

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *LuMei W. CPA Inc. v. Nixon*,
2025 BCSC 987

Date: 20250529
Docket: S98578
Registry: Nanaimo

Between:

LuMei W. CPA Inc. and Lu Mei Wallin

Plaintiffs

And

Debra A. Nixon and Debra A. Nixon Inc.

Defendants

Before: The Honourable Justice Thompson

Reasons for Judgment

Counsel for the Plaintiffs:	E. Scrimshaw
Counsel for the Defendants:	A. Buchanan
Place and Date of Hearing:	Nanaimo, B.C. April 30, 2025
Place and Date of Judgment:	Nanaimo, B.C. May 29, 2025

[1] This action relates to the sale of an accounting business. The parties agree that an issue of contract interpretation is appropriate for summary trial. They ask the Court to decide whether the seller, the corporate defendant, was obliged by the buy-sell agreement to provide certain client-related business documents and information to the purchaser, the corporate plaintiff. I agree that this issue is appropriate for summary trial.

[2] The plaintiff Lu Mei Wallin is a chartered professional accountant, and she is the sole director and shareholder of the purchaser, LuMei W. CPA Inc. Likewise,

the defendant Debra A. Nixon is a chartered professional accountant, and her professional corporation, Debra A. Nixon Inc., is the seller.

[3] The buy-sell agreement, titled "Purchase of Business Agreement" and dated 5 January 2023, provides for the sale of the business' assets in exchange for a total purchase price of \$170,000. The purchase price was to be paid by \$50,000 at closing, and the balance by way of a \$120,000 loan from the seller repayable in three annual \$40,000 instalments plus 3% interest. This loan is secured by Ms. Wallin's guarantee, and a security agreement.

[4] Following are the material terms of the buy-sell agreement:

BACKGROUND

- a. The Seller is a corporation which carries on the business of Chartered Professional Accounting ... (the "Business").
- b. The Seller owns and desires to sell certain of its business assets of its Business (the "Assets") to the Purchaser, subject to any exclusions set out in this Agreement and the Purchaser desires to buy the Assets.

...

Definitions

1. The following definitions apply in the Agreement:
 - a. The "Assets" consist of the following:
 - ...
 - ii. all books, records and files, relevant to carrying on the Seller's Business (the "Books, Records, and Files");
 - iii. subject to paragraph 35, the benefit of all unfilled engagements, including Business client engagements, received by the [Seller] in connection with the Seller's Business, and all other contracts, engagements, or commitments, whether written or oral, to which the Seller is entitled in connection with the Seller's Business (the "Material Contracts"), and in particular all right, title, and interest of the Seller in, to, and under the material agreements and contracts described in the Schedule of Material Contracts;
 - iv. the goodwill of the Seller's Business including, but not limited to, customer lists (a copy of which is attached hereto in the Clients Listing Schedule) and the right of the Purchaser to represent itself as carrying on the Seller's Business in continuation of and in succession to the Seller (the "Goodwill");
 - ...
 - c. "Excluded Assets" means assets that are owned by the Seller but do not form any part of the Assets for the purpose of this transaction. Excluded Assets will include the following:
 - ...

vii. those Business clients with engagement with the [Seller], as listed in the Schedule of Excluded Clients.

...

Closing

...

6. At Closing and upon the Purchaser resolving the Purchase Price in full to the Seller, the Seller will deliver the Assets to the Purchaser. The Seller will deliver to the Purchaser possession of the Assets, in the same condition as on the Execution Date, and free and clear of any liens, charges, rights of third parties, or any other encumbrances, except those attached as a result of the Purchaser's actions.

7. At Closing and upon the Purchaser resolving the Purchase Price in full to the Seller, the Seller will provide the Purchaser with duly executed forms and documents evidencing transfer of the Assets, where required including, but not limited to, bills of sale, assignments, assurances, and consents. The Seller will also co-operate with the Purchaser as needed in order to effect the required registration, recording, and filing with public authorities of the transfer of ownership of the Assets to the Purchaser.

...

Seller's Representations and Warranties

11. The Seller represents and warrants to the Purchaser that:

a. the Seller has full legal authority to enter into and exercise its obligations under this Agreement;

...

d. the Seller is the absolute beneficial owner of the Assets, with good and marketable title, free and clear of any liens, charges, encumbrances or rights of others. The Seller is exclusively entitled to possess and dispose of the Assets;

e. to the best knowledge of the officers of the Seller there is no pending or anticipated claim against the Assets or against the Seller's ownership or title in the Assets or against the Seller's right to dispose of the Assets;

f. no third-party contract is outstanding that could result in a claim against or affecting the Assets in whole or in part either now or in the future;

g. the Seller does not have any outstanding contracts, agreements, or commitments of any kind, written or oral, with any third party regarding the Assets, except for any material contracts described in the Schedule of Material Contracts. The Seller represents and warrants that no material default or breach exists with regard to any presently outstanding Material Contract; . . .

...

13. The Seller warrants to the Purchaser that each of the representations and warranties made by it is accurate and not misleading at the Closing Date. The Seller acknowledges that the Purchaser is entering into this Agreement in reliance on each representation and warranty.

14. The Seller's representations and warranties will survive the Closing Date of this Agreement.

...

Conditions Precedent to be Performed by the Seller

24. The obligation of the Purchaser to complete the purchase of the Assets under this Agreement is subject to the satisfaction of the following conditions precedent by the Seller, on or before the Closing Date, each of which is acknowledged to be for the exclusive benefit of the Purchaser and may be waived by the Purchaser entirely or in part:

a. all of the representations and warranties made by the Seller in this Agreement will be true and accurate in all material respects on the Closing Date;

b. the Seller will obtain and complete any and all forms, documents, consents, approvals, registrations, declarations, orders, and authorizations from any person or governmental or public body that are required of the Seller for the proper execution of this Agreement and transfer of the Assets to the Purchaser;

c. no substantial damage to or alteration of the Assets that would adversely affect their value will occur between the date this Agreement is signed and the Closing Date;

...

g. the Seller will execute and deliver to the Purchaser a [bill] of sale for the Assets in favor of the Purchaser; and

h. the Seller will provide the Purchaser with complete information concerning the operation of the Seller, in order to put the Purchaser in a position to carry on in the place of the Seller.

...

Disclosure

26. Upon the reasonable request of the Purchaser, the Seller will, from time to time, allow the Purchaser and its agents, advisors, accountants, employees, or other representatives to have reasonable access to the premises of the Seller and to all of the books, records, documents, and accounts of the Seller, during normal business hours, between the date of this Agreement and the Closing Date, in order for the Purchaser to confirm the representations and warranties given by the Seller in this Agreement.

...

Non-Competition

30. For a period of 5 years (the "Non-Competition Period") after the Closing Date, the Seller and its principal, Debra Nixon, will not, either individually or in conjunction with any other person or business entity or in any other manner whatsoever, have interest in, enter employment with, lend money to, advise or permit its name to be associated with any business similar to or in competition with the Purchaser within a 100 kilometer radius of the Business premises, except with respect to [the] Excluded Clients listed in the Schedule of Excluded Clients.

...

32. On or before the Closing Date the Seller will cause Debra Nixon to sign a Non-competition Agreement substantially in accordance with the

terms of paragraph 30 and 31 above.

...

Transfer of Third Party Contracts

35. This Agreement is not to be construed as an assignment of any third party contract, including Material Contracts, from the Seller to the Purchaser if the assignment would be a breach of that third party contract.

36. The obligation of the Seller with respect to the assignment of client engagements of the Business, will be limited to the Seller diligently exercising its best efforts to cause Business clients (Except Excluded Clients) to engage the Purchaser to carry on with their accounting and related services.

37. Subject to paragraph 35, the Purchaser will be responsible for acquiring new contracts with third parties where the existing contracts are not legally assignable from the Seller to the Purchaser, including, without limitation, client engagements.

38. Each party shall at the request of the other execute and deliver such applications for consent and such assumption agreements, and provide such information as may be reasonably necessary to obtain the consents for the assignments of the Leasehold Properties, the Material Contracts, and any other of the Assets to the Purchaser for which a consent is required and each party will assist and co-operate with the other in obtaining the consents.

...

Personal Information

46. The Purchaser acknowledges that the Seller may disclose or has disclosed information about identifiable individuals to the Purchaser for the purposes of the transactions contemplated by this Agreement, which information constitutes personal information as that term is defined under the Personal Information Protection Act (British Columbia) ("Personal Information"). Unless an individual has provided their consent otherwise, the Purchaser shall:

(a) prior to closing, use or disclose such Personal Information solely for purposes related to the transactions contemplated under this Agreement;

(b) if the purchase and sale transactions contemplated hereunder complete[:]

[i] only use or disclose such Personal Information for the same purposes for which it was collected, used, or disclosed by the Seller; [and]

[ii] notify the employees, customers, directors, officers, and shareholders whose Personal Information the Seller has disclosed to the Purchaser without consent that the transactions contemplated by this Agreement have taken place and that Personal Information about them has been disclosed to the Purchaser; . . .

...

General Provisions

52. This Agreement contains all terms and conditions agreed to by the Parties. Statements or representations which may have been made by any Party to this Agreement in the negotiation stages of this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value to either Party. Only the written terms of this Agreement will bind the Parties.

...

57. The parties will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

58. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.

...

[5] There are eight schedules attached to this buy-sell agreement. The first is a ten-page list of personal (i.e. non-corporate) clients by name with their city of residence. The second is a two-page corporate client list. The third is a one-page equipment schedule. The fourth is a one-page "Schedule of Returns" which is blank other than this title. The fifth is a one-page "Schedule of Excluded Clients" with eight companies listed. The sixth is a one-page "Contractor Agreement Schedule" which is blank other than this title. The seventh is a one-page "Seller Loan Schedule" which is blank other than this title. The eighth is a one-page "Schedule of Material Contracts" with five software licenses and "Website hosting" listed.

[6] The plaintiffs contend that the seller failed to deliver all the assets upon closing of the transaction. In particular, they submit that the seller was obliged by the buy-sell agreement to deliver the following client-related information (other than in relation to the small number of "Excluded Clients"):

- a. A list or summary of client contact information including email addresses or phone numbers;
- b. Copies of prior correspondence with clients;
- c. Business records of the clients used for the preparation of accounting and tax documents; and
- d. Accounting and tax records previously prepared and/or submitted by the seller on behalf of the clients.

The purchaser contends that the failure to deliver these records (the “disputed material”) obstructed its ability to carry on business including providing services to the clients.

[7] The question presented by the parties is what part, if any, of the disputed material falls within the buy-sell agreement’s definition of “Assets” (para. 1(a)) or constitutes “information concerning the operation of the Seller, in order to put the Purchaser in a position to carry on in the place of the Seller” (para. 24(h)).

[8] The parties agree that *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, is the governing authority on contract interpretation, and that these principles were accurately summarized in *RBC Dominion Securities Inc. v. Crew Gold Corporation*, 2016 ONSC 5529 at para. 52, aff’d 2017 ONCA 648:

- (1) When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said.
- (2) The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective.
- (3) In interpreting the contract, the court may have regard to the objective evidence of the “factual matrix” or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties.
- (4) The court should interpret the contract so as to accord with sound commercial principles and good business sense, and avoid commercial absurdity.
- (5) If the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity.
- (6) While the factual matrix can be used to clarify the intention of the parties, it cannot be used to contradict that intention or create an ambiguity where one did not previously exist.

[9] The important context underlying the negotiation of this contract is that both the seller and the purchaser are professional accounting corporations. The parties must be presumed to have been aware of accountants’ fundamental duty to guard the confidentiality of their clients’ financial information. It would be an absurdity in this context to contemplate the buying and selling of clients or their confidential information. All that this seller could sell and that this purchaser could buy is the

tangible assets and the seller's promise to make best efforts to cause the clients to engage the purchaser to carry on servicing their accounting needs. This contractual promise – backed by the non-competition terms in the buy-sell agreement and the collateral non-competition and independent contractor agreements – is clearly intended to make the goodwill of the business an asset worth purchasing.

[10] The purchaser argues that the text of the contract clearly defines the disputed material as assets. At first blush, the various items of disputed material would seem to be “books, records and files, relevant to carrying on the Seller’s Business” (para. 1(a)(ii)). And, it is noteworthy that the definition of “Excluded Assets” includes “clients with engagement with the Seller, as listed in the Schedule of Excluded Clients” (para. 1(c)(vii)) – i.e., the parties to the contract seem to define certain clients as assets, albeit excluded assets. The “benefit of all unfilled . . . client engagements” is defined as an asset (para. 1(a)(iii)), as is the goodwill of the business (para. 1(a)(iv)), and the purchaser argues that these inclusions support its position that the contract is a sale of the clients, and client-related file materials.

[11] The purchaser also relies on the broad language in the Bill of Sale, as follows:

The Seller covenants, promises and agrees with the Buyer that the Seller is now rightfully in title to the sold, assigned and transferred property and assets and that the Seller now has in good right, title and authority to sell, assign and transfer to the Buyer, its successors and assigns, according to the true intent and meaning of these presents and that the Buyer shall immediately after execution and delivery have possession of and may from time to time and at all times peacefully and quietly have, hold, possess and enjoy the same and every part thereof to and for its own use and benefit without any manner of hinderance, interruption, molestation, claim or demand whatsoever of, from or by the Seller or any person whomsoever and with good and marketable title thereto, free and clear . . .

[12] The purchaser refers to the Independent Contractor Agreement, by which the seller agreed to perform services for the buyer for a period of time after closing. The seller agreed not to disclose any confidential information it obtains while so engaged, and confidential information is defined as any data or information reasonably considered to be proprietary including client records (paras. 14 and 15). The purchaser submits that this is further evidence that client

records were regarded by the parties as property to be transferred as assets at closing.

[13] The purchaser submits that the seller is also obliged by the conditions precedent to provide the disputed material on or before the closing date as it is “information concerning the operation of the Seller, in order to put the Purchaser in a position to carry on in the place of the Seller” (para. 24(h)). Further, the conditions precedent oblige the seller to obtain any consents and authorizations required for the proper execution of the buy-sell agreement and transfer of the assets (para. 24(b)), and that this required the seller to obtain the authorizations of its clients to hand over the client records and files to the purchaser at closing (para. 6).

[14] I reject the contention that the clients were sold (i.e., that the seller’s client engagements were in effect assigned to the purchaser) despite the inference that can be argued to arise from para. 1(c)(vii) in the buy-sell agreement or terms in the collateral agreements. Other terms of the buy-sell agreement make such an interpretation doubtful. For instance, the seller represents that it is the “absolute beneficial owner of the Assets, with good and marketable title ... [and] is exclusively entitled to possess and dispose of the Assets” (para. 11(d)). To apply language of ownership to client engagements or clients’ files is nonsensical in the context of professional engagements and confidential documents.

[15] Moreover, the “Transfer of Third Party Contracts” terms in the buy-sell agreement recognize these realities. In particular, it is stated that the agreement does assign third-party contracts if the assignment would be a breach of those contracts, and the purchaser is responsible for acquiring new contracts with third parties where the existing contracts, including client engagements, are not assignable (paras. 35 and 37). The obligation of the seller with respect to assignment of client engagements is limited to making best efforts to cause the clients to engage the purchaser (para. 36).

[16] I interpret the agreement as the purchaser acquiring the benefit of unfilled engagements and the opportunity to acquire new engagements with all of the seller’s clients (except those excluded), subject, however, to the clients’ consent to the transfer of existing engagements or clients’ agreement to new engagements as the case may be. The seller has books, records, and files related to its business

other than client-related materials. These would be available for inspection prior to closing (para. 26), and were deliverable at closing (paras. 1(a)(ii) and 6).

[17] I agree with the seller that its obligation to diligently exercise its best efforts to cause its clients to engage the purchaser arises at the time the purchaser is obliged to make the first payment of \$50,000 to the seller, i.e. at closing. It would be risky and make little commercial sense for the seller to make efforts to persuade its clients to transfer their files to the purchaser before closing – a *fortiori*, to obtain consents or authorizations to transfer their confidential information before closing. And, on this interpretation of the buy-sell agreement, the purchaser would have no need of contact information for the seller’s clients before closing. That said, contact information for the clients would be “records ... relevant to carrying on the Seller’s Business” (para. 1(a)(ii)) and thus an asset to be delivered at closing. Information such as the clients’ names (disclosed in a schedule to the buy-sell agreement) and contact information for these clients, is very different from records related to clients’ finances – there is a much-heightened expectation of confidentiality associated with the latter. This context of confidentiality of client-related records is why contact information is caught within the definitional phrase “all books, records and files” but the confidential client-related material is not.

[18] I agree with the plaintiffs that the client contact information is also part of the “complete information concerning the operation of the Seller” that would help “put the Purchaser in a position to carry on in the place of the Seller” (para. 24(h)). Paragraph 37 provides that the purchaser is responsible for acquiring new engagements, including with existing clients. Client contact information concerns the business’ operation, and is important information to position the purchaser upon closing to attempt to acquire new engagements from the business’ existing clients.

[19] I answer the questions put by the parties as follows:

- Q1. Which of the items described in paragraph 20(a)-(d) of the notice of application, if any, fall within the definition of “Assets” in the Purchase of Business Agreement?

- A. Only a list or summary of client contact information, including email addresses or phone numbers.
- Q2. Which of the items described in paragraph 20(a)-(d) of the notice of application, if any, constitute “information concerning the operation of the Seller in order to put the Purchaser in a position to carry on in the place of the Seller” as described at section 24(h) of the Purchase of Business Agreement?
- A. Only a list or summary of client contact information, including email addresses or phone numbers.

The form of order will include a declaration accordingly.

[20] The notice of application sought to resolve all issues. The question of whether the remainder of the issues in this action are suitable for summary trial has not been argued or decided. The summary trial application, other than the severed issue addressed by these reasons, is adjourned generally by consent.

[21] Neither side was entirely successful on this summary trial application. I am inclined to reserve the issue of costs of this application to the judge hearing the trial or a further summary trial as the case may be. If any party seeks a different order, they have liberty to apply.

“Thompson J.”