that the defendant had destroyed his computers to eliminate incriminating evidence, had manipulated time stamps on drawings to hide the fact that they had been taken, and had used misappropriated information for personal as well as business purposes: *GEA* at paras. 57, 95, 101.

[293] The conduct of Mr. Jia, Dr. Pan and Bluvec in this case is not comparable. I decline to award punitive damages.

[81] The appellant argues that an order for punitive damages was not only appropriate but necessary to effectively punish, denounce, and deter the theft of confidential technology in a highly competitive industry. Skycope submits that an award of punitive damages akin to that in *GEA Refrigeration Canada Inc. v. Chang*, 2020 BCCA 361, would serve the purposes for which punitive damages are awarded. In particular, it notes that the misuse of its confidential information was planned and deliberate; it was particularly vulnerable to Mr. Jia; and Bluvec gained wrongful advantage because it was able to bring a competing product to market more quickly by virtue of the misuse of Skycope's source code.

[82] It says there was a "relatively modest damages award" insufficient to effectively punish, deter, or denounce that misconduct.

[83] The respondents say a punitive damages award is discretionary in nature, and that a trial judge's "sense of the situation and her understanding of the parties cannot be duplicated in this Court": citing *Gadhri v. 0760815 B.C. Ltd.*, 2017 BCCA 31 at para. 52. They say the appellant does not identify any particular error by the trial judge in her exercise of discretion. The trial judge's reasons clearly demonstrate knowledge of the relevant law and an application of the law to the facts before her, and there is no basis to suggest that she failed to consider relevant factors to justify appellate interference.

[84] I agree. Most of the appellate decisions cited to us are appeals from an award, rather than appeals from the refusal to make a punitive damages award. In such cases, the questions before the appellate court are (1) whether there is an error of law, and (2) whether the amount awarded is rationally connected to the purposes for which punitive damages are awarded—prevention, deterrence and denunciation: *Cinar Corporation v. Robinson*, 2013 SCC 73 at para. 134. In this case, the only relevant question before us is whether the trial judge made an error of law in failing to award punitive damages.

[85] Where an appeal is from an order for the payment of punitive damages, this Court has described the standard of review as “rationality”. The question is whether the punitive damages “serve a rational purpose” or were “‘rationally required’ to act as deterrence”: *Yates v. Langley Motor Sport Centre Ltd.*, 2022 BCCA 398 at paras. 67–68. Where the appeal is from the refusal to make such an award, conversely, the question we should pose is whether the misconduct of the defendant was so outrageous that punitive damages were rationally required to act as deterrence: *Chung v. Chung*, 2025 BCCA 136 at paras. 53–54.

[86] In my opinion, given that Mr. Jia, Mr. Pan and Bluevec were ordered to pay substantial damages it cannot be said that further damages were rationally required to act as a deterrence.

[87] Further, however, we can weigh in the balance the fact that, as a result of the decision of the Beijing Arbitration Commission, Mr. Jia has lost whatever interest he had in the Shengkong shares, as a result of the breach of his non-competition agreement. Those shares may have been the only equity in either company payable to Mr. Jia as compensation. Mr. Pan has been ordered to indemnify Skycope for costs in the contractual litigation. There remains, as I note below, the possibility Mr. Jia will have to pay Skycope’s costs throughout.

[88] In my opinion, we should not interfere with the judge’s assessment of the necessity of a punitive damages award.

Disposition

[89] I would allow the appeal relating to Mr. Jia’s equity interest and set aside the award to Mr. Jia of damages valued at 30% of the equity in Skycope at the time of his termination. The questions I have described above with respect to Mr. Jia’s entitlement to shares are remitted to the trial court.

Costs

[90] Because I would set aside the award in Mr. Jia’s favour (other than the relatively small claim for repayment of his loan to Skyclope), I would set aside the judge’s order requiring the parties to bear their own costs. I would award the appellant costs of the appeal and remit the question of trial costs for reconsideration by the trial court.

“The Honourable Mr. Justice Willcock”

I AGREE:

“The Honourable Madam Justice DeWitt-Van Oosten”

I AGREE:

“The Honourable Justice Donegan”