

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Roshy Skincare Clinic Inc. v. Vrossis
Investment Group Inc.*,
2025 BCSC 1769

Date: 20250911
Docket: S230399
Registry: New Westminster

Between:

Roshy Skincare Clinic Inc. and Roshanak Kazemian

Plaintiffs

And

**Vrossis Investment Group Inc., Vrossis Cosmetics Inc., Silk Road Tours Ltd.
and Hossein Lotfi**

Defendants

Before: The Honourable Justice Hamilton

Reasons for Judgment

Counsel for the Plaintiffs:

O. Yazar
F. Wu

Counsel for Defendants:

R. Assinger

Place and Dates of Trial:

New Westminster, B.C.
January 27-31, February 3-7 and
14, 2025

Place and Date of Judgment:

New Westminster, B.C.
September 11, 2025

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Introduction

[1] The plaintiffs sue the defendants for fraudulent misrepresentation and, in the alternative, negligent misrepresentation. The plaintiffs claim that, when Ms. Kazemian met the defendant Mr. Lotfi in 2015, he falsely represented that he could assist Ms. Kazemian and her family immigrate from Iran and secure permanent residency in Canada. Ms. Kazemian claims that, based on Mr. Lotfi’s representation, she signed an immigration agreement (the “Immigration Agreement”) with Mr. Lotfi’s company, the defendant Silk Road Tours Ltd. (“Silk Road Tours”), and agreed to pay \$100,000 USD to obtain permanent residency. Mr. Lotfi is not a lawyer or a registered immigration consultant. Mr. Lotfi claims that he did not represent that he was a lawyer or a registered immigration consultant. He claims that he helps immigrants “settle” but has qualified immigration professionals do their part.

[2] Early on, Mr. Lotfi recommended Ms. Kazemian pursue residency through the British Columbia Provincial Nominee Program (the “BC PNP”). The BC PNP accepts applications from immigrants who establish businesses in British Columbia. If the applicant meets the business goals specified by the BC PNP within a set time limit, the BC PNP then nominates the applicant to Immigration, Refugees and Citizenship Canada (the “IRCC”) for permanent residency.

[3] As part of her application to the BC PNP, Mr. Lotfi recommended that Ms. Kazemian open a spa and skin care clinic in Whistler, British Columbia. Pursuant to the Immigration Agreement, Mr. Lotfi prepared Ms. Kazemian’s business plan (the “Business Plan”) to submit to the BC PNP. The BC PNP used the terms of the Business Plan to set performance goals that Ms. Kazemian was required to meet. In August 2018, Ms. Kazemian was granted a work permit to establish the business in British Columbia. Ms. Kazemian was required to meet the BC PNP’s performance goals for the business within 20 months from the issuance of the work permit, which was by May 2020.

[4] After Ms. Kazemian received her work permit and came to British Columbia, she discovered that certain terms of her Business Plan were impossible to meet,

including hiring seven full-time Canadian citizens or permanent residents to work year-round at the skin care clinic. Her performance goals based on the Business Plan required the seven employees to be on the payroll by December 2019 – at least six months before Ms. Kazemian filed her final report in May 2020.

[5] In January 2020, Ms. Kazemian was copied on an email from Mr. Lotfi’s assistant Sao Khadjieva to an immigration lawyer which stated that Ms. Kazemian had missed an important deadline for her BC PNP application. Ms. Kazemian was alarmed. She had dealt with Mr. Lotfi for her BC PNP application. She did not know the immigration lawyer addressed in the email nor had she met with any immigration lawyer or registered immigration consultant to that point. She had only dealt with Mr. Lotfi and thought he was her immigration consultant.

[6] After receiving the January 9, 2020, email, Ms. Kazemian no longer trusted Mr. Lotfi and ceased working with him and Silk Road Tours. She retained a registered immigration consultant, Farid Alampour, to salvage her BC PNP application. Mr. Alampour managed to negotiate a six-month extension and certain modifications to the Business Plan with the BC PNP. By the end of October 2020, Ms. Kazemian met the modified terms of her performance agreement. The BC PNP then nominated Ms. Kazemian to the IRCC for permanent residency. However, as of the trial, Ms. Kazemian still awaits permanent residency. The plaintiffs seek damages against Mr. Lotfi and Silk Road Tours for fraudulent misrepresentation and ask the court to lift the corporate veil between Mr. Lotfi and Silk Road Tours.

[7] As mentioned, Mr. Lotfi denies representing to Ms. Kazemian that he was an immigration lawyer or registered immigration consultant. He maintains that he works with immigration lawyers and qualified immigration consultants and regularly refers his clients to immigration lawyers and consultants to handle their immigration matters. He maintains that he confines his assistance to giving tours to potential immigrants, offering them training, helping them set up businesses in Canada, and helping them “settle” in Canada. With respect to the plaintiffs’ recent request to amend their pleadings to claim negligent misrepresentation in the alternative to

fraudulent misrepresentation, Mr. Lotfi maintains that the claims in negligence are statute-barred.

[8] The corporate defendants are all companies of which Mr. Lotfi is an owner and director. Silk Road Tours is a company which Mr. Lotfi uses to help people immigrate to Canada. Vrossis Cosmetics Inc. (“Vrossis Cosmetics”) and Vrossis Investments Group Inc. (“Vrossis Investments”) are companies Mr. Lotfi incorporated to sell devices to Ms. Kazemian’s skin care business, Roshy Skincare Clinic Inc. (“Roshy”), offer training and seek partnerships with skin care clinics. Vrossis Cosmetics also planned to distribute skin creams.

[9] In its counterclaim, Silk Road Tours seeks damages of \$20,000 USD against Ms. Kazemian for breach of the Immigration Agreement because Ms. Kazemian only paid \$80,000 USD of the \$100,000 USD payable thereunder. In response, Ms. Kazemian states that the remaining \$20,000 USD was not due until she obtained residency, which did not happen. As part of her own damages claim, she seeks repayment of the \$80,000 USD she paid because Mr. Lotfi and Silk Road Tours turned out to be incapable of assisting her with her immigration matters.

[10] The defendant Vrossis Cosmetics provided devices to Roshy and invoiced Roshy \$165,000 for the devices. Roshy paid \$120,000 but did not pay the remaining \$45,000. Roshy maintains that when the devices arrived, they appeared used, did not work properly, or were otherwise unsuitable for use in the clinic. Ms. Kazemian previously asked to return the equipment and requested a refund for the \$120,000 paid, but Mr. Lotfi refused.

[11] Mr. Lotfi and Vrossis Investments claim that Ms. Kazemian and Roshy breached a contract entitled Summary Agreement (the “Summary Agreement”) because Ms. Kazemian failed to transfer half of her shares and profit of Roshy to Vrossis Investments. Ms. Kazemian and Roshy maintain that the Summary Agreement should be declared void based on the doctrine of unconscionability.

Issues

[12] The issues are therefore:

- 1) Did the defendant Mr. Lotfi falsely represent that he was qualified to advise on immigration matters and handle Ms. Kazemian’s application under the BC PNP in order to induce her to enter a contract for immigration services?
- 2) If so, was the misrepresentation fraudulent or in the alternative negligent?
- 3) If negligent, is Ms. Kazemian’s claim for negligent misrepresentation statute-barred?
- 4) What damages flow if any from Mr. Lotfi’s representation?
- 5) Should the corporate veil be lifted so that Mr. Lotfi is liable for damages owed to the plaintiffs by Silk Road Tours?
- 6) With respect to the defendants’ counterclaim:
 - a. Did Ms. Kazemian breach the Immigration Agreement such that she owes the remaining \$20,000 USD?
 - b. Does Roshy owe Vrossis Cosmetics a further \$45,000 for devices?
 - c. Is the Summary Agreement void because it is unconscionable?
 - d. If the Summary Agreement is not void, did Ms. Kazemian or Roshy breach the Summary Agreement?
 - e. In the alternative, have the defendants proven the plaintiffs were unjust enriched?
- 7) Costs.

Credibility and Reliability

[13] The two central witnesses were Ms. Kazemian and Mr. Lotfi. I found Ms. Kazemian’s evidence both credible and reliable overall. Her memory for details was excellent. Overall, Ms. Kazemian’s testimony was thoughtful and measured even on

cross-examination. I could tell that Ms. Kazemian was upset with Mr. Lotfi, but she did not appear to let her emotions taint her evidence. She seemed to appreciate the importance of being truthful and providing details to assist the court make a determination on the merits. The only concern that I had regarding Ms. Kazemian's conduct arose from an exchange that occurred outside the courtroom during one of the breaks. Ms. Kazemian inappropriately exchanged words with one of the defendant's witnesses, stating words to the effect of "I don't know you. You better make sure you tell the truth or I will sue you."

[14] I admonished Ms. Kazemian for threatening the witness given it was the witness' duty under subpoena to attend and provide the court with relevant evidence. Ms. Kazemian readily acknowledged her behaviour was inappropriate and was embarrassed, remorseful and apologetic. Regardless of this incident, I am satisfied that Ms. Kazemian's in-court testimony was reliable.

[15] By contrast, I have significant concerns about Mr. Lotfi's credibility and the reliability of his evidence. I reject Mr. Lotfi's evidence except where it is uncontroverted or corroborated by other witnesses. Mr. Lotfi's evidence was not reliable for several reasons. First, Mr. Lotfi's memory is poor. For example, he did not even remember being examined for discovery.

[16] In addition to memory issues, Mr. Lotfi's evidence was internally inconsistent and he repeatedly attempted to craft his evidence to win the case. For example, Mr. Lotfi first claimed that his employee Sao Khadjieva of Silk Road Tours was a qualified immigration consultant who worked on Ms. Kazemian's immigration application. However, later he admitted that Ms. Khadjieva was not a qualified immigration consultant when Silk Road Tours handled Ms. Kazemian's immigration matters. Mr. Lotfi also initially testified that Ms. Khadjieva was employed by him through Silk Road Tours during the entire duration of the Immigration Agreement, from 2016 through 2020. However, he later admitted that Ms. Khadjieva had only worked for Silk Road Tours for 1.5 to 2 years and he did not specify which years.

[17] Similarly, Mr. Lotfi implied that Larry DeLong was a qualified immigration consultant who was handling Ms. Kazemian's immigration file from beginning to end. However, later Mr. Lotfi admitted that Mr. DeLong was retired, although he did not confirm the date he retired. Mr. Lotfi also later admitted that Mr. DeLong worked for another company, Silk Road Canada ("Silk Road Canada"), and never worked for the defendant Silk Road Tours Ltd. However, Mr. Lotfi then stated that the fact that it was different companies did not matter because Silk Road Canada does business as Silk Road Tours. This was inconsistent with his earlier testimony that Ms. Kazemian's contract was with Silk Road Tours and not with Silk Road Canada. I formed the impression that Mr. Lotfi was making up facts as he testified.

[18] Mr. Lotfi also claimed that lawyer Derek Larson was retained as Ms. Kazemian's official immigration representative and gave Ms. Kazemian "frequent advice". However, later he testified that Mr. Larson became involved to follow up two or three times only. He testified that lawyer Sarah McInnes was handling Ms. Kazemian's file from December 2019 on. Notably, Ms. Kazemian never met or corresponded with any of Mr. DeLong, Mr. Larsen or Ms. McInnes nor did Mr. Lotfi call any of them as witnesses.

[19] In addition, Mr. Lotfi was aggressive and argumentative throughout most of his cross-examination. For example, when he was asked whether he created an email address for Ms. Kazemian and used it to communicate with the BC PNP, he responded, "Where's your proof?" When pressed, he said he did not remember if he had created the email address or if he had sent a particular email as Ms. Kazemian. He refused to answer certain questions. He gave non-responsive answers to other questions.

[20] Mr. Lotfi's evidence was also often contrary to documentary evidence. For example, Mr. Lotfi testified that Roshy only paid \$65,000 toward the devices. Later, when he was shown his receipts, he was forced to concede that Roshy had paid \$120,000 toward the devices. As well, despite acknowledging in his pleadings that Ms. Kazemian had paid \$80,000 USD pursuant to the Immigration Agreement, Mr.

Lotfi denied receiving the \$80,000 USD and asked for proof. Later, he admitted that consistent with his pleadings, she had paid the funds.

[21] Where their evidence differs, I prefer Ms. Kazemian's evidence over Mr. Lotfi's evidence.

[22] I found the other witnesses generally credible. There are some issues with the reliability of certain of the witnesses which I will address as necessary.

Did the defendant Mr. Lotfi fraudulently represent to Ms. Kazemian that he was an immigration expert to induce her to enter a contract for immigration services?

The Law on Fraudulent Misrepresentation

[23] All of the following elements must be proven in order to find fraudulent misrepresentation:

- (1) The wrongdoer must make a misrepresentation of fact;
- (2) The representation must be false;
- (3) The wrongdoer must have known that the representation was false when he made it or been so reckless as to not care whether it was true;
- (4) The wrongdoer must have intended that the victim act on the representation;
- (5) The victim must have been induced to enter the contract in reliance on the misrepresentation.

Froese v. Sharif, 2020 BCSC 1914 at paras. 160 and 163 [*Froese*].

[24] A misrepresentation of fact may be implied or made by omission. An incomplete statement may be as misleading as a false one and half-truths have frequently been treated as misrepresentations: *Froese* at para. 163.

Analysis on Fraudulent Misrepresentation

Did Mr. Lotfi represent to Ms. Kazemian that he was an Immigration Expert?

[25] Mr. Lotfi represented that he was qualified to advise Ms. Kazemian on her immigration matters and handle Ms. Kazemian's immigration application through the BC PNP.

[26] Ms. Kazemian and Mr. Lotfi met in 2015 at a Starbucks at Park Royal Mall in West Vancouver. Only Ms. Kazemian and Mr. Lotfi were present. Their versions of the discussion differ in terms of what Mr. Lotfi represented he could do for Ms. Kazemian. I accept Ms. Kazemian's version of events.

[27] Ms. Kazemian knew of Mr. Lotfi because Mr. Lotfi had helped Ms. Kazemian's father's friend immigrate to Canada approximately 20 years prior. Ms. Kazemian therefore requested to meet Mr. Lotfi to discuss her desire to become a permanent resident of Canada. Ms. Kazemian told Mr. Lotfi that she wanted a better life and better opportunities for her and her family in Canada. Ms. Kazemian told Mr. Lotfi that she wanted her children to attend school, including university, in Canada.

[28] During this meeting, Mr. Lotfi told Ms. Kazemian that he had helped over one hundred of people immigrate to Canada. He told Ms. Kazemian that he had been helping people immigrate from Iran to Canada for over 25 years. He told her that he had good relationships with people in the Canadian government. I accept Ms. Kazemian's evidence that Mr. Lotfi told her that he was qualified to advise her on her immigration matters and handle her application for permanent residency in Canada. I accept Ms. Kazemian's evidence that Mr. Lotfi represented that he had the requisite skills, qualifications, and experience to handle her immigration matters and help her set up a viable business in British Columbia as part of her immigration application through the BC PNP.

[29] I reject Mr. Lotfi's evidence that he said was that he could put her in contact with lawyers or immigration consultants to handle her immigration matters. I accept

Ms. Kazemian’s evidence that Mr. Lotfi said he would personally handle her immigration matters as opposed to others.

[30] While Mr. Lotfi did not necessarily state that he was an immigration “consultant” or “lawyer”, I find that he represented to Ms. Kazemian that he was qualified to advise her on her immigration application and handle all issues relating to her immigration including applying under the BC PNP program.

[31] At the time of meeting with Mr. Lotfi, Ms. Kazemian lived in Iran and spoke only Farsi. She did not know how the immigration process worked in Canada. That is the very reason she met with Mr. Lotfi; Ms. Kazemian understood that Mr. Lotfi would be able to help her and her family secure permanent residency in Canada. I find that Mr. Lotfi did not say anything to the contrary. He was aware that Ms. Kazemian was unfamiliar with the Canadian immigration process including the BC PNP. However, he represented that he was knowledgeable and experienced in handling immigration matters and could handle her immigration matters.

[32] In addition to preferring Ms. Kazemian’s testimony over Mr. Lotfi’s testimony, there are other factors that support that Mr. Lotfi made these representations. For example, during Mr. Lotfi’s own examination in chief, he proudly testified that he has helped hundreds of immigrants “settle” in Canada. He confirmed that he assisted the friend of Ms. Kazemian’s father immigrate to Canada over 20 years ago. Mr. Lotfi even insisted on showing the court a 2005 letter he received from a politician praising him for assisting over 100 people immigrate to New Brunswick..

[33] However, at the same time throughout his testimony, Mr. Lotfi was adamant that he did not specifically tell Ms. Kazemian that he was an immigration “consultant” or a lawyer. Mr. Lotfi appeared to be under the assumption that as long as he did not speak the word “consultant” or “lawyer” that he had not made a representation that he was able to handle Ms. Kazemian’s immigration needs. However, as stated in *Froese*, a misrepresentation can be by omission of words – Mr. Lotfi need not have mentioned the word “consultant’ or “lawyer” to have misled Ms. Kazemian.

[34] Mr. Lotfi met with Ms. Kazemian specifically to discuss Ms. Kazemian's desire to immigrate to Canada. Mr. Lotfi very proudly testified about helping hundreds of people "settle" in Canada. It makes sense that he shared this with Ms. Kazemian, as he so readily shared this with the court. It makes sense in the circumstances that Mr. Lotfi told Ms. Kazemian or at the very least implied that he could advise Ms. Kazemian on her immigration matters and assist her in making a successful application for permanent residency.

[35] Ms. Kazemian also called two of Mr. Lotfi's former immigration clients to provide similar fact evidence. One of the witnesses was Ms. Kazemian's sister, Raheleh Kazemian, and the other was Dr. Kambiz Eslami, whom Mr. Lotfi tried to assist establish a skin care business in Squamish around the same time as he assisted Roshy in Whistler. I allowed Ms. Raheleh Kazemian's evidence as similar fact evidence, issuing my ruling mid-trial. I was not asked to rule on Dr. Eslami's evidence during the trial, but I admit his evidence as similar fact evidence for the same reasons as I allowed Ms. Raheleh Kazemian's evidence. I am mindful that Mr. Lotfi's counsel has asked me to place little or no weight on similar fact evidence. Here, the evidence of Ms. Raheleh Kazemian and Dr. Eslami's evidence corroborates an abundance of other evidence.

[36] Both Ms. Raheleh Kazemian and Dr. Eslami met Mr. Lotfi at a coffee shop to ask him to help them immigrate from Iran to Canada. Ms. Raheleh Kazemian's initial meeting with Mr. Lotfi was in British Columbia in 2015. Dr. Eslami's initial meeting with Mr. Lotfi was in Iran in 2017. Both testified that Mr. Lotfi told them that he had the necessary qualifications and experience to handle their immigration matters. Dr. Eslami testified that his friend referred him to Mr. Lotfi as an immigration consultant and that Mr. Lotfi specifically represented to Dr. Eslami that he was an immigration consultant when they met. Dr. Eslami did not appear to want to be a witness at trial. He and Mr. Lotfi had a falling out. However, I found Dr. Esmali's evidence reliable and not tainted by his feelings about Mr. Lotfi.

[37] Mr. Lotfi called two witnesses to counter the similar fact evidence – Parastoo Rasouli and Maryam Takahayori. Ms. Parastoo met Mr. Lotfi in September 2019 in a coffee shop in downtown Vancouver to discuss Ms. Parastoo’s desire to open a business. She already had a visitor visa since June 2019. She testified that Mr. Lotfi helped her purchase an existing business and referred her to a law firm to help her obtain a work permit.

[38] Ms. Takahayori was introduced to Mr. Lotfi through a friend in 2019. They met in West Vancouver to discuss business, not immigration. Later, Mr. Lotfi referred her to a law firm to apply for a visitor visa and work permit.

[39] However, unlike Ms. Kazemian, her sister, and Mr. Eslami, who specifically sought to discuss Mr. Lotfi’s immigration services, Ms. Parastoo and Ms. Takahayori met with Mr. Lotfi to discuss business, not immigration. Furthermore, Ms. Parastoo and Ms. Takahayori did not meet Mr. Lotfi until much later, in 2019, and Mr. Lotfi referred them to immigration lawyers some time even later after. It is therefore possible that by 2019 or later, perhaps after troubles arose with Ms. Kazemian’s immigration application, Mr. Lotfi decided he better decline new immigration clients.

[40] In addition, until relatively recently, Mr. Lotfi made public representations on social media on his “LinkedIn” profile that he was qualified to offer immigration services. When questioned about his LinkedIn profile during cross-examination, Mr. Lotfi initially stated that he had not logged into his LinkedIn profile for many years. However, he was then pressed as to why his LinkedIn profile was changed in 2024 and was forced to admit that he had logged into his account more recently.

[41] Mr. Lotfi was shown a copy of his old pre-2024 LinkedIn profile as well as a copy of his new post-2024 profile. He then admitted that his old profile represented that he was qualified to offer immigration services and his new profile deleted this reference. He admitted that he deleted the reference because it was misleading; it implied he was qualified to provide immigration services when he was not. The fact that, prior to 2024, Mr. Lotfi represented on social media that he was able to offer

immigration services supports that he would do so in his 2015 meeting with Ms. Kazemian as a prospective client.

[42] The factual circumstances before and after Ms. Kazemian and Mr. Lotfi's meeting are also consistent with Mr. Lotfi having made the representation that he was qualified to advise on and handle Ms. Kazemian's immigration application. Ms. Kazemian was eager to immigrate to Canada. She wanted a better life for herself and her children. She trusted Mr. Lotfi. He was around her father's age, spoke Farsi, and had helped a family friend immigrate. Had Mr. Lotfi told Ms. Kazemian that she needed an immigration lawyer or immigration consultant to help her with her immigration, as opposed to relying on him, Ms. Kazemian would have retained an immigration lawyer or consultant. Instead, Mr. Lotfi must have represented that he had the necessary expertise.

[43] Following their meeting, Ms. Kazemian then retained Mr. Lotfi's company, Silk Road Tours, and followed all of Mr. Lotfi's recommendations regarding her BC PNP application. Ms. Kazemian never met with a lawyer or registered immigration consultant from the time she first met Mr. Lotfi until she terminated his services in January 2020 and hired Mr. Alampour. She dealt solely with Mr. Lotfi.

[44] I reject Mr. Lotfi's evidence that he had immigration consultants or lawyers handling Ms. Kazemian's immigration matters. Silk Road Tours did not employ any such qualified people during the time frame. Larry DeLong was employed by Silk Road Canada (not a defendant) and Mr. DeLong prepared the Business Plan in draft for Mr. Lotfi's review but there is no plausible evidence that he was a qualified immigration consultant during the time frame, that Mr. DeLong was handling Ms. Kazemian's immigration matters, or that Ms. Kazemian ever met or corresponded with Mr. DeLong. Similarly, I reject Mr. Lotfi's evidence that either Derek Larson or Sarah McInnes or any other immigration lawyer was handling Ms. Kazemian's immigration matters. There is some evidence that Mr. Lotfi received half an hour's worth of advice from Embarkation Law for Silk Road Travel in April 2017. There is evidence that Mr. Lotfi signed a retainer letter to retain Ms. McInnes to give

immigration law advice to Silk Road Canada Services from December 9, 2019 onward. However, there is no plausible evidence that anyone other than Mr. Lotfi was actually overseeing Ms. Kazemian's immigration file. I accept Ms. Kazemian's testimony that Mr. Lotfi represented that he would be Ms. Kazemian's immigration consultant and consistently, he was the only person Ms. Kazemian dealt with for her immigration advice and application.

[45] Overall, I have no trouble finding that Mr. Lotfi made representations to Ms. Kazemian at their initial meeting in 2015 that he had expertise in Canadian immigration and was able to advise Ms. Kazemian and handle her application for permanent residency through the BC PNP.

Was Mr. Lotfi's representation that he was able to advise Ms. Kazemian on immigration matters and handle her application for permanent residency under the BC PNP false?

[46] Section 91 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") restricts who can advise or assist others in immigration applications. The Act requires those who advise others on immigration matters to be either a registered immigration consultant or a lawyer. Mr. Lotfi was neither. Mr. Lotfi's representation that he was qualified to advise Ms. Kazemian on her immigration matters and assist her apply for permanent residency was therefore false.

[47] Mr. Lotfi maintained throughout the trial that he relied on qualified immigration consultants or immigration lawyers to assist his clients, including Ms. Kazemian, with immigration matters in compliance with the legislation. However, as mentioned, I do not accept this evidence. Mr. Lotfi's evidence was vague, confusing, and internally inconsistent in this regard. I accept Ms. Kazemian's evidence that she never met or dealt with an immigration lawyer or registered immigration consultant while she was working with Mr. Lotfi under the Immigration Agreement. There was no qualified immigration professional advising Ms. Kazemian or handling her immigration application under the BC PNP until she hired Mr. Alampour in January 2020.

[48] In addition to not meeting the statutory requirements of the *Act*, the evidence at trial establishes that Mr. Lotfi was incapable of assisting Ms. Kazemian in pursuing her immigration application under the BC PNP.

[49] Pursuant to the Immigration Agreement, Mr. Lotfi had Larry DeLong, his former partner in Silk Road Canada, prepare a draft of the Business Plan for his review. The Business Plan was an essential requirement for Ms. Kazemian's immigration application under the BC PNP and its terms became conditions that Ms. Kazemian had to meet in order to meet her performance agreement with the BC PNP.

[50] The Business Plan committed Ms. Kazemian to:

- (1) Starting her own spa business in Whistler, British Columbia;
- (2) Investing \$470,000 on qualifying expenses in establishing the business;
and
- (3) Employing seven Canadian citizens or permanent residents in her spa business on a full-time basis for a minimum of two-years. The seven employees were required to have been working in the business for six months prior to Ms. Kazemian submitting a final performance report based on her Business Plan.

[51] On the basis of the Business Plan, Ms. Kazemian received a work permit in August 2018, permitting her to work in Canada.

[52] Ms. Kazemian had 20 months from August 2018, or until May 2020, to submit a final performance report to the BC PNP showing that she met all required conditions. Unless she met all conditions by May 2020, the BC PNP would not nominate her to the IRCC for principal residence.

[53] Once Ms. Kazemian received her work permit, she moved to Canada to start her business. However, she struggled to find qualified employees in Whistler. As a newcomer to British Columbia, Ms. Kazemian had not realized the difficulty in finding

seven full-time local employees who were Canadian citizens or permanent residents, as required in the Business Plan. By December 2019, six months prior to the deadline for Ms. Kazemian to file her final performance report with the BC PNP, she had only managed to hire three out of the required seven employees. Therefore, she was unable to meet this condition of her Business Plan.

[54] Further, Ms. Kazemian had not spent a total of \$470,000 on qualified investments for the business by May 2020. On Mr. Lotfi's advice, Ms. Kazemian purchased a pre-existing spa business in Whistler for \$108,000. Unfortunately, the Business Plan required Ms. Kazemian to establish her own spa business as opposed to buying a pre-existing business. Ms. Kazemian had not appreciated that the Business Plan required her to *establish* a business from scratch and not buy a business.

[55] In order to start generating income and to make investments in the business according to the Business Plan, Ms. Kazemian needed to purchase equipment for the business including laser machines for hair removal and skin care. Mr. Lotfi, through Vrossis Cosmetics, delivered seven devices to Roshy and invoiced Roshy a total of approximately \$165,000 for such devices. Roshy paid \$120,000 of the \$165,000. However, when Ms. Kazemian received the devices, she could not make use of them in her business.

[56] Ms. Kazemian asked for a refund and return of the devices. Mr. Lotfi refused. Ms. Kazemian still needed devices to generate income in the business and meet the investment requirements of the Business Plan, so she was forced to buy other devices.

[57] On January 9, 2020, Ms. Kazemian received a copy of an email from Mr. Lotfi's assistant, Ms. Khadjieva of Silk Road Tours. The email was from Ms. Khadjieva to an immigration lawyer, Ms. McInnes, stating that Ms. Kazemian had missed a deadline in her performance agreement under the BC PNP. Ms. Kazemian had not dealt with Ms. McInnes or any immigration lawyer before that. Ms. Kazemian had understood Mr. Lotfi had been handling her immigration matters. On receipt of

this letter, Ms. Kazemian no longer trusted Mr. Lotfi and instead hired Mr. Alampour to salvage her immigration application.

[58] Mr. Alampour did not provide expert evidence. However, he testified as to the status of Ms. Kazemian's immigration file when Ms. Kazemian first retained him in January 2020, and the steps he took after he was retained.

[59] When Mr. Alampour took over, the Business Plan had already been submitted to the BC PNP. Had Mr. Alampour created the Business Plan, he testified that he would have recommended an investment of \$200,000 (the minimum required), not \$470,000, for the proposed business. Mr. Alampour would also not have committed Ms. Kazemian to hiring seven full time employees in Whistler. As well, he noted that the Business Plan required Ms. Kazemian to establish a spa and skin care business as opposed to purchasing an existing business.

[60] Mr. Alampour testified that these terms in the Business Plan were problematic because Ms. Kazemian was unable to find seven full time qualified employees to work in the business. Also, she had not spent \$470,000 on qualified investments – for example, the amount she spent on purchasing an existing spa was not a qualifying expense under her Business Plan.

[61] Mr. Alampour approached the BC PNP to renegotiate the terms of the Business Plan. I accept his evidence that it was hard to renegotiate terms after the fact. Mr. Alampour managed to negotiate:

- 1) a reduction in Ms. Kazemian's monetary commitment of \$470,000 to \$417,000;
- 2) a reduction in the number of employees from seven to three;
- 3) an acceptance of the purchase of the pre-existing business; and
- 4) a six-month extension to the end of October 2020 for Ms. Kazemian to file a final performance report.

[62] With Mr. Alampour's assistance, Ms. Kazemian was able to comply with her performance agreement by October 2020.

[63] Despite the documentary evidence presented during Mr. Lotfi's testimony, including the Business Plan, Ms. Kazemian's performance agreement, and correspondence from the BC PNP, Mr. Lotfi still did not appear to understand many aspects of the BC PNP process. Mr. Lotfi testified that he asked Larry DeLong from New Brunswick to draft the Business Plan for his review. Mr. Lotfi admitted, however, that he did not personally read the whole Business Plan before it was submitted to the BC PNP because it was 60 pages long.

[64] It became clear during Mr. Lotfi's testimony that he did not understand:

- a) the importance of the Business Plan in the BC PNP process or the mandatory nature of its terms;
- b) the significance of the 20-month deadline for submitting the final performance report;
- c) that it would be impossible or at least extremely difficult for Ms. Kazemian to find seven full-time year-round Canadian employees in Whistler within the 20-month deadline;
- d) that the time frame required Ms. Kazemian's employees to be on the payroll for at least six months *prior* to the final report (i.e. six months prior to the 20-month deadline);
- e) the distinction between *establishing* a business versus *purchasing* an existing business under the BC PNP. It is clear from the BC PNP correspondence that the Program considered this difference to be significant; or
- f) that only certain expenses would qualify as part of Ms. Kazemian's \$470,000 investment under the Business Plan. Ms. Kazemian spending \$108,000 to purchase a pre-existing spa on Mr. Lotfi's recommendation did not qualify.

[65] Mr. Lotfi's representation that he had the expertise and ability to advise and handle Ms. Kazemian's immigration application for permanent residency was false.

Was Mr. Lotfi aware that his representation that he was an immigration expert was false when he made it or was he reckless as to the truth?

[66] I find that Mr. Lotfi knew that he did not have the expertise or qualifications to handle or advise on immigration matters. He had helped people "settle" for many years. He knew and had referred people to immigration lawyers previously. Larry DeLong used to work with Mr. Lotfi in Silk Road Canada. In that company, Mr. Lotfi testified that Larry DeLong handled the clients' immigration matters and Mr. Lotfi handled matters relating to business. They would have divided their duties this way because Mr. DeLong was an immigration consultant and Mr. Lotfi was not. While Mr. DeLong prepared a draft Business Plan for Ms. Kazemian at Mr. Lotfi's request in or around July 2017, there is no plausible evidence that Mr. DeLong remained involved beyond preparing that draft. Mr. Lotfi went over the plan with Ms. Kazemian later in January 2018 not Mr. DeLong. Mr. Lotfi admitted that at some point, Mr. DeLong had retired and was no longer his partner in Silk Road Canada.

[67] In the circumstances, Mr. Lotfi would have known that he was not qualified to enter into an immigration contract with clients. However, instead of referring Ms. Kazemian to a lawyer or registered immigration consultant, or putting Ms. Kazemian in contact with someone else who was qualified to assist, he had his company Silk Road Tours enter an Immigration Agreement with Ms. Kazemian whereby she would pay \$100,000 USD to obtain permanent residency status.

[68] At one point in his testimony, Mr. Lotfi even stated that the very reason he had Silk Road Tours enter into the Immigration Agreement with Ms. Kazemian as opposed to himself personally was *because* he was not a lawyer or immigration consultant. Clearly, Mr. Lotfi was aware he was unqualified.

Did Mr. Lotfi intend for Ms. Kazemian to rely on the false representation?

[69] Mr. Lotfi must have intended for Ms. Kazemian to rely on his representation. Mr. Lotfi was aware that Ms. Kazemian's focus was to immigrate to Canada. He knew how important it was to Ms. Kazemian to secure permanent residency status for her family. She told him she sought a better life in Canada and for her children to attend school including post-secondary school in Canada. He also knew that Ms. Kazemian did not speak English and was not familiar with Canadian laws or immigration processes.

[70] In all the circumstances, I find that Mr. Lotfi saw the opportunity to gain \$100,000 USD if Ms. Kazemian signed the Immigration Agreement with Silk Road Tours.

[71] Had Mr. Lotfi told Ms. Kazemian at their initial meeting that she should retain a lawyer or registered immigration consultant to assist her with her immigration matters, I have no doubt that Ms. Kazemian would have gone that route. Had Mr. Lotfi been clear with Ms. Kazemian that he could only help her with things outside of the scope of immigration, Ms. Kazemian would not have signed the Immigration Agreement or agreed to pay \$100,000 USD. The ancillary services Mr. Lotfi offered, such as tours of British Columbia, training and business advice were far less important to Ms. Kazemian. Ms. Kazemian's focus was on applying for permanent residency. I find that it must have been clear to Mr. Lotfi that Ms. Kazemian would only agree to pay a large sum like \$100,000 USD for immigration services.

[72] Mr. Lotfi was aware of Ms. Kazemian's priorities and must have intended for her to rely on his representations in order for her to sign the Immigration Agreement and pay his company \$100,000 USD.

Did Mr. Lotfi's false representation induce Ms. Kazemian to enter into the immigration contract with Silk Road Tours?

[73] I accept Ms. Kazemian's evidence that Mr. Lotfi's representation induced her to enter into the Immigration Agreement with Silk Road Tours.

[74] Temporally, Mr. Lotfi and Ms. Kazemian met for coffee to discuss Ms. Kazemian's goal of permanent residency in 2015. Ms. Kazemian signed the Immigration Agreement on October 20, 2015, not long after the coffee meeting. The timing also supports Ms. Kazemian's evidence.

Conclusion on Fraudulent Misrepresentation

[75] In conclusion, all of the elements for fraudulent misrepresentation are met. Mr. Lotfi made a fraudulent representation to Ms. Kazemian to induce her to sign the Immigration Agreement. He represented to Ms. Kazemian that he had the necessary expertise and qualifications to advise her on immigration matters and secure Canadian permanent residency for her and her family under the BC PNP. Mr. Lotfi may not have used the words "immigration consultant" but for all intents and purposes, he falsely represented that he was a qualified immigration consultant. Contrary to his claims, Mr. Lotfi did not introduce Ms. Kazemian to any registered immigration consultant or lawyer throughout his dealings with her. Instead, from the first time Ms. Kazemian met with Mr. Lotfi, he represented that he would handle her immigration matters and he would assist her to apply for permanent residency. Mr. Lotfi made these representations so that Ms. Kazemian would sign an Immigration Agreement with his company and pay his company \$100,000 USD.

[76] Ms. Kazemian has been successful on her claim against Mr. Lotfi in fraudulent misrepresentation. As such, I need not address her claim based on negligent misrepresentation.

Did Ms. Kazemian suffer damages as a result of Mr. Lotfi's false representation?

[77] I find that Ms. Kazemian has suffered damages as a result of Mr. Lotfi's misrepresentation. However, I do not accept that the damages are as extensive as claimed by Ms. Kazemian.

[78] I agree that Ms. Kazemian should be reimbursed for the \$80,000 USD she paid Silk Road Tours under the Immigration Agreement to obtain permanent residency. The focus of the agreement was immigration. I disagree with Mr. Lotfi that

80% of the agreement was business advice, tours of Canada and training. The document was titled “immigration agreement” and the title reflected its purpose. I accept Ms. Kazemian’s evidence that she was not interested in training or starting a business except to the extent it would facilitate her becoming a permanent resident of Canada. I disagree with Mr. Lotfi’s submission that Ms. Kazemian received significant benefits under the Immigration Agreement. Mr. Lotfi and Silk Road Tours were not qualified to provide immigration services and failed at providing competent immigration services. When I consider the additional expenses Ms. Kazemian incurred because of the ill-advised Business Plan, for example, I find there was no net benefit to Ms. Kazemian. In fact, Ms. Kazemian suffered significant harm from being induced to sign the Immigration Agreement. The Business Plan that Mr. Lotfi prepared for Ms. Kazemian committed Ms. Kazemian to terms that were impossible and impractical. This caused problems with her BC PNP application and delayed her application for at least six months.

[79] Ms. Kazemian had to retain Mr. Alampour in January 2020 to salvage her application. She has spent over \$18,000 on Mr. Alampour’s services which should have been covered by the Immigration Agreement with Silk Road Tours.

[80] Mr. Lotfi covered Ms. Kazemian’s expenses for her visits to British Columbia. However, these expenses amounted to a few thousand dollars. Ms. Kazemian paid for her husband and children’s expenses, and they shared hotel rooms.

[81] In terms of training, Ms. Kazemian admits that Mr. Lotfi paid \$2500 for a course she took in British Columbia. However, Mr. Lotfi produced certificates relating to additional training that he claims Ms. Kazemian attended. Ms. Kazemian denies attending these additional courses. I accept her evidence that Mr. Lotfi falsified the certificates. Ms. Kazemian was in a different geographical location on the dates when Mr. Lotfi claims the additional courses were held. I reject Mr. Lotfi’s evidence that he was present at each of the courses and witnessed Ms. Kazemian present for each course. I prefer Ms. Kazemian’s evidence over Mr. Lotfi’s evidence.

[82] Ms. Kazemian's evidence was that between approximately January 2020 and the date when Mr. Alampour convinced the BC PNP to reduce it to three employees, she scrambled to hire six or seven employees. She incurred extra costs in doing so, although it is unclear exactly how much.

[83] I reject Mr. Lotfi's evidence that he provided valuable business advice to Ms. Kazemian under the Immigration Agreement. I accept the evidence of Ms. Kazemian and Ms. Whitney that when Mr. Lotfi attempted to assist the clinic, it was chaotic. I accept that when Mr. Lotfi was not involved, the business ran professionally and smoothly. Ms. Whitney had worked in the previous spa business at the site and also worked in Ms. Kazemian's business from the beginning. Her evidence was detailed and compelling.

[84] Considering the above, I do not find that Ms. Kazemian netted any benefit from the Immigration Agreement or the \$80,000 USD she paid to Silk Road Tours. The \$80,000 USD should be returned to Ms. Kazemian. But for the fraudulent misrepresentation, Ms. Kazemian would never have signed the Immigration Agreement or paid the \$80,000 USD.

[85] Ms. Kazemian also seeks that Mr. Lotfi cover Roshy's business losses for each fiscal year to date. She points to the Business Plan, which estimated that her business would suffer a relatively small loss in its first year but be profitable after that. In my view, this argument fails.

[86] I agree with Mr. Lotfi's counsel that the numbers in the Business Plan are stated as projections only and that there was no guarantee that the business would earn a profit in its second year. Furthermore, Mr. Lotfi submits that the Covid-19 pandemic would have affected Ms. Kazemian's profitability, although I accept Ms. Kazemian's evidence that the clinic only shut down for approximately one month in 2020.

[87] The plaintiffs have the onus of proving damages. I am not satisfied that the business losses are attributable to Mr. Lotfi's fraudulent misrepresentation.

[88] As part of the damages sought, Ms. Kazemian also claims that because she did not obtain permanent residency for her and her family in approximately two years as suggested in the Immigration Agreement, she was required to pay foreign student tuition fees for her son to attend post-secondary school. She testified that Canadian permanent residents pay approximately 15% of what foreigners pay. Ms. Kazemian paid \$56,000 for her son's tuition but claims that if they were permanent residents of Canada, she would only have paid 15%, or \$8,400. Therefore, she claims that Mr. Lotfi's misrepresentation cost her \$47,600 more.

[89] I am not satisfied on the evidence that Mr. Lotfi should pay \$47,600 for the extra school fees. Ms. Kazemian did not provide documentary evidence regarding the breakdown of her son's tuition each year.

[90] The evidence establishes that Mr. Lotfi's misrepresentation and mishandling of Ms. Kazemian's immigration matters led to a six-month delay in her submitting her final performance report to the BC PNP – instead of submitting the report in May 2020, she submitted it at the end of October 2020. The BC PNP then took several months to process the report and nominated Ms. Kazemian for permanent residency in 2021. While Ms. Kazemian and Mr. Alampour testified that Mr. Lotfi's conduct of the immigration application caused red flags and delays, there is no clear evidence that the delay after November 2020 is attributable to Mr. Lotfi or Silk Road Tours.

[91] There is no evidence from the IRCC, for example, as to why Ms. Kazemian still does not have permanent residency four years since she was nominated. I am satisfied that Mr. Lotfi's fraudulent misrepresentation caused the delay in Ms. Kazemian's immigration between May 2020 and the end of October 2020, but I am not satisfied that it caused the subsequent delay. As such, without knowing what, if any, extra amount Ms. Kazemian's son's post-secondary tuition cost for his 2020 fall session, I am not persuaded that I ought to award any amount under this head of damages.

[92] Ms. Kazemian also claims that she should not have to pay for the \$120,000 she paid to Vrossis Cosmetics for devices. The only reason Ms. Kazemian started a

skin care business was on Mr. Lotfi's recommendation in order to become a permanent resident under the BC PNP. Based on Mr. Lotfi's representation, she entered the Immigration Agreement with Silk Road Tours and followed Mr. Lotfi's advice to run a skin care business according to the Business Plan. The Business Plan required her to purchase skin care devices to use in the clinic. Ms. Kazemian trusted Mr. Lotfi and purchased devices from Mr. Lotfi through Vrossis Cosmetics.

[93] I address the devices in further detail below when I address the defendants' claims. However, I accept Ms. Kazemian's evidence that she was unable to use any of the devices in the business and they continue to be stored in one of the treatments rooms at Roshy's clinic. The devices came with no warranties, did not work properly, and were not suitable for the Business Plan. Ms. Kazemian should never have had to pay \$120,000 for these devices. I order that Mr. Lotfi and Vrossis Cosmetics return the \$120,000 to Ms. Kazemian. If Vrossis Cosmetics wishes to retrieve the devices as is, they may make mutually convenient arrangements to retrieve the devices within 30 days. If no arrangements are made to retrieve the devices within 30 days, Ms. Kazemian may remove or dispose of the devices as she sees fit.

[94] I also order that Mr. Lotfi return the \$40,000 that Ms. Kazemian lent to him when he needed moneys for his skin cream packaging and distribution business. I accept Ms. Kazemian's evidence that these moneys were lent to Mr. Lotfi and never repaid. Mr. Lotfi claims that the moneys were not a loan but that Ms. Kazemian was supposed to invest \$80,000 in his skin cream business and only invested \$40,000. I reject Mr. Lotfi's evidence. Ms. Kazemian's evidence is supported by documentary evidence in which Mr. Lotfi explains to his business partners that he underestimated his expenses and needed funds. There is also a cheque that Mr. Lotfi made out to Ms. Kazemian for \$50,000 as a good faith sign that he would repay the loan and pay an additional \$10,000 shortly. I accept Ms. Kazemian's evidence that Mr. Lotfi told her not to cash the cheque at the time because he was short on funds. I am ordering Mr. Lotfi to repay the \$40,000 to Ms. Kazemian.

Punitive Damages

[95] In addition to consequential damages, Ms. Kazemian seeks punitive damages from Mr. Lotfi.

[96] The test for an award of punitive damages is set out in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 [*Whiten*] at para. 36:

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

[97] The principles set out in *Whiten* were elaborated upon in *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189 at paras. 77 to 78:

[77] The three objectives of punitive damages are retribution, deterrence, and denunciation. Punitive damages awards should be approached with caution and restraint and resorted to only in exceptional circumstances: *Whiten* at para. 69. Punitive damages awards are rational only when compensatory damages do not adequately achieve the objectives of retribution, deterrence, and denunciation: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 87.

[78] In *Whiten* at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages. The factors include:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
- d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the

defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;

e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and

f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[98] An award of punitive damages involves a judge's exercise of discretion based on the principles set out in *Whiten: Mounce v. King*, 2023 BCCA 184 at para. 7.

[99] Having heard the evidence of the plaintiffs and the defendants, I agree that an award of punitive damages is justified and appropriate in this case. I do so in recognition of the exceptional circumstances involved in this matter and the need to denounce Mr. Lotfi's actions.

[100] Mr. Lotfi acted in a high-handed and malicious manner. Mr. Lotfi intentionally made a fraudulent misrepresentation to induce Ms. Kazemian into entering an agreement for immigration services when he knew that he was not qualified to provide such services. He knew that Ms. Kazemian desperately wanted to be a resident of Canada. He knew she only spoke Farsi and did not know about the Canadian immigration laws. He preyed on her vulnerability for his own monetary gain. Mr. Lotfi's conduct is worthy of rebuke.

[101] Accordingly, I order that Mr. Lotfi pay Ms. Kazemian \$50,000 in punitive damages.

Should the corporate veil be lifted?

Law regarding when the court will lift the corporate veil

[102] In *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 SCR 2, the Supreme Court of Canada acknowledged that, in certain circumstances, courts will lift the corporate veil where failing to do so would result in unfairness:

As a general rule a corporation is a legal entity distinct from its shareholders: *Salomon v. Salomon & Co.*, [1897] A.C. 22 (H.L.). The law on when a court may disregard this principle by “lifting the corporate veil” and regarding the company as a mere “agent” or “puppet” of its controlling shareholder or parent corporation follows no consistent principle. The best that can be said is that the “separate entities” principle is not enforced when it would yield a result “too flagrantly opposed to justice, convenience, or the interests of the Revenue”: L.C.B. Gower, *Modern Company Law* (4th ed. 1979), at p. 112.

[103] Courts may lift the corporate veil “where the corporate form has been abused – that is, it has been used for fraudulent or illegitimate purposes”: *Badesha v. Aujila*, 2016 BCCA 294 at para. 27 quoting *Edgintgton v. Mulek Estate*, 2008 BCCA 505 at para. 22.

[104] The plaintiffs submit that the corporate veil should be lifted between Silk Road Tours Ltd. and Mr. Lotfi. Mr. Lotfi and Silk Road Tours oppose the relief sought.

[105] In considering whether to lift the corporate veil in this case, I must consider two elements:

- a) Is Silk Road Tours “completely dominated and controlled” by Mr. Lotfi?
and
- b) Was Silk Road Tours used as a shield for fraudulent or improper conduct?

The Owners, Strata Corporation KAS1490 v 453842 BC Ltd. (Deri Holdings), 2021 BCSC 1164 at para. 117 quoting *Tresoro Mining Corporation v. Mercer-Gold Corp. (B.C.)* 2015 BCSC 1822 at para. 30.

[106] It is appropriate to lift the corporate veil in this case. Notably:

- (1) Mr. Lotfi is the sole owner, director and operator of the defendant Silk Road Tours Ltd.
- (2) Mr. Lotfi completely dominates and controls the Silk Road Tours. He makes all the decisions.

- (3) Ms. Kazemian, Raheleh Kazemian, Dr. Eslami and Ms. Takahayori all testified that in their dealings with Silk Road Tours, they had not met anyone from the company other than Mr. Lotfi.
- (4) Mr. Lotfi admitted to using his personal email address for all his businesses.
- (5) Mr. Lotfi admitted to using his personal bank account for all his companies' businesses.
- (6) Mr. Lotfi pays expenses either personally or through his companies including the defendants and it is for his accountant to sort out later.
- (7) Mr. Lotfi testified that the very reason he provided immigration services through his company Silk Road Tours was because he was not a registered immigration consultant.

[107] Mr. Lotfi completely controls and dominates Silk Road Tours. He also used Silk Road Tours to offer immigration services when he is not a registered immigration consultant or lawyer. It is contrary to the law.

[108] Mr. Lotfi admitted that he used Silk Road Tours as a vehicle to provide immigration services *because* he was not a qualified immigration consultant. It would be flagrantly opposed to justice to permit Mr. Lotfi to break the law and provide such services just because he purports to do so through a company.

Counterclaim: Did Ms. Kazemian breach the Immigration Agreement?

[109] Ms. Kazemian did not breach the Immigration Agreement. She owned the requisite amount of assets. She learned English. She signed the Business Plan on Mr. Lotfi's request, attended her immigration interview, and paid Mr. Lotfi \$80,000 USD in installments as due. She did not pay the final instalment of \$20,000 USD to Mr. Lotfi, but under the Immigration Agreement, the final \$20,000 USD was only due "on receipt of medical paperwork". Ms. Kazemian testified that the \$20,000 USD was due when the IRCC was in the process of granting her permanent residency which

has still not occurred Ms. Kazemian's evidence is that before that could happen, she discovered Mr. Lotfi was not qualified to handle her immigration matters. Mr. Lotfi did not address the specific due date for the \$20,000 USD in his evidence.

[110] Mr. Lotfi takes issue with Ms. Kazemian retaining Mr. Alampour in January 2020 instead of remaining with him and Silk Road Tours until she obtained residency and paid the final \$20,000 USD. However, Ms. Kazemian acted entirely reasonably in terminating the contract and retaining a registered immigration consultant. On January 9, 2020, when Ms. Kazemian received a copy of the email from Ms. Khadjieva stating that Ms. Kazemian had missed an important deadline under her performance agreement with the BC PNP, Ms. Kazemian was understandably concerned.

[111] Until that point, Ms. Kazemian had trusted Mr. Lotfi's immigration expertise and guidance. But seeing the email that a deadline had been missed caused Ms. Kazemian to lose all trust in Mr. Lotfi's ability to handle her file. After the email, Ms. Kazemian immediately retained Mr. Alampour to take over her immigration matters.

[112] Mr. Lotfi's position is that Ms. Kazemian had not missed any deadlines – that she had until May 2020 to file her final performance agreement with the BC PNP. However, that misses the point. While the report itself was not due until May 2020, the performance agreement which was based on the Business Plan required Ms. Kazemian to have had seven employees on her payroll for at least six months prior to submitting the report. The seven full-time employees should have all been hired by December 2019. Ms. Kazemian had only been able to find three qualified employees by December 2019. Clearly, Ms. Kazemian had missed an important deadline under her performance agreement under Mr. Lotfi's supervision.

[113] The defendants' claims for breach of the immigration contract and for Ms. Kazemian to pay the remaining \$20,000 USD are dismissed. I have dealt with the return of the \$80,000 above.

Counterclaim: Did Roshy breach a devices agreement with Vrossis Cosmetics?

[114] The defendants claim that Roshy owes Vrossis Cosmetics a balance of \$45,142 on an invoice totalling \$165,142 for devices. There is no written contract.

[115] Seven devices were delivered to Ms. Kazemian. I accept Ms. Kazemian's evidence that only two of the devices came with packaging and the rest seemed used. None of the devices came with a warranty or guarantee. The devices did not have markings to indicate the manufacturer – they were labelled "Vrossis". Most of the devices were not suitable for use in a skin care clinic like Ms. Kazemian's which focused on laser hair removal, massage and facial treatments. For example, she received a large egg-shaped "oxygen" chair with lights that changed colour. This device purportedly treated stress but was not a device that was contemplated by the Business Plan. Ms. Kazemian received a non-medical "eye scanner" device to which supposedly acted like a "whole body MRI" for assessing clients. The scanner was not contemplated by the Business Plan either. Vrossis Cosmetics also delivered an "electronic acupuncture" machine, but Ms. Kazemian was not licensed to provide acupuncture.

[116] I accept Ms. Kazemian's evidence that most of the devices did not work properly or quit working shortly after receipt. There were other witnesses who attended a training session put on by Vrossis Cosmetics who testified they saw the devices working. However, I do not find their evidence reliable. They only attended a single session during which the devices were demonstrated. While the witnesses could tell if the devices were turned on, I am not convinced they are able to tell whether the devices actually did what they purported to do. During the trial, Mr. Lotfi's counsel played a video of the same demonstration session the witnesses attended. In one video, for example, Mr. Lotfi's former partner, Mr. Tzimpoulas, demonstrated a skin rejuvenation device on one of the attendees who was also a witness at trial. During the demonstration, Mr. Tzimpoulas repeatedly points to the woman's skin and notes the significant difference the device was making to erase wrinkles and unwanted pigmentation. However, while watching the video, I was

unable to see any significant difference myself. This caused me concern with respect to the reliability of the evidence of the witnesses and Mr. Tzimpoulas.

[117] By contrast, Ms. Kazemian and her employee Patricia Whitney gave detailed, compelling evidence about the devices, which I accept. Ms. Whitney attended the same demonstration session as the other witnesses. Ms. Whitney testified that the skin rejuvenation device was not working properly at the session. Unlike the other witnesses who attended the demonstration session, Ms. Whitney worked in skin care clinics previously and already had training in skin care devices. Ms. Whitney was in a better position to tell whether the devices were working properly and what devices were useful in a skin care clinic that focused on laser hair removal, massage and facials.

[118] One of the devices provided by Vrossis Cosmetics that would have had potential utility in the clinic was a laser machine. Unfortunately, the particular laser device provided was prohibited for use in Canada. The Vancouver Coastal Health inspector noted in his report that the laser device must not be used because it might injure clients.

[119] Overall, Ms. Kazemian paid Mr. Lotfi or Vrossis Cosmetics (some of the cheques were made payable to Mr. Lotfi and some to Vrossis Cosmetics) \$120,000 for the devices. She refused to pay the remaining \$45,142 given the problems. She asked Mr. Lotfi to return the devices and her money. He refused. Ms. Kazemian has stored the useless devices as “evidence” in one of the treatment rooms at the clinic pending trial. They take up valuable space that the clinic could use for treatments.

[120] Mr. Lotfi as a director of Vrossis Cosmetics would have known that the equipment was not of any use to Ms. Kazemian’s business. Mr. Lotfi had overseen Ms. Kazemian’s Business Plan. He would have known what devices Ms. Kazemian would need in her business and that the ones he has Vrossis Cosmetics deliver were not what Ms. Kazemian ordered.

[121] I dismiss Vrossis Cosmetic’s claim for breach of contract in relation to the devices.

Vrossis Investment’s Counterclaim: Did Roshy breach the Summary Agreement?

[122] At Mr. Lotfi’s insistence, Ms. Kazemian signed a one-page document entitled “Summary Agreement” on November 23, 2019. There are at least two versions of this agreement in evidence. Ms. Kazemian and Mr. Lotfi each maintain that the version they produced is the final version of the document. Mr. Lotfi claims for damages for breach of contract. He has the onus of proving which document represents the agreement between Vrossis Investments and Roshy. I am unable to determine which version is the final version.

[123] However, even if Mr. Lotfi’s version of the Summary Agreement is the correct version, Vrossis Investment’s claims fail as the contract is void based on the common law principle of unconscionability.

Law Regarding Unconscionability

[124] The Supreme Court of Canada revisited the law on unconscionability in its 2020 decision *Uber Technologies Inc. v. Heller*, 2020 SCC 16. Generally, unconscionability works to set aside unfair agreements that resulted from an inequality of bargaining power. It does not require the stronger party to knowingly take advantage of the inequality of bargaining power – that is, there is no intent requirement: *Uber* at para. 84.

[125] The Court in *Uber* confirmed that two elements are required to prove unconscionability:

- a) inequality of bargaining power, in the sense that one party is incapable of adequately protecting their interests; and
- b) an unfair or improvident agreement, in the sense that there was an undue advantage or benefit secured as a result of the inequality.

[126] In confirming this two-part approach, the Court in *Uber* rejected the former, more stringent four-part test. The previous four-part test for unconscionability had required the transaction be “grossly unfair”, without independent legal advice, that the power imbalance between the parties be “overwhelming”, and that there be intention to take advantage. The Court found the former approach too narrow and restrictive. The Court confirmed that there is no closed list of situations which may create unequal bargaining power: *Uber* at paras. 81–82.

[127] In terms of the first element, inequality of bargaining power exists “when one party cannot adequately protect their interests in the contracting process”: *Uber* at para. 66.

[128] To summarize the Court’s commentary at paras. 67 to 74 in *Uber*:

- (1) There are no "rigid limitations" on the sources of unequal bargaining power. Differences in wealth, knowledge, or experience may be relevant, but inequality encompasses a much wider variety of potential transactional weaknesses.
- (2) Transactional weaknesses may be *personal* (*i.e.*, characteristics of the claimant generally). That is, the disability may stem from the claimant's "purely cognitive, deliberative or informational capabilities and opportunities", so as to preclude "a worthwhile judgment as to what is in his best interest".
- (3) Alternatively, transactional weaknesses may be *circumstantial* (*i.e.*, vulnerabilities peculiar to certain situations). That is, a disability may arise where the claimant was "a seriously volitionally impaired or desperately needy person", and therefore was specially disadvantaged because of "the contingencies of the moment".
- (4) The disadvantage need not be so serious as to negate the capacity to enter a technically valid contract.

- (5) In many cases of inequality of bargaining power, the disadvantage impairs a party's ability to freely enter or negotiate a contract, compromised a party's ability to understand or appreciate the meaning and significance of the contractual terms, or both.
- (6) One common example of inequality of bargaining power comes from "necessity" cases, where the weaker party is so dependent on the stronger that serious consequences would flow from not agreeing to a contract. This imbalance can impair the weaker party's ability to contract freely and autonomously. When the weaker party would accept almost any terms, because the consequences of failing to agree are so dire, equity intervenes to prevent a contracting party from gaining too great an advantage from the weaker party's unfortunate situation.
- (7) Another common example of an inequality of bargaining power occurs where, as a practical matter, only one party could understand and appreciate the full import of the contractual terms, creating a type of "cognitive asymmetry". Cognitive asymmetry may occur because of personal vulnerability or because of disadvantages in the contracting process, such as the presence of dense or difficult to understand terms in the parties' agreement.
- (8) Regardless of the source of impairment, the key is the presence of a bargaining context "where the law's normal assumptions about free bargaining either no longer hold substantially true or are incapable of being fairly applied". In these circumstances, courts can provide relief from a bargain that is improvident for the weaker party in the contracting relationship.

[129] On the second element, the Court stated that a bargain is improvident if it unduly advantages the stronger party or unduly disadvantages the weaker one: *Uber*, at para. 74. Improvidence is measured at the time of the contract.

Analysis Regarding Whether the Summary Agreement is Unconscionable

[130] In terms of the first element, I find that Ms. Kazemian was not capable of adequately protecting her interests in the contracting process. Ms. Kazemian was a newcomer to Canada. Her sole focus was obtaining permanent residency in Canada. She trusted Mr. Lotfi as her immigration advisor who handled her immigration matters. He had told her he had government connections relating to her immigration and she believed him.

[131] When Mr. Lotfi asked Ms. Kazemian to sign the Summary Agreement in 2019, Ms. Kazemian had already paid Mr. Lotfi \$80,000 USD to handle her immigration and was financially committed to operate a skin care business in Whistler based on his Business Plan. The Business Plan was already filed with the BC PNP in January 2018. Ms. Kazemian's immigration process was underway but still required her to fulfill her performance agreement and submit her final report to the BC PNP in order to be nominated for permanent residence.

[132] I accept Ms. Kazemian's evidence that Mr. Lotfi threatened her that if she did not sign the Summary Agreement, he would no longer pursue her immigration application. I accept Ms. Kazemian's evidence that she felt she had no choice but to sign the Summary Agreement document because she worried that he had the power and connections to sabotage her immigration application.

[133] I also find that the second element for unconscionability is met-the agreement itself is an improvident bargain in that it unduly advantaged Mr. Lotfi and Vrossis Investments and unduly disadvantaged Ms. Kazemian and Roshy.

[134] The Summary Agreement appears to require Ms. Kazemian to transfer 50% of the shares of Roshy and 50% of its profit to Mr. Lotfi's company Vrossis Investments in exchange for several terms that Mr. Lotfi was already required to meet under the Immigration Agreement. This raises several concerns.

[135] In terms of the value of the companies, it is common ground that there was no profit ever generated by Vrossis Investment. Further, the shares of Vrossis Investment do not appear to have had any value. By contrast, the shares of Roshy had monetary value at the time. Ms. Kazemian paid \$108,000 to acquire the pre-existing spa business and Mr. Lotfi's own evidence was that the value of Roshy was double that, or at least \$216,000.

[136] As mentioned, the other "consideration" to be provided by Mr. Lotfi under the Summary Agreement included providing Ms. Kazemian business advice and assistance to get her business fully operational. Ms. Kazemian was already supposed to be provided by Mr. Lotfi under their Immigration Agreement.

[137] The Summary Agreement was only to Mr. Lotfi's and/or Vrossis Investment's benefit. There does not appear to be any benefit to Ms. Kazemian or Roshy in signing the Summary Agreement.

[138] In fact, the Summary agreement was to Ms. Kazemian's detriment. Term 9 of Ms. Kazemian's performance agreement with the BC PNP required her to remain the sole owner of her business – she was not allowed to have any partners. Mr. Lotfi was responsible for preparing the Business Plan on which the performance agreement was based – he would have known that the terms of the Summary Agreement were not permitted. Yet, Mr. Lotfi insisted that Ms. Kazemian sign.

[139] Mr. Lotfi testified that Ms. Kazemian wanted to sign the Summary Agreement because she no longer could afford to be the sole owner of Roshy and could not afford to invest the \$470,000 she was required to invest under the performance agreement. Mr. Lotfi claims that the Summary Agreement gave Ms. Kazemian some relief from these financial burdens. However, Mr. Lotfi's evidence makes no sense. The Summary Agreement did not provide any financial relief to Ms. Kazemian. The Summary Agreement states that Ms. Kazemian would have to transfer 50% of her shares in Roshy to Vrossis Investment but still required Ms. Kazemian to fund 100% of Roshy's monthly expenses upfront, and only be reimbursed later out of the profit. Furthermore, the evidence was that Mr. Lotfi was the person who was short of

money, not Ms. Kazemian. Mr. Lotfi approached Ms. Kazemian for a loan for \$40,000 when he needed more money for his skin cream business. He promised to repay Ms. Kazemian \$50,000, but he never repaid her.

[140] In all the circumstances, I find the Summary Agreement is unconscionable and it is void for being unconscionable.

Summary of Orders:

[141] Mr. Lotfi and Silk Road Tours Ltd. are jointly and severally liable to pay Ms. Kazemian damages equivalent to \$80,000 USD for return of moneys paid by Ms. Kazemian pursuant to the Immigration Agreement.

[142] Mr. Lotfi shall pay Ms. Kazemian:

- (1) \$40,000 for the moneys Ms. Kazemian lent to Mr. Lotfi; and
- (2) punitive damages of \$50,000.

[143] Mr. Lotfi and Vrossis Cosmetics shall repay Ms. Kazemian the total sum of \$120,000 for the devices.

[144] The defendant Vrossis Cosmetics has 30 days to make arrangements with Ms. Kazemian to retrieve the devices it provided to the Roshy. If no arrangements are made within 30 days, Ms. Kazemian may dispose of the devices as she sees fit.

[145] The Summary Agreement between Mr. Lotfi and Vrossis Cosmetics and Ms. Kazemian and Roshy is void.

[146] The defendants' claims are dismissed.

Costs

[147] Ms. Kazemian is the successful party. Counsel did not make submissions on costs. If counsel are unable to agree as to costs, counsel may request to schedule a 9:00 a.m. appearance via Teams within the next 30 days.

“Hamilton J.”