IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lu v. Dentons Canada LLP,* 2025 BCSC 2003

Date: 20250922
Docket: S252368
Registry: Vancouver

Between:

Yunjing Lu

Plaintiff

And

Dentons Canada LLP, Trustee Jordan Schultz, Polycan Health Center Canada Inc., Wei Dong Zhu Select One and Select One, Walter Carl Yackel Jr., Hong Peng Yang

Defendants

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	R. Wu S. Xue
Counsel for the Defendants Dentons Canada LLP and Trustee Jordan Schultz:	D.J. Winterton
Counsel for the Defendant Walter Carl Yackel Jr.:	A. Nayyar
Place and Date of Trial/Hearing:	Vancouver, B.C. September 16 and 22, 2025
Place and Date of Judgment:	Vancouver, B.C. September 22, 2025

This is the written version of judgment rendered orally on September 22, 2025. It has been edited to improve or correct grammar and style, but nothing substantive

has been changed. Some information has been added for clarity. Added information is contained within square brackets with italicized text.

[1] **THE COURT:** I will make a few preliminary remarks. This matter first came to the court in general chambers when I was presiding. It was a typical chambers day with over 22 matters on the list comprising over 20 hours. This matter was the last matter to be called. I was not satisfied that the respondent had sufficient time to fully argue the application, and there was no time for reply. I asked the parties to return, and I appreciate counsel doing so today for the purpose of finishing the application.

[2] In the interim, counsel for another defendant [*Walter Carl Yackel Jr.]* appeared today seeking leave to address the Court. It was confirmed that until today, that defendant had not filed a response to the application, although the application was properly delivered to him. I exercised my discretion and declined to hear [*counsel for Mr. Yackel Jr*.] for the reasons that I have cited above, which include that this is meant to be a continuation of the hearing that was set down to be heard on Tuesday [*September 16, 2025*] and, due to no fault of counsel, did not finish. [*Mr. Yackel Jr. chose not to respond nor appear at that hearing and*] that is why I declined to hear that defendant.

[3] I also note that the applicant filed written submissions, which I accepted at the previous hearing. In hindsight, I ought not to have done so because written submissions are not allowed for matters under two hours or less [*without leave of the Court].* I appreciate that now they are on the court file according to the recent practice direction, but I will confirm that my decision is based on looking at the notice of application and response only.

[4] This is an application pursuant to Rule 9-5(1)(a) of the *Supreme Court Civil Rules* brought by the defendants Dentons Canada LLP and Trustee Jordan Schultz (the “Defendants”), seeking to strike the notice of civil claim against them without further leave to amend.

[5] The plaintiff’s claim arises from an agreement that she claims she had with another defendant, Wei Dong Zhu. She alleges that she gave Mr. Zhu a bank draft in the amount of $300,000 to be held in trust by Dentons, subject to the terms of an explicit trust agreement. Therefore, the issue is whether the notice of civil claim

as amended pleads facts sufficient to establish a cause of action. The sole cause of action asserted against the Defendants is breach of trust.

LEGAL PRINCIPLES

[6] There is no dispute about the applicable law. Under Rule 9-5(1)(a), the court examines the pleadings alone and does not look at evidence. The court must treat the pleaded facts as true, and if there is a chance the plaintiff could succeed, the application must fail: *R. v. Imperial Tobacco Canada Ltd*., 2011 SCC 42 [*Imperial Tobacco*]; *Willow v. Chong*, 2013 BCSC 1083; *Moses v. Lower Nicola Indian Band*, 2015 BCCA 61; *Gaucher v. British Columbia Institute of Technology*, 2021 BCSC 289; *Sahyoun v. Ho*, 2015 BCSC 392.

[7] Another important principle applicable to Rule 9-5 is that if insufficient material facts have been pleaded to support every element of a cause of action, then that meets the test as being beyond doubt that the action is bound to fail: *Skybridge Investments Ltd. v. Metro Motors Ltd.,* 2006 BCCA 500 at para. 22.

[8] In *Imperial Tobacco,* the Supreme Court of Canada sets out, in broad terms, the purpose of the rule, but also expresses caution that it not be applied on the basis that a novel claim is being asserted. Those comments do not apply here as the plaintiff is not seeking to advance a novel or new cause of action. The issue comes down to the form of the pleadings.

FACTS AND PLEADINGS

[9] The plaintiff claims that in February 2024, she delivered to Mr. Zhu a bank draft that was made payable to Dentons Canada LLP in trust, and that it related to an agreement the two of them had for the acquisition of a business. She claims that she advanced the funds to be a potential co-investor with Mr. Zhu, but that it was subject to an agreement she had with him. She pleads the terms of that agreement are that:

a) Mr. Zhu would arrange that the plaintiff advance the funds not to him personally, but to Dentons;

b) he would instruct the lawyers to prepare a draft investment agreement for her to review as soon as possible;

c) she would advance the funds to be held by Dentons, subject to certain specific trust conditions, and pending further agreement by her;

d) Mr. Zhu would not be paid out the funds to invest unless she consented; and,

e) until she agreed to the terms of the investment with Mr. Zhu, she could at any time request the funds be returned to her or be reinvested by him in a different project.

[10] She claims that she advanced the funds in trust with express notice to Dentons because of the words “in trust” after “Dentons Canada” as the payee on the bank draft. She also relies on the fact that her address is printed on the bank draft.

[11] At all material times, the defendant Mr. Schultz was a barrister and solicitor at Dentons, and the law firm and Mr. Schultz represented Mr. Zhu. Mr. Zhu is adverse in interest to the plaintiff.

[12] The Defendants’ pleadings say that they were retained by Mr. Zhu for the purpose of acquiring a business and on February 5, 2024, he delivered a bank draft to Dentons. He was required to provide a deposit to comply with the bidding process for the business, which was in receivership. That was the purpose of the bank draft.

[13] In the response to civil claim, it is alleged that Mr. Zhu did not inform the Defendants of the existence of any alleged agreement between him and the plaintiff.

[14] Two days later, on February 7, 2024, Mr. Zhu instructed Dentons to remit the amount to the receiver, and his bid was successful. His bid was approved by the Supreme Court on February 26, 2024. The transaction closed shortly thereafter.

[15] It was not until many months later, in November 2024, that the plaintiff contacted Mr. Schultz for the first time regarding the funds she provided in the bank draft. She subsequently learned that they had been released in the bidding for the business.

[16] She filed a notice of civil claim on March 28, 2025. She did so as an in-person plaintiff, and that notice of civil claim is plainly insufficient on its face. It only has four paragraphs. The Defendants filed a response to that notice of civil claim in May 2025.

[17] However, on August 7, 2025, the plaintiff filed an amended notice of civil claim in response to this application. The issue is whether the amended notice of civil claim, on its face, is sufficient to establish a cause of action.

[18] I will not read out the paragraphs of the amended notice of civil claim, but the ones particularly pertinent for my analysis are paragraphs 7 to 14 and 17 to 21. In particular, counsel focussed on paragraphs 17 and 19.

[19] The Defendants' position is that, despite these amendments, there are no facts that support a conclusion that the Defendants owed a duty of care to the plaintiff or that any trust obligations were imposed on them.

[20] Specifically, their position is that paragraph 19 of the amended notice of civil claim, which asserts that Dentons had actual, or alternatively, constructive knowledge that the funds were held in trust for the plaintiff pursuant to the pleaded trust conditions, is a conclusory statement. As such, it is an element of the claim, but it does not constitute a pleading of fact.

[21] The issue is the key to the resolution of this case -- whether, on the face, those paragraphs do plead a possible cause of action.

[22] The plaintiff's position is that paragraph 19 is determinative. It pleads that the Defendants had actual or constructive knowledge and her position is that is fatal to this application.

[23] I take a different view. That pleading is necessary because it establishes an element of the claim that Dentons was somehow a trustee. However, that is not an assertion of facts.

[24] It is important to note that the case law says one must look at the entire amended notice of civil claim. The pleading does not have a bare assertion of a wide-ranging or broad trust agreement. The plaintiff very specifically alleges the mechanism by which the Defendants committed the breach of trust was by paying

out the money to make the bid for the business without her consent, and by not ensuring first that she and Mr. Zhu had an agreement about the investment. It is important that the facts relating to those allegations are sufficiently set out.

[25] In my view, there are no facts pleaded to show that the Defendants had actual knowledge. In the application response, the plaintiff says that the fact that the bank draft was stated to be to “Dentons in trust” and her address was printed on the bank draft is sufficient to show the funds were held by Dentons in trust for her. But, the addition of the words "for her" in the argument is conclusionary.

[26] The issue is whether the words on the bank draft and her address were sufficient to establish actual knowledge not just that the funds were received in trust, but that they had very specific trust terms applicable to them. The pleading must specify how the Defendants had actual knowledge of the specific trust terms. I do not find that the words “in trust” or the plaintiff’s address are sufficient to establish that the Defendants had actual knowledge of the terms of the trust.

[27] The more difficult question is whether there could be constructive knowledge of the terms of the trust. In my view, *Green Light Solutions Corp. v. Baker*, 2021 BCCA 287, is a complete answer to that argument, and I find in favour of the Defendants.

[28] It is necessary to look closely at the *Green Light Solutions Corp.* case. In my view, it sets out at para. 1 the identical issue before me:

> [1] This appeal concerns the payment of funds by a non-client into a lawyer’s trust account. Specifically, it raises the question as to whether the lawyer in this case held funds in trust for a non-client and what inquiries, if any, he should have made prior to disbursing the funds on his client’s instructions.

[29] With respect, that is the exact claim being made by the plaintiff. The allegation is that by the failure to make inquiries as to what the words "in trust" meant, placed the Defendants in the position of being liable.

[30] In *Green Light Solutions Corp*., there was an agreement between Green Light Solutions Corp. and another entity by which the other entity agreed to loan $30,000US to Green Light Solutions Corp. to be deposited with its lawyer, in trust, on certain conditions.

[31] At paras. 5–6 of the judgment, the Court of Appeal notes that the issue before the summary trial judge was whether a trust was created. The conclusion that was being challenged on the appeal was the judge's view that although Mr. Baker [the lawyer] never expressly agreed to become a trustee for Green Light Solutions Corp., the surrounding circumstances made him so.

[32] The Court of Appeal overturned the decision, holding at para. 6, “A mere transfer of funds into the trust account of another party’s lawyer, without anything further, is insufficient to result in a finding that the lawyer is the transferor’s trustee.”

[33] Some of the other facts that were important to the Court of Appeal include those stated at para. 11, “Neither Green Light nor its counsel contacted Mr. Baker, nor was any information provided regarding the funds at the time of the wire transfer.”

[34] In my view, what is important about that sentence is the word “information”.

[35] In this case, the allegation is that the plaintiff’s address and the words “in trust” were sufficient to establish both actual and/or constructive knowledge. I have already addressed actual knowledge, concluding that in my view, there had to be something that provided actual knowledge not just of the potential existence of a trust, but the particular terms of the trust, including that the funds could not be paid out without the plaintiff's consent, and that consent was not sought. That is the information that is missing in the pleading. There is no allegation in the pleading that Mr. Zhou told Dentons of the alleged agreement that he had with the plaintiff. The claim rest on merely her name and address appearing on the bank draft.

[36] In my view, the fact that the Court of Appeal in *Green Light Solutions Corp.* looked at the documents in the case of a wire transfer, noting that they did not refer to the agreement and no agreement was provided to Mr. Baker, makes the case identical to the facts before me. There is no allegation in the plaintiff’s pleadings that Mr. Zhou made reference to the alleged agreement or trust terms, and no agreement or trust terms were provided to the Defendants any other way; nor could they have been, since it is alleged Mr. Zhou had an oral agreement with the plaintiff.

[37] The important point in *Green Light Solutions Corp.* was that Mr. Baker was unaware of the wire transfer's actual nature and purpose. In that case, the "actual nature and purpose" had to do with the agreement between the client and a non-client.

[38] This case might be slightly different in that there is no disagreement that the funds were being provided by the plaintiff for the purpose of a particular investment. However, the plaintiff's claim centres on the lack of her consent to actually pay the funds to compete in the bidding process. Therefore, the issue is not the receipt of the funds: the issue is paying them out without her consent. There is nothing, in the amended notice of civil claim, that alleges facts that could establish, either actually or constructively, that the Defendants could have been aware that her consent was required.

[39] In *Green Light Solutions Corp.*, the Court of Appeal specifically overturned the chamber's judge's conclusion that having had constructive knowledge of the terms of the trust, the firm breached those terms, making it liable for breach of trust. And, that is the important point: It is not just the potential existence of a trust, which in this case might arise from the words "in trust" on the bank draft, but the plaintiff has to plead material facts to show constructive knowledge of the terms of the trust.

[40] The Court of Appeal goes on to address the potential three avenues for liability of a trustee in that case, only two of which are raised in this case: implied acceptance to become a trustee or becoming a trustee *de son tort*.

[41] With regard to implied acceptance, the important point is articulated at para. 36:

> A trustee may accept their appointment by conduct, where they deal with trust property for reasons that cannot be clearly linked to another purpose: … [but] whether a person has done so is an inherently fact-specific inquiry.

[42] In other words, those facts must be carefully laid out and pled.

[43] The court continues at para. 37 to mention circumstances referred to in some of the academic writing that could amount to "dealing with the funds" in that way, for instance, advertising property for sale, collecting rents, *et cetera*. There is no allegation in the amended notice of civil claim of any dealing with the funds. All

that was done is that they were paid out pursuant to the specific instructions. To be clear, the act of paying out the funds for the purpose of that particular investment is not disputed. The dispute is the lack of the plaintiff's consent to do so at that time. In my view, that is why the implied route of knowledge of the trust does not exist in the pleadings.

[44] With regard to trustee *de son tort*, it requires a relation between the trustee and the trust property described as "substantial legal control or possession of it" (para. 40). In this case, the law firm simply acted on instructions from their own client. I am not satisfied that amounts to anything approaching substantial control or possession of the funds.

[45] At para. 61, there is a partial summary of the Court of Appeal's reasoning:

> [61] In this case, Mr. Baker never became possessed of the trust funds except in the interests of his client. He had no actual knowledge of the trust's existence and there was no evidence that he ever dealt with the funds *qua* Green Light's trustee. The mere fact that the funds were deposited into his trust account was not, in my view, sufficient to impute knowledge to him that the funds were impressed with a trust, per the terms of the Agreement.

[46] I acknowledge the plaintiff's argument that in *Green Light Solutions Corp.* there was a wire transfer, and in this case, there is delivery of a bank draft. She places a great deal of significance on the words "in trust" on the bank draft and her address. I have already explained why in my view, that cannot amount to actual knowledge.

[47] Similarly, I am not satisfied that there is anything in the pleading that could imply knowledge of the terms of the trust, which is what would be essential to establish a claim in breach of trust.

[48] I add that the plaintiff also referred to and has pleaded a publication of the Federation of Law Societies. The point of that is to support her claim that even if the plaintiff was wrong, and the words "in trust" could not establish the existence of a trust in her favour, at the very least it was a suspicious circumstance that ought to have led to a train of inquiry.

[49] That position is also answered conclusively against her position in *Green Light Solutions Corp.* at paras. 65–68. The court held that "inquiries required by

potential standards cannot, on their own, serve to impute knowledge of the trust".

[50] That is what the pleading attempts to do in this case, which is to rely on the words "in trust", which I have determined was insufficient to establish constructive knowledge, combined with professional obligations, to create liability. As stated by the Court of Appeal, the reason that inquiries required by professional standards cannot alone establish liability in the sense of establishing imputed knowledge is that it would amount to a unilateral appointment of a trustee.

[51] The Defendants emphasized throughout their submissions that there cannot be the existence of a trustee or the appointment of a trustee without mutuality. There is no dispute about that. The dispute in this case is whether that has been done impliedly or constructively. For all the reasons that I have set out already, I am not satisfied the pleading sets out the essential elements or facts to make that case.

[52] Therefore, I grant the order that the amended notice of civil claim is struck as against Dentons Canada LLP and Trustee Jordan Schultz, but the entire claim is not struck. The order is limited in that sense.

"Sharma J."