

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Guo v. Wang*,
2026 BCCA 7

Date: 20260113
Docket: CA49785

Between:

Ying Ping Guo

Appellant
(Defendant)

And

Weihe Wang, Guilian Tian and Weihe Investments Ltd.

Respondents
(Plaintiffs)

And

**Yunal Kumar Nath, Jozsef Horvath, Katalin Maria Horvath,
Developro Construction Ltd. and Vantone Development Group Ltd.**

Respondents
(Third Parties)

Before: The Honourable Mr. Justice Harris
The Honourable Madam Justice Horsman
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of British Columbia, dated
March 4, 2024 (*Wang v. Guo*, 2024 BCSC 380, Vancouver Docket S175130).

Counsel for the Appellant:

L. Liang

Counsel for the Respondents,
Weihe Wang, Guilian Tian and
Weihe Investments Ltd.:

J.A. Dawson
R. LaPlante

Place and Date of Hearing:

Vancouver, British Columbia
September 5, 2025

Place and Date of Judgment:

Vancouver, British Columbia
January 13, 2026

Written Reasons by:

The Honourable Justice MacNaughton

Concurred in by:

The Honourable Mr. Justice Harris

The Honourable Madam Justice Horsman

Summary:

This appeal arises from a failed real estate development project in which the respondents invested more than \$5 million on the recommendation of the appellant. The appellant challenges the trial judge's finding that he is liable for negligent misrepresentation, breach of fiduciary duty and breach of contract.

Held: Appeal allowed in part. The trial judge erred in finding the appellant negligently misrepresented the experience of two individual third parties.

The trial judge also erred in finding that the appellant breached a fiduciary duty owed to the respondents. Trial judge's breach of contract finding upheld. Damage award reduced accordingly.

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Reasons for Judgment of the Honourable Justice MacNaughton:**Overview**

[1] The appellant appeals a trial judgment finding him liable for damages arising from a failed real estate development project involving the appellant and a group of others, including the respondents.

[2] After a 37-day trial, during which the appellant was self-represented, the trial judge concluded that the project was a complete failure, involved significant misappropriation and secret profits earned by its proponents, and led to the respondents losing in excess of \$5 million. As it relates to the issues on this appeal, significant damages were awarded against the appellant jointly and severally with the proponents of the development project, Yunal Kumar Nath (“Nath”) and Jozsef Horvath (“Horvath”). A smaller damage award was made severally against the appellant, Ying Ping Guo, and Nath and Horvath.

[3] The appellant, who introduced the development opportunity to the respondents, Weihe Wang and Gulian Tian, and their company, Weihe Investments Ltd. (“Weihe”), appeals the orders made against him. Nath did not participate in the proceedings. Horvath does not appeal the awards against him. Horvath’s wife was also found liable for some of the damages suffered by the respondents. She does not appeal the awards against her.

[4] In reasons indexed as 2024 BCSC 380 [“*RFJ*”], the trial judge found the appellant liable for negligent misrepresentation, breach of contract and breach of fiduciary duty.

Background

[5] I take the following summary of the background facts from the *RFJ*, noting specific findings of the trial judge where they are relevant to understanding the narrative. I will review the liability findings of the trial judge later in this judgment.

The Parties and their Respective Backgrounds

[6] Mr. Wang and Ms. Tian are spouses. In 2005, they immigrated to Canada from China with their now-adult children. Mr. Wang returned to China where, until he retired, he continued to operate a successful pharmaceutical business. He spent one or two months a year in Canada. Ms. Tian remained in Canada with the children. She became a Canadian citizen in 2010.

[7] Mandarin is Mr. Wang and Ms. Tian’s first language. Mr. Wang cannot read or understand English. Ms. Tian has limited ability in both spoken and written English. She understands very basic conversational English.

[8] Weihe is one of Mr. Wang’s and Ms. Tian’s family businesses. It is a BC company incorporated to invest in Canadian real estate, primarily in residential properties. At the relevant time, Mr. Wang and Ms. Tian were Weihe’s shareholders. Although Mr. Wang and Ms. Tian were experienced real estate investors, prior to becoming involved in the development projects at the heart of this appeal, they had not been involved in real estate development.

[9] The appellant met Mr. Wang in 1994. They worked together in various business projects in China and Vietnam and they and their families became friends. At the time of the events in issue in this appeal, the appellant was managing construction projects on a rental property in Pitt Meadows on behalf of his client, a Chinese investor, and managing another property in Burnaby. He had been the Chief Executive Officer of a publicly traded Canadian company.

[10] The appellant met Horvath in 2013, when Horvath and his family moved into the Pitt Meadows property. The appellant met Nath in 2016, in connection with asbestos removal at the Pitt Meadows property.

[11] In 2015, the owner of the Pitt Meadows property hired Horvath to build, and the appellant to manage, construction of a house and a mushroom processing facility on it.

[12] Horvath is a contractor. Prior to coming to Canada, he trained as a painter and wallpaper hanger, and worked as a labourer building and resurfacing roads, constructing modular homes, and renovating. In Canada, Horvath worked in home renovation and construction. He worked for Bosa Development as a supervisor of residential construction, and on a subdivision in Nanaimo.

[13] Nath is also a contractor. Horvath and Nath met in 2015. They worked together on asbestos removal and excavation projects. The trial judge found neither of them had the experience or qualifications to manage a large-scale development of the kind involved in these proceedings.

[14] Nath and Horvath, and their companies, Developro Construction Ltd. (“Developro”), and Vantone Development Group Ltd. (“Vantone”), were all involved in the failed development projects.

The Property Developments

[15] As I have said, the subject of this appeal is the parties’ involvement in the failed development of two pieces of BC property. The first property is a 143-acre, densely treed rural property, located about 20 km southwest of Prince George (the “PGP”).

[16] The second property is an uncleared, 153-acre parcel of land near the top of Sumas Mountain in Abbotsford (the “SMP”). It has no road access but, if permits were granted, an existing road could have been extended to access it. A variance to the zoning bylaw and Official Community Plan would be necessary to develop the SMP into a significant residential subdivision.

[17] During the construction at the Pitt Meadows property, in late April and May 2016, Horvath, Nath and the appellant discussed a potential real estate development that required an investor. The appellant was tasked with finding an investor and they discussed the possibility of Mr. Wang investing. In late April or early May 2016, the three of them met to discuss how they would manage the

projects if Mr. Wang were to invest. They agreed that the appellant would be the overall project manager, and that Horvath and Nath would do the development work.

[18] On May 14, 2016, the appellant advised Mr. Wang that he had found two real estate development opportunities that had the potential to be very profitable and, if Mr. Wang agreed to invest in them, he could earn significant profits.

[19] The appellant told Mr. Wang that there was an opportunity to develop the PGP into one-acre lots that, when fully developed, could each be sold for \$800,000 and that after development expenses, Mr. Wang could earn a profit in excess of \$50 million. The appellant told Mr. Wang that the SMP could be subdivided into half-acre lots, allowing 300 houses to be built on it.

[20] At trial, the appellant testified that he was simply relaying to Mr. Wang what he had been told by Horvath and Nath. The trial judge accepted that the appellant spoke in positive terms about the development opportunities because his task was to find an investor, and he himself stood to make a profit if the development was successful. The appellant explained that Horvath and Nath would develop the properties under the appellant's management. Mr. Wang reasonably understood that the appellant had formed this project management team to develop the properties.

[21] The trial judge found that the appellant knew that Mr. Wang and Ms. Tian would rely on his vouching for Horvath's experience and qualifications. The appellant did not represent that it was certain that the properties could be subdivided as he had suggested. In fact, one reason for Nath's involvement was to take advantage of his purported family connections to obtain the necessary government approvals for the SMP subdivision.

[22] Nonetheless, the trial judge was satisfied that the appellant negligently misrepresented to Mr. Wang that circumstances were favourable for achieving the subdivision without a basis for that representation. It was likely that the appellant relayed or suggested to Mr. Wang that Horvath or Nath had been following the PGP and SMP for some time. The trial judge accepted that the appellant represented to

Mr. Wang that the development opportunities were good ones, based on representations Horvath and Nath made to him, on their expectation that he would relay that to Mr. Wang to persuade him to invest.

May 2016 Meeting

[23] In May 2016, Nath joined Mr. Wang, the appellant, and Horvath while they were having lunch in Abbotsford, and the four of them discussed the investment opportunity.

[24] Mr. Wang wanted to charter a plane to see the PGP that afternoon. Nath arranged, and Mr. Wang paid for, a charter flight from Abbotsford to Prince George. They took a cab to the PGP and, after viewing it from the perimeter, returned to Abbotsford. Mr. Wang told the appellant that he was interested in buying it.

[25] On the same day, they went to see the SMP, and an active residential development on Sumas Mountain, to get a sense of what might be possible.

[26] Over dinner that evening, Mr. Wang and Ms. Tian agreed with the appellant, and Horvath and Nath, that they would buy the properties and invest in the development of them. By the time dinner concluded, the parties had discussed a proposal whereby Mr. Wang and Ms. Tian would buy the PGP for \$1.5 million, and the SMP for \$3.25 million, and put up the capital for the development costs for both properties. Horvath and Nath would be responsible for developing the two properties, and the appellant would be the overall manager, with ultimate decision-making authority. The appellant offered to guarantee Mr. Wang and Ms. Tian's investment in the development. While their agreement was not binding, the general terms had been agreed.

[27] Unbeknownst to Mr. Wang, Ms. Tian, or the appellant, in the weeks leading up to the May 16, 2016 dinner, Horvath and Nath secured for themselves the right to buy the PGP and the SMP for substantially less than the price given to Mr. Wang and Ms. Tian.

Undisclosed Interest in PGP

[28] On May 12, 2016, Horvath and Nath travelled to Prince George to see the PGP. They met the owner and a real estate agent and were shown preliminary development plans. Nath decided he wanted to buy the property.

[29] On May 16, 2016—the same day as the dinner with the appellant, Mr. Wang and Ms. Tian—Mr. Nath, through his company Developro, entered into a contract to purchase the PGP for \$550,000 to be completed on May 26, 2016. An appraisal obtained for litigation purposes, assessed the May 16, 2016 market value of the PGP at \$375,000.

[30] On May 18, 2016, Developro assigned its rights to purchase the PGP to 1076121 B.C. Ltd., a recently incorporated shell company, then wholly owned by Nath. This company would later be sold to Weihe as part of the development project.

Undisclosed Interest in SMP

[31] On May 4, 2016, an individual named Troy Theodore entered into a contract to purchase the SMP from 638070 Alberta Ltd. for \$2.65 million, subject to financing (to be secured by June 4, 2016) and the completion of a development feasibility study (by June 19, 2016). The scheduled completion date was June 29, 2016.

[32] On May 10, 2016, Horvath, through a newly incorporated company, 1075191 B.C. Ltd. (“191 Ltd.”), took an assignment of Mr. Theodore’s rights under the contract. The assignment refers to an assignment fee of \$3.15 million but, at trial, Horvath agreed that he paid \$2.65 million for the assignment—the same price at which Mr. Theodore had agreed to buy the property. The trial judge inferred that the assignment fee was inflated to help conceal the fact that Horvath and Nath would be earning a profit by flipping the assignment of the SMP to Mr. Wang and Ms. Tian.

[33] An appraisal obtained for litigation purposes, assessed the June 29, 2016 market value of the SMP at \$2.69 million.

[34] After the assignment was signed, by mid-June 2016, Mr. Theodore waived the subject conditions. At trial, Horvath admitted that he had not disclosed the subject conditions to Mr. Wang and Ms. Tian so as to earn his undisclosed profit. In cross-examination, he agreed that it would have been a good idea for Mr. Wang and Ms. Tian to obtain a development feasibility study for the SMP before waiving the subject conditions.

[35] The trial judge concluded that, prior to Mr. Wang and Ms. Tian acquiring both the PGP and the SMP, they thought they were buying them from a third party and were unaware that Horvath and Nath had acquired interests in the properties and were reselling them at a profit. In particular, he found that, to the extent Mr. Wang and Ms. Tian understood that Horvath and Nath (or their companies) were involved in the transactions, they believed that Weihe was reimbursing Horvath and Nath for deposits they paid to ensure that Weihe could buy the properties. Horvath and Nath structured their transactions to conceal their interest and to profit from flipping the PGP and SMP.

The Purchase of the PGP

[36] The appellant advised Mr. Wang and Mr. Tian that they were meeting Aaron Salter, of Equip Law, and Horvath and Nath in Abbotsford, on May 18, 2016, to execute documents for Weihe's purchase of the PGP. Mr. Salter would prepare the transfer documents, and they would need to provide him with about \$4.8 million, in trust, not all of which would be required on that day. The appellant told Mr. Wang and Ms. Tian to bring four bank drafts, and specified in what amounts, and to whom they were to be payable.

[37] At trial, Mr. Salter testified that when he learned that Mr. Wang and Ms. Tian were attending the meeting without a lawyer, he recommended that they retain one. He told them that he was not their lawyer and would not represent them. The appellant testified that Ms. Tian said she understood.

[38] Nevertheless, the trial judge accepted that Mr. Wang and Ms. Tian were unsure about who Mr. Salter was acting for, and his role in the transactions, apart from preparing documents. The appellant told Mr. Wang that Mr. Salter was the lawyer who was going to handle the conveyance and the development projects. The trial judge found that Mr. Wang and Ms. Tian likely believed that Mr. Salter was retained to prepare the transfer documents. They did not know that he represented Horvath and Nath but knew he was not representing them or Weihe. The trial judge accepted that Ms. Tian's English was sufficient to understand Mr. Salter's recommendation that she and Mr. Wang should speak to their own lawyer, but they chose not to.

[39] For each of the PGP and the SMP, Mr. Salter prepared: a Transfer Agreement, providing for the transfer of the beneficial interest in them to Weihe from companies controlled by Horvath and Nath; and a Share Purchase Agreement, providing for the transfer of shares in the two numbered holding companies that were to acquire the properties.

[40] The documents were not translated into Mandarin. Mr. Salter read at least one of the documents, paragraph-by-paragraph while the appellant translated it for Mr. Wang and Ms. Tian. They did not go through the same detail on all the documents because some were very similar to others. The appellant did not explain the documents word for word. He translated what he considered to be their "core part[s]" or "key business terms" such as the price and the property descriptions. The trial judge accepted that the appellant told Mr. Wang and Ms. Tian that the documents were "standard legal documents", and assured Ms. Tian that she could sign them.

[41] The trial judge found that the appellant downplayed his role in all of the events surrounding the review and execution of the purchase documents, and the payment of the purchase price[s] through Mr. Salter's trust account. The appellant was not just translating or relaying in Mandarin what Nath told him to communicate. The appellant knew that Mr. Wang and Ms. Tian trusted him and relied on what he

told them about the transaction. The appellant wanted the deal to go through because he stood to earn, what he believed, would be a substantial profit from Mr. Wang's and Ms. Tian's investment.

[42] The trial judge accepted Mr. Wang's and Ms. Tian's evidence that they did not understand the legal intricacies of the documents or why numbered companies were being used. They relied on advice relayed by, or through, the appellant that numbered companies are often used in commercial real estate transactions in BC. They were never told that one reason for using numbered companies was to facilitate flipping the properties without disclosing the original contracts of purchase and sale or their assignments.

Additional Credibility Findings

[43] As I have said, in making his factual findings, the trial judge viewed much of the non-expert evidence of the main participants with "varying degrees of caution or skepticism". He had significant credibility and reliability concerns with both the appellant's and Horvath's evidence and said their evidence "frequently and materially" conflicted with their discovery evidence. The trial judge was concerned about Mr. Wang's memory, as it related to details of events, and concluded that his evidence on some matters was clearly contradicted by more reliable evidence. Mr. Nath never participated at trial.

[44] The trial judge relied on the evidence of Dennis Voss, the on-site project manager for the PGP. Mr. Vos had no personal interest in the outcome of the dispute, did not attempt to favour any party, and was on-site daily during the development. His evidence provided a good backdrop against which to consider the veracity of the other witnesses' evidence. The trial judge also found Brendon Masson's evidence to be credible and reliable. He was an engineer with McElhaney, the project engineers hired for the PGP.

[45] The trial judge found that the appellant learned on May 18, 2016, through his review of the purchase documents in the course of translating them to Mr. Wang and Ms. Tian, that Horvath and Nath, through their holding companies, acquired the

rights to buy the PGP and SMP. Despite his knowledge, the appellant did not disclose their interest to Mr. Wang and Ms. Tian. The trial judge accepted that the appellant believed that Horvath and Nath's involvement related to their efforts to secure the properties for Weihe, and that he did not know that they were making a secret profit by flipping the properties.

First Project Management Agreement

[46] On May 21, 2016, after the purchase and transfer agreements were signed, Mr. Wang, Ms. Tian, the appellant, Horvath and Nath all signed a property management agreement for the development of the PGP and the SMP. It was entitled "Agreement on Realty Development Cooperation" (the "First PMA"). The appellant drafted the First PMA in both English and Mandarin.

[47] The First PMA identifies Weihe as "Party A" and the appellant, Nath and Horvath as "Party B". It purports to create a "cooperation partnership" for the development of the properties. The First PMA provides that Wiehe will use the property for "realty development purposes" and will provide the funding necessary to support that development, budgeted to be \$5 million in total.

[48] The First PMA gives the appellant, Nath, and Horvath the "sole right" to plan and manage the development and the marketing and sales of the homes. They agreed to appoint Vantone as the project management company. At trial, Horvath agreed that his responsibilities under the First PMA included planning the project and identifying how the properties could be developed in a feasible and profitable manner. The trial judge found that Nath had the same responsibilities.

[49] Vantone was incorporated on May 30, 2016, for the purpose of receiving project development funds from Weihe and developing the properties. Horvath and Nath were its only shareholders.

[50] The First PMA provided that the development of both properties was to be completed within three and a half years of the work commencing.

[51] Clause 5 of the First PMA appoints the appellant as the general manager for the project:

5. Party A [Weihe] agrees to appoint Mr. Yingping Guo as the General Manager for the above mentioned projects. He has the ultimate right of decision making, preparation for development plan, preparation for budget, execution of the projects, and reporting to Party B [Horvath, Nath and Guo] regularly for the progresses of the development projects.

[52] The trial judge found that this clause made the appellant the ultimate supervisor of the project, with responsibility for overseeing what Horvath and Nath were doing, including how they spent the development funds provided by Mr. Wang and Ms. Tian.

[53] The appellant, Horvath, and Nath were to prepare a budget for Mr. Wang and Ms. Tian's approval, and a development plan for the two properties. After approval of the budget, Mr. Wang and Ms. Tian through Weihe, were to cover all of the appellant's, Horvath's and Nath's expenses in developing the properties out of the budgeted amount. Weihe was to compensate the appellant, Horvath and Nath by paying them 15% of the total net income from the projects, with each receiving 5% as a "compensation dividend".

[54] At this same meeting, Horvath told Mr. Wang and Ms. Tian that a minimum of four lots in the PGP would be ready for a pre-sale marketing campaign by the end of 2016. Horvath acknowledged that he "plucked [that assurance] out of thin air".

Second Project Management Agreement

[55] The second project management agreement was between the appellant, Mr. Wang and Ms. Tian and, although dated May 21, 2016, was signed on May 22, 2016 (the "Second PMA"). The appellant drafted the agreement in both English and Mandarin.

[56] Pursuant to its terms, if the development met certain profit goals, the appellant would receive an additional 10%. In exchange, the appellant personally guaranteed the respondents' investment in the project through an indemnity clause.

[57] In the English version, the indemnity clause read:

4. Party B [Mr. Guo] is responsible for planning, design, monitoring, execution, marketing and sales, project management for the development, and has a high right of decision makings. At the mean time, Party B will take relevant risks. If the development projects fail and cause losses to Party A [Weihe] due to the reasons of Party B misconducts, Party B shall be fully responsible, compensate Party A for the losses, and guarantee it by using all assets of Party B.

[58] In the Mandarin version, the indemnity clause read, as translated:

4. Party B is in charge of planning, designing, monitoring, implementing, marketing and managing the project development with high level of decision-making power. Meanwhile, Party B shall bear the corresponding risks. If, due to Party B, losses were caused to the development of the project and to Party A, Party B shall be fully responsible, compensate Party A for its loss, and pledge its entire assets.

[59] Clause 5 from the First PMA was repeated in the Second PMA, but it referred to giving the appellant a “high” right rather than the “ultimate” right of decision-making. The wording emphasized that the appellant, the drafter of these agreements, assumed full and discretionary control over Weihe’s interests in the projects and, as a result, the Project Development Funds

[60] Clause 6 of the Second PMA created the more generous compensation arrangement. If the projects earned a before-tax profit of \$50 million, or an after-tax profit of \$30 million, Weihe would reward the appellant with an additional 10% of the net income over and above the 5% he was entitled to under the First PMA.

[61] The trial judge found that the purpose of the Second PMA was to confirm that, in exchange for guaranteeing Weihe’s investment, the appellant would receive a greater share of any profits. The trial judge accepted that the appellant’s guarantee under the Second PMA related to him having the “high” or “ultimate” right of decision making, and that the appellant’s potentially higher remuneration under it was in exchange for guaranteeing the investment. The trial judge found:

[122] ... Having a “high right” or “ultimate right” of decision making gave Mr. Guo discretionary control over the project to protect against his own risk arising from the personal guarantee. However, it also gave him a level of responsibility over the project management that would be commensurate with

the reward he expected to receive at the end of the day. If the project generated a net profit of \$30 million or more as the Second [PMA] contemplated, Mr. Guo stood to receive at least \$4,500,000 without investing a penny. Clearly, for this potential reward, it was expected that Mr. Guo would make a substantial contribution through his discretionary management and oversight of the project.

[62] On June 8, 2016, the parties met to complete the transfer documents for the SMP. Prior to the meeting, the appellant told Ms. Tian that she needed a bank draft of \$2,773,327.32 to complete the purchase.

[63] In June 2016, the appellant, Mr. Wang, Ms. Tian and Horvath and Nath attended a project management meeting at Vantone's offices. It appears that Horvath's son, Zsolt, and Mr. Wang's son, Haitao, also attended the meeting, but nothing turns on their attendance. The meeting was for two purposes: 1) for a presentation about marketing the PGP and the SMP once they were developed; and, 2) to approve the development budget for the PGP.

[64] In addition to the price for the purchase of the PGP and SMP, Mr. Wang and Ms. Tian invested another \$2,862,500 in the development of the PGP (the "Project Development Funds"), and \$82,000 for a survey of the SMP that was never completed. Only about \$812,536 of the Project Development Funds were spent on the PGP.

The Project Development

[65] In June 2016, Vantone hired McElhanney as the engineers, and Mr. Voss as the site manager, for the PGP.

[66] Horvath and Nath started the project before McElhanney had completed its design and planning work or received the necessary approvals from the municipality. McElhanney warned Mr. Voss that, for a number of reasons, the project was not viable. Mr. Voss passed that warning on to Horvath and Nath; they instructed him to press on.

[67] Mr. Voss communicated primarily with Horvath. Horvath made it clear to Mr. Voss that he was only to discuss costs with him. Mr. Voss thought the appellant was an investor. Mr. Voss was directed, or indirectly pressured, by Horvath to make the PGP appear more advanced than it was when Mr. Wang came to view the progress.

[68] The PGP was grossly mismanaged. There was no advanced planning. Construction began before proper plans and approvals were in place. The road work was done in bad weather, which increased costs significantly. Horvath and Nath ignored warnings from Mr. Voss and McElhanney.

[69] In October 2016, McElhanney withdrew as the PGP's engineer of record and in November, the project ceased to progress because contractors had not been paid, and the site was too wet to continue. Also in November, Mr. Voss learned that several contractors had not been paid.

[70] Horvath and Nath had misappropriated most of the \$2,862,500 that Weihe advanced in Property Development Funds.

[71] Despite not knowing how the project was proceeding (apart from his superficial observations during site visits), the appellant counselled Ms. Tian to continue making monthly payments of Project Development Funds to Vantone up until November 2016. Against the appellant's advice, Ms. Tian made two further payments of \$206,500 in November and \$6,500 in December 2016.

[72] In late January 2017, Mr. Voss emailed the appellant about the unpaid contractors.

[73] In early February 2017, the appellant emailed Horvath asking him to provide a signed document the following day confirming that all the PGP contractors and subcontractors had been paid. Horvath provided the written confirmation but did not provide particulars of the payments. The confirmation was false.

[74] The appellant told Horvath that he had left him “in the dark at a hell” and insisted that he “pay the contractors NOW!” He said, “You and [Nath] cannot pocket the money for yourself and/or use it for other businesses and for your families!”

[75] The appellant emailed Mr. Horvath stating that, by his estimate, only \$410,000 had been spent on contractors, yet Weihe had advanced \$2,862,000 in Project Development Funds. He demanded to know why contractors had not been paid.

[76] Horvath and Nath paid some of the contractors but created false invoices to cover up their misappropriation. These false invoices were passed on to the appellant.

[77] By April 2017, Horvath admitted to the appellant that he and Nath had misappropriated most of the Project Development Funds. Thereafter, the appellant told Mr. Wang.

The Appellant’s Conduct After Signing the PMAs

[78] The trial judge found that the appellant never resigned, and was not removed as project manager, as that role was defined in the First and Second PMAs. The appellant had been sidelined by Horvath and Nath but did not attempt to assert his authority as set out in the First PMA. He gave up on managing the project without advising Mr. Wang or Ms. Tian he had done so. The appellant abdicated his duties as project manager with a misguided expectation or hope that Horvath and Nath would competently run the project without his oversight.

[79] The trial judge concluded that the PGP was never viable. Even assuming that Weihe could develop 29 lots on it, the market could only absorb about five developed lots a year, meaning that the PGP would have to be carried for six years before all of the lots were sold. Although the original development budget was probably enough to complete the development, it was likely that they would have to start all over again as the roads did not meet the required standards.

[80] The trial judge found that Mr. Wang, Ms. Tian and Weihe received no benefit from their investment in the PGP. There is presently no option to develop the PGP in an economically feasible way. McElhanney’s work added no value to the land.

[81] The trial judge also concluded that the SMP never progressed beyond a pipe dream. An Official Community Plan amendment would have been required to develop the SMP, and there were no services to that part of the mountain, including no water. The Official Community Plan called for a gross density of almost 20-acre lots, which restricted the type of development that could occur, and excluded the possibility of half-acre or one-acre lots that the appellant, Horvath and Nath had suggested. At best, seven lots could have been developed, not 150 or 300.

[82] The development of the SMP hinged on a “grossly-misguided” notion that, as mentioned, Nath had a relative who worked in government, and could call in favours, to get the zoning and Official Community Plan changed. This was never going to happen. It was certain that the respondents would lose a large amount of money on any development of the SMP.

[83] In sum, the respondents received no value for, and no benefit from, the \$3,170,000 they invested in the development of the PGP, nor did they receive any value for the \$82,000 they paid for a survey of the SMP.

Trial Judgment

Credibility Findings

[84] In making his credibility findings, the trial judge expressed significant credibility and reliability concerns about the appellant’s and Horvath’s evidence. He said their trial evidence “frequently and materially” conflicted with their discovery evidence. The trial judge also expressed concern about Mr. Wang’s memory, as it related to details of events, and concluded that his evidence on some matters was clearly contradicted by more reliable evidence.

[85] In making his factual findings, the trial judge said he viewed much of the non-expert evidence of the main participants with “varying degrees of caution or skepticism” and, as a result, he relied on the evidence of witnesses who were involved, at the site level, in the development of one of the properties.

[86] The trial judge found the appellant liable for negligent misrepresentation, breach of contract, and breach of fiduciary duty.

Negligent Misrepresentation

[87] The trial judge found that the appellant negligently misrepresented Horvath’s property development experience to Mr. Wang when he told Mr. Wang that he had known Horvath for some years, in the context of another development project, and that he was capable of managing the PGP and SMP. The trial judge found that the appellant deliberately endorsed Horvath to persuade Mr. Wang and Ms. Tian to invest in the PGP and SMP, projects from which they expected to profit, and that the appellant knew that they would rely on his representations as he was a trusted friend.

[88] In deciding to invest, Mr. Wang and Ms. Tian reasonably relied on this advice, establishing the necessary proximity to support a duty of care between the appellant and Mr. Wang/Ms. Tian. The appellant should have taken care to ensure the representation was accurate.

[89] Since Mr. Wang and Ms. Tian would not have entered into the contract and suffered these losses but for the appellant’s negligent misrepresentations, the trial judge found that some of the losses they incurred were a consequence of that misrepresentation. It was therefore foreseeable, at the time of the negligent misrepresentation, that Mr. Wang and Ms. Tian may not have been paying market value for the properties, since no appraisal had been done. He found that the appellant was severally liable with Nath and Horvath for the \$175,000 overpayment (the amount they paid for the PGP and SMP over the appraised value), subject to contributory negligence.

Breach of Contract

[90] The trial judge also found that the appellant was contractually bound by both PMAs to oversee the management of the projects. The appellant's role as general manager with the "high right" or "ultimate right" of decision making under the PMAs necessarily implied an obligation to carry out oversight duties, and the appellant abdicated those duties on the project as early as June 2016.

[91] In particular, the appellant did not, until February 2017: take steps to determine if the PGP was viable; investigate the PGP subdivision plan; inquire about market demand; involve himself in the project or oversee it; and paid no attention to how the respondents' development funds were being spent. He did not meet with anyone from McElhanney and took no steps in 2016 to satisfy himself that Vantone was fulfilling the tasks reflected in the 2016 budget.

[92] It was only after Mr. Voss contacted the appellant in February 2017, and told him that contractors had not been paid, that he began to act under his managerial responsibilities. By then, it was too late—the Project Development Funds had been misappropriated, and even the funds that were spent on the PGP were wasted, because the project itself was not viable and road construction proceeded in grossly unfavourable conditions and without necessary permits.

[93] As a result, the appellant's lack of oversight allowed Horvath and Nath to misappropriate more than \$2 million in project development funds plus the \$82,000 for a survey that was never done on the SMP. The appellant's lack of oversight breached his responsibilities under both PMAs, documents that he had drafted.

Fiduciary Duty

[94] The trial judge found that the appellant was under an *ad hoc* fiduciary duty to prudently manage the respondents' investment. Under both the PMAs, Mr. Wang and Ms. Tian ceded control of the Project Development Funds to the appellant, making them particularly vulnerable to misuse and abuse of power over the

investment. The appellant drafted the PMAs, which gave him the ultimate right of decision-making.

[95] The trial judge found that these factors were sufficient for the three elements of an *ad hoc* fiduciary duty to be met:

- 1) the appellant gave an undertaking to manage Weihe's funds in its best interests;
- 2) Weihe was vulnerable under the terms of the PMAs to the appellant's, Horvath, and Nath's sole right to manage the project and the appellant's "ultimate right" of decision-making; and
- 3) Weihe's considerable financial investment stood to be adversely affected by the appellant's control over it.

[96] The trial judge found that, when the appellant encouraged Ms. Tian to make further payments, the appellant was impressed with a fiduciary duty, and it was incumbent on him to ensure that the money was being properly spent.

Indemnity

[97] The trial judge also found the appellant liable under the indemnity clause in the Second PMA. Clearly the projects failed, and Mr. Wang and Ms. Tian suffered a substantial loss. The trial judge found that the indemnity term, referring to "misconduct", was broad enough to capture the appellant's failure to supervise and manage the project.

[98] In any event, the Mandarin version of the Second PMA (which would have been the one that the respondents understood) indemnifies those losses "undoubtedly due to" the appellant. The trial judge found that the loss was undoubtedly due to the appellant's failure to supervise the project and monitor how the Project Development Funds were spent.

Interest

[99] The appellant was found jointly and severally liable with Horvath and Nath for the interest Mr. Wang and Ms. Tian paid on the money they borrowed to invest in the projects. The appellant's liability for the interest payments resulted from the trial judge's findings that he breached his fiduciary duty and that his negligent misrepresentation induced Mr. Wang and Ms. Tian to buy the properties.

Damages Breakdown

[100] The trial judge broke down the appellants liability as follows:

Item	Amount	Assignment and Apportionment of Liability
Market value overpayment for the Prince George Property	\$87,500	Several with Nath and Horvath but not joint. This was due to the appellant's negligent misrepresentations.
Project Development Funds	\$2,649,500	Joint and several with Nath and Horvath. This was due to the appellant's breach of contract, breach of fiduciary duty, and liability under the indemnity clause. (exclusion of \$213,000 applied for November and December Project Development Fund payments)
Sumas Mountain Lidar Survey	\$82,000	Joint and several with Nath and Horvath.
Teare Creek Settlement	\$307,500	Joint and several with Nath and Horvath.
Investment Interest	\$187,950	Joint and several with Nath and Horvath. This was a consequence of the appellant's negligent misrepresentation and breach of fiduciary duty.

Other Claims

[101] Although not the subject of this appeal, for completeness, the trial judge dismissed Mr. Wang and Ms. Tian's other claims related to the appellant and his wife, Ms. Xie. He allowed some of the claims against Horvath's wife, whom he found knowingly received some of the Project Development Funds.

[102] The trial judge allowed the appellant's third-party claim against Horvath, Nath, and Vantone in its entirety. Regarding the purchase funds, he found that Nath and Horvath made misrepresentations to the appellant, to convince him that investing in the development projects was a good idea, and so that he would make a persuasive case to Mr. Wang. As to the Project Development Funds and other damages, Horvath and Nath deliberately excluded the appellant from management of the development projects and concealed their misappropriations from him.

Issues on Appeal

[103] The preliminary issue on appeal is whether the appellant has raised new issues not argued before the trial judge.

[104] The substantive issues on appeal are:

- 1) Should the appellant be permitted to rely on new arguments and authorities;
- 2) Did the trial judge err in law, mixed fact and law, or fact, in finding the appellant liable for negligent misrepresentation and breach of contract;
- 3) Did the trial judge err in law, mixed fact and law, or fact in finding that the appellant was a fiduciary and that he breached his duty;
- 4) Did the trial judge err in law, mixed fact and law, or fact in finding the appellant liable under the indemnity clause; and,
- 5) Did the trial judge err in law, mixed fact and law, or fact in finding the appellant liable for Mr. Wang's interest charges?

Discussion

Should the Appellant be Permitted to Rely on New Arguments on Appeal?

[105] The appellant did not seek leave to raise new issues on appeal.

[106] The respondents submit that many of the substantive issues raised on appeal are new and that the appellant requires leave to argue them. The respondents say that the appellant attempts to argue that the trial judge erred by failing to consider legal principles or arguments which the appellant did not raise at trial.

[107] This Court does not generally consider arguments not advanced before the trial judge but may do so in certain circumstances: *Pickwell v. Rajwan*, 2025 BCCA 32 at para. 19; *1052387 B.C. Ltd. v. Forjay Management Ltd.*, 2024 BCCA 81 at para. 63. Though appeals are “from the order, not from the reasons” (*Topgro Greenhouses Ltd. v. Houweling*, 2009 BCCA 27 (Chambers) at para. 8), there are limits to the manner in which appeals may be argued. As Justice Saunders explained in *Gorenshtein v. British Columbia (Employment Standards Tribunal)*, 2016 BCCA 457, this Court has taken a “restrained approach” to entertaining new issues on appeal: *Provost v. Dueck Downtown Chevrolet GMC Limited*, 2021 BCCA 164.

[108] The test for raising a new issue involves consideration of whether: (1) the issue is truly “new”; (2) the evidentiary record is sufficient; and (3) the “interests of justice support granting an exception to the general rule”, a question in which “the issue of potential prejudice looms large”: *Gorenshtein* at para. 45.

[109] In *Pickwell*, this Court listed relevant considerations to determine whether the “interests of justice” support the hearing of a new issue:

[21] ...the threshold question is whether the interests of justice are served by allowing them to raise the new argument. In resolving that question the Court considers all the circumstances, including any prejudice the other parties would suffer if the applicant were to be granted leave to resile. Other relevant factors for consideration include the finality principle, the importance of the issues raised, the nature of the pleadings, and the reason(s) advanced for adopting the inconsistent position at the appellate level.

[110] In this case, without citing any authority for the proposition, counsel for the appellant argues that, because he was self-represented at trial and English is not his first language, this Court should entertain all of his new arguments on appeal. The appellant’s counsel submits that, given the appellant’s position at trial that he was

not liable for any of the respondents' losses, what he now argues are in any case not truly new issues and they may be resolved by reference to the existing evidentiary record. The appellant's counsel also submits that, given the significant award of damages made against the appellant, it is in the interests of justice to permit consideration of all possible arguments and reliance on all relevant authorities.

[111] A review of the record shows that over the lengthy trial, the appellant navigated examining and cross-examining a number of witnesses and various complex causes of action and claims between the parties. This was not a case in which the appellant had representation at some point but lost it before trial. The size of a damage award is not a factor that I would consider in allowing new issues to be argued on appeal in the circumstances of this case.

[112] I accept that the evidentiary record is largely sufficient to address the new issues. However, in my view it is not in the interests of justice to allow the appellant, even though self-represented at trial, an opportunity to make up for deficiencies in his case or to treat the appellate process as a second opportunity to reargue it. Here, the trial took place over 37 days. The pleadings made clear that the respondents were seeking considerable damages. A review of the submissions at trial makes it apparent that the appellant had the benefit of some legal assistance in preparing them. The appellant should not be permitted to reframe his case on appeal with the benefit of hindsight, new counsel, and the trial judge's reasons.

[113] I will return to this point.

Did the Trial Judge Err in Finding Negligent Misrepresentation?

Standard of Review

[114] Whether a particular relationship attracts a duty of care is a question of law reviewable on a standard of correctness: *1668782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35 at para. 24. Whether the appellant made representations to Mr. Wang that were untrue, inaccurate, or misleading is a finding of fact reviewable for palpable and overriding error.

[115] The requisite standard of care, and whether the appellant acted negligently, are questions of mixed fact and law that, provided the trial judge applied the correct legal test and principles, will be afforded deference on appeal.

Positions of the Parties

[116] The appellant argues that the trial judge applied the incorrect test when analyzing the existence of a duty of care, specifically at the proximity stage. The appellant argues that the trial judge did not sufficiently grapple with the policy considerations inherent in imposing a duty of care between friends.

[117] Regarding the negligent misrepresentation finding, the appellant also submits that:

- 1) The appellant did not actually misrepresent Horvath’s experience in real estate development. The trial judge did not identify what the appellant could have done to further verify Horvath’s capabilities; and
- 2) Mr. Wong and Ms. Tian, who were experienced businesspeople, could themselves have done more to understand Horvath’s experience.

[118] The appellant also raises a remoteness argument—that it was not reasonably foreseeable that Nath and Horvath would steal money from the development project and would act against the advice of professionals retained for the purposes of that project.

[119] The respondents submit that many of these arguments were not raised at trial. They submit that the trial judge sufficiently considered the friendship between the appellant and Mr. Wang and Ms. Tian, and that, in any case, the concept of a duty of care is itself premised on proximity.

[120] The respondents also point out that there is no remoteness issue: the appellant made representations about Horvath’s capabilities, and the respondents invested in the development project based on them. Although it was not foreseeable

that Horvath would commit fraud, it was foreseeable to the appellant that Mr. Wang, Ms. Tian and Weihe might not be paying market value for the properties.

Analysis

[121] In my view, the appeal on this ground falls to be decided on whether the trial judge made a palpable and overriding error of fact in finding that the appellant's representations about Horvath's experience were false, inaccurate, or misleading.

[122] I note that this narrow issue is not new.

[123] In finding the appellant liable for negligent misrepresentation, the trial judge first canvassed the law. He cited the leading case on negligent misrepresentation. In *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at 110, 1993 CanLII 146, the Supreme Court of Canada recognized a duty of care in precontractual negotiations. It set out five general requirements for a successful tort claim based on negligent misrepresentation:

1. There must be a duty of care based on a "special relationship" between representor and representee;
2. The representation must be false, inaccurate, or misleading;
3. The representation must be made negligently;
4. The representee must have reasonably relied on the representation; and
5. The reliance must have been detrimental to the representee in that the representee suffered damages.

[124] The duty of care required of a person making representations is an objective one: it is a duty to exercise such reasonable care, as required in the circumstances, to ensure that representations made are accurate and not misleading: *Cognos* at paras. 62–63.

[125] At trial, Mr. Wang gave general evidence regarding what the appellant told him about Horvath's experience. It included that Horvath: had "a few decades of experience"; had "very comprehensive skills"; and was "very capable of managing a building construction project". On the record, these representations were supported or borne out by Horvath's own evidence about his experience and qualifications, which was apparently accepted by the trial judge.

[126] In particular, Horvath testified that he had experience in renovation, construction, and trades going back to at least the 1980's—over three decades. Horvath went to trade school and worked in the trades; operated his own renovation and construction companies, building homes and other buildings; worked as a subcontractor on a multi-lot subdivision; and worked in residential construction and site supervision for Bosa Development, a large and well-known Vancouver real estate development firm.

[127] The trial judge appears to have inferred from Mr. Wang's evidence that the appellant specifically and negligently misrepresented that Horvath was capable of developing the PGP and the SMP in a particular way. In my view, this inference was not supported by the evidence.

[128] For months before the appellant introduced Horvath to Mr. Wang, Horvath had been engaged in the construction of a residence and a mushroom processing facility on a Pitt Meadows property that the appellant managed on behalf of its owner. The appellant had an opportunity to assess Mr. Horvath's construction and site management work during his oversight of that work. There was no evidence that Horvath's work was substandard or that any concerns were raised about his work or abilities.

[129] Assessing both Mr. Wang's evidence about what the appellant told him, and Horvath's evidence about his background and experience, I would conclude that the trial judge made a palpable and overriding factual error in finding that the appellant's statements were untrue, false, or misleading. It follows that the trial judge erred in

finding that the appellant acted negligently in making representations to Mr. Wang about Horvath's experience and qualifications.

[130] In addition, prior to Weihe's purchasing of the PGP and the SMP, Mr. Wang had an opportunity to view and assess, first-hand, Horvath's workmanship at the Pitt Meadows property and Mr. Wang spent two days with the appellant and Horvath, touring various potential investment properties and discussing their development. These properties included a lakeside resort and casino project at Harrison Hot Springs, and housing developments in Chilliwack, before visiting the PGP and the SMP, and an active residential development on Sumas Mountain when visiting the SMP. During this time, Mr. Wang had the opportunity, using the appellant as an interpreter, to ask any questions he considered necessary to independently assess Horvath's skills and experience. Mr. Guo pointed this out in his closing submissions when he said that Ms. Tian and Mr. Wang did not take any steps to verify their "impressions" of Horvath and Nath.

[131] In my view, the trial judge made a palpable and overriding error in finding the appellant liable to the respondents in negligent misrepresentation. It flows from this finding that the damages award against the appellant, in the amount of \$87,500, for the market value overpayment for the PGP, should be set aside.

Breach of Contract

Positions of the Parties

[132] The appellant does not directly challenge the trial judge's findings that he abandoned his duty to supervise the PGP. He acknowledges that he did not supervise the PGP, arguing that he was prevented from performing his duties under the PMAs. He also challenges his liability for breach of contract on the bases of causation, remoteness, and contributory negligence.

[133] The appellant argues that the trial judge erred in fact and in law in assessing causation. Specifically, he submits:

- 1) There is a lack of causal connection between the appellant's conduct and Weihe's losses—that is, even if the projects had been properly managed, the respondents still would have suffered the same harm, and that, because it was Horvath and Nath who acted fraudulently, the chain of causation between the appellant and the respondents was broken.
- 2) Given the respondents' experience in business and real estate, they acted recklessly in the course of investing in this project. He argues that they should have known that the appellant lacked experience in real estate project management, and that, as a result, they contributed to their own losses.
- 3) That the PMAs did not, practically-speaking, give the appellant the authority to manage the projects: Horvath and Nath were in control and acted without consulting the appellant, so the appellant could not have caused their losses.

[134] The appellant also argues that it would not be reasonably foreseeable that Horvath and Nath would act contrary to professional advice, raising a remoteness issue.

[135] The respondents submit that many of these arguments were not raised at trial, and that, in any case, the trial judge committed no palpable and overriding error.

Standard of Review and Analysis

[136] This Court will not interfere with a judge's assessment of damages absent an error in principle or law, or where the result reached was wholly erroneous: *Canada (Minister of Public Safety and Solicitor General) v. McLellan*, 2023 BCCA 279 at para. 24.

[137] Moreover, I have already said that it is not in the interests of justice for this Court to hear new issues on appeal that were not raised before the trial judge.

[138] The appellant says the issue of intervening acts breaking the causal chain is not new as it was raised to the trial judge by the plaintiff's counsel, but plaintiff's counsel did so, along with the issue of remoteness, only in the context of the question for damages for fraudulent misrepresentation and breach of fiduciary duty. In my view, these are new arguments on appeal in the context of liability for breach of contract.

[139] The other principle that bears repeating is that the appellant cannot simply attempt to re-argue issues on appeal by "cherry-picking the evidence that was rejected by the trial judge, which, had it been accepted, might have provided an evidentiary foundation for a different result": *Fotsch v. Begin*, 2015 BCCA 403 at para. 70.

[140] The bulk of the appellant's arguments before this Court, regarding his liability under breach of contract, are essentially claims that the trial judge should have interpreted the evidence differently, under the vague guise that he erred "in law, in mixed fact and law, and in fact". At trial, the trial judge heard arguments on: whether the plaintiffs could prove that their harm would not have flowed but-for Mr. Guo; whether Mr. Guo would have suspected that Horvath and Nath had "fraudulent intentions"; whether the plaintiffs were reckless and must "take the blame for the situation that they found themselves in"; and whether it was foreseeable that if the plaintiffs "acted in the manner that they did", including acting contrary to professional advice, they would obtain no benefit from the PGP. The appellant attempts to re-argue these points before this Court without identifying a specific basis upon which to do so.

[141] I also note that bald assertions that the trial judge "erred in law, in mixed fact and law, and in fact" without pointing to specific errors of each asks this Court to "parse the reasons of the trial judge in a line by line search for errors" which is not the role of the appellate court: *R. v. Chung*, 2020 SCC 8 at para. 13.

[142] Mr. Guo repeatedly submitted at trial that the PMAs did not give him real authority to manage the projects. The trial judge held to the contrary—that when Mr. Guo emailed Horvath demanding ongoing record of payments to contractors per their “initial agreement”, he was referencing his authority under the First PMA and acting in this capacity: *RFJ* at para. 210. Before this Court, the appellant tries to re-package these same arguments by alleging that the trial judge erred in his reading of the evidence, without identifying an error committed by the trial judge.

[143] The appellant also argues that the trial judge erred in failing to acknowledge that Horvath’s and Nath’s fraudulent scheme contributed to the respondents’ loss, breaking the requisite causal link. The trial judge found quite the opposite—he found that it was Mr. Guo’s abdication of his responsibilities under the PMAs that allowed Horvath and Nath to misappropriate the Project Development Funds: *RFJ* at para. 432. In other words, the appellant’s breach of contract permitted the fraud scheme to take place. Mr. Guo has identified no error warranting intervention from this Court.

[144] Indeed, as the trial judge emphasized, had the appellant managed the PGP in accordance with the terms of the First and Second PMAs, the appellant, and through him, Mr. Wang and Ms. Tian, would have learned that no feasibility study had been done for the PGP, and Horvath and Nath were acting against the advice of Mr. Voss and McElhanney. He would also have learned that contractors were not being paid. Had the appellant insisted on receiving a reconciliation of contractor’s invoices paid, he would have been alerted to issues as they arose. I agree with the trial judge that Mr. Guo’s abdication of his responsibility caused the loss to the respondents.

[145] The appellant argues that the trial judge erred in law in reaching this conclusion on causation without referring to the legal principles which require the breach to be the “effective” or “dominant” cause of the loss, and for losses to be the direct result or consequence of the breach (citing *Sharp v. Royal Mutual Funds Inc.*, 2021 BCCA 307 at paras. 113–122).

[146] While the trial judge did not refer specifically to the principles set out in *Sharp* and elsewhere regarding causation, “appellate courts must review a trial judge’s reasons generously and as a whole, bearing in mind the presumption that trial judges know the law”: *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 104, citing *R. v. G.F.*, 2021 SCC 20 at para. 79.

[147] A review of the trial decision, as a whole, does not reflect a failure to apply the appropriate legal principles. The trial judge said the appellant did not manage the PGP project at all and that the project failed because of that gross mismanagement: at para. 259. In particular, he described: 1) a “complete failure to conduct any feasibility studies for the project before the land was purchased” or ground broken on the development; 2) no advance planning for the project; 3) road construction proceeded before essential plans and approvals were completed; 4) work was done in “horrendous weather conditions” that caused project costs to balloon unnecessarily; and 5) gross mismanagement of the work by Horvath and Nath who ignored critical advice and warnings from Mr. Voss and McElhanney: *RFJ* at para. 198.

[148] The trial judge found that the Prince George project was “not managed at all” by the appellant as he had abdicated his duties under the PMAs: *RFJ* at paras. 259, 198. He concluded that:

[199] From the time the project budget was approved in June 2016 through to the termination of work in November 2016, [the appellant, Nath and Horvath] failed utterly to meet their obligations under the Project Management Agreements. None of them gave any serious attention to supervising the work on the project or following the expenditures.

[Emphasis added.]

[149] As it related to the appellant, the trial judge found that, after the June 2016 project management meeting, he: 1) abdicated his duties under both PMAs and left matters to Horvath and Nath to run; 2) did not speak to any of the project contractors and did not know who they were; 3) never dealt with McElhanney or met with any of the project engineers, leaving that to Horvath and Nath; and 4) was not involved in

the decision to convert the project to a bare-land strata and appeared not to know about that decision until after the lawsuit was commenced: *RFJ* at para. 200.

[150] In addition, the trial judge found that he: 1) took no steps to determine if the PGP was viable or what kind of development the zoning bylaws would permit; 2) did not determine what the minimum lot size would be for the subdivision or investigate the number of serviced lots that could be developed; 3) did not investigate or make any inquiries about the market demand for the kind of lots the project was developing; 4) did not involve himself in that process or attempt to oversee it; 5) took no steps in 2016 to satisfy himself that Vantone Developments was fulfilling the tasks in the 2016 budget; and 6) paid no attention to how the plaintiffs' Project Development Funds were being spent: *RFJ* at para. 430.

[151] The trial judge did not accept the appellant's evidence that: at or shortly after the June 2016 project management meeting, Mr. Wang relieved him of his obligations under the PMAs and replaced him with Haitao Wang, his son; he was thereby relieved of his obligations under the PMAs to oversee the project, including the indemnity in the Second PMA; and that thereafter he served as a translator helping out his old friends: *RFJ* at para. 201.

[152] The trial judge set out several reasons for not believing the appellant's evidence. First, it was not corroborated: *RFJ* at paras. 203, 211.

[153] Second, it was highly unlikely that Haitao Wang would be put in charge of a multi-million-dollar investment in projects he knew nothing about: *RFJ* at paras. 204–206.

[154] Third, the appellant never confirmed, in writing or otherwise, that his obligations under the PMAs had come to an end despite the substantial indemnity that he had given Mr. Wang and Ms. Tian: *RFJ* at para. 207.

[155] Fourth, when the appellant emailed Horvath in February 2017 demanding that the contractors be paid, the appellant was acting in his project manager capacity to try and sort out the failure to pay contractors: *RFJ* at para. 210.

[156] The trial judge concluded that the fact that the appellant had been shut out of the PGP did not excuse him from his obligations under the PMAs. Before learning that contractors had not been paid, he never: asserted himself; tried to assume his role as project manager; or reported to Mr. Wang or Ms. Tian that he had been shut out of his management role contrary to the PMAs. He acquiesced in his exclusion and allowed Horvath and Nath to run it without his oversight. Although Mr. Wang visited the PGP, he had no idea whether he was getting value from his investment as it was the appellant's job to oversee that aspect of the project: *RFJ* at paras. 212–214.

[157] In sum, the trial judge found:

[215] ...the appellant never resigned and was not removed from the role of project manager as that role was defined in both [PMAs]. It is clear that [the appellant] was sidelined in this role by ... Nath and ... Horvath but [he] did not attempt to assert his authority as set out in the First [PMA]. Rather, he gave up on managing the project without advising Mr. Wang or Ms. Tian. He abdicated his duties as project manager with a misguided expectation or hope that ... Horvath and ... Nath would competently run the project without his oversight.

[158] The trial judge's finding on the causal connection between Mr. Guo's abdication of his responsibilities and the plaintiff's losses is clear:

[432] Having failed utterly under his management obligations, Mr. Guo not only allowed an already unviable project to proceed prematurely in poor conditions but, worst of all, his lack of oversight allowed Mr. Nath and Mr. Horvath to misappropriate more than \$2 million in Project Development Funds plus the \$82,000 for a survey that was never done.

[159] Reading the reasons holistically and contextually, I disagree that the trial judge committed an error in law in finding the appellant liable for breach of contract.

[160] Finally, I disagree that the argument regarding the respondents' recklessness (i.e., that they did not consult professionals) warrants intervention from this Court. I note that this argument was raised before the trial judge in a general way—that the plaintiffs were reckless in choosing how to proceed. Once again, this appeal is not an opportunity for the appellant to re-argue his case without pointing to specific errors made by the trial judge. On the contrary, I agree with the respondents'

submission that, even if the respondents had consulted a lawyer and other professionals, the result, as it pertains to the mismanagement of the projects, would not have been any different.

[161] I would not accede to this ground of appeal.

Breach of Fiduciary Duty

Standard of Review

[162] Whether a fiduciary duty exists is a question of mixed fact and law. However, specific legal errors such as the application of an incorrect legal standard are reviewable for correctness: *Ontario (Attorney General) v. Restoule*, 2024 SCC 27 at para. 227.

Positions of the Parties

[163] The appellant argues that the trial judge applied the wrong test in finding an *ad hoc* fiduciary duty and applied the test incorrectly to the facts. He argues that fiduciary relationships are dependant on the purported fiduciary relinquishing self-interests to act in the interests of others, and in this case, the situation was one of mutual benefit.

[164] The appellant also submits that he had no real power under the First and Second PMAs, and that Ms. Tian kept control of the finances in the face of advice from the appellant to the contrary, and so there was no real fiduciary relationship.

[165] The appellant argues that even if he was a fiduciary, a breach of contract by a fiduciary does not amount to a breach of fiduciary duty.

[166] The respondents argue that mutual benefit does not preclude a finding of a fiduciary duty. The respondents point out that, in any case, the appellant had discretionary power over the Wangs' funds pursuant to the First and Second PMAs and did not have any of his own funds at stake.

[167] They also argue that the appellant owed a duty of candour that he breached by not disclosing to them that he was not supervising the project. The respondents submit that several of the appellant's arguments were not raised before the trial judge.

Analysis

[168] In my view, this ground of appeal turns on whether the trial judge applied the correct legal principles in assessing whether Mr. Guo breached his fiduciary duty owed to the plaintiffs. It is therefore not necessary to address the balance of the arguments raised by the appellant.

[169] The Supreme Court of Canada identified the elements that lead to the existence of a fiduciary duty in cases not covered by a recognized category of fiduciary relationships in *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 at paras. 29–35 [*Elder Advocates*]. In this case, the trial judge, correctly in my view, summarized the law at para. 291 of his reasons. A fiduciary duty is one of the most onerous duties imposed by law. It protects vulnerable parties against abuse by another in certain relationships or particular situations. In a fiduciary relationship, the fiduciary must act with undivided loyalty to the beneficiary by placing the beneficiary's interest above their own and forsaking all other interests in favour of the beneficiary.

[170] An *ad hoc* fiduciary relationship arises where there is: (1) an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiaries; (2) a defined class of beneficiaries vulnerable to the fiduciary's control; and (3) a legal or substantial practical interest of the beneficiaries that stands to be affected by the alleged fiduciary's exercise of discretion or control: *Elder Advocates* at para. 36.

[171] The trial judge concluded that the appellant was not liable as a fiduciary to account for Horvath and Nath's secret profits or the inflated price Weihe paid for the PGP or the SMP. Particularly, the appellant did not share in the profit Nath and Horvath received; he did not directly benefit from the sale; and he did not know Nath and Horvath earned a profit from flipping the properties to Weihe: *RFJ* at para. 314.

[172] The trial judge did not find that the appellant was under a fiduciary duty to protect Mr. Wang, Ms. Tian's or Weihe's interests in their decision to buy the lands at the price they did: *RFJ* at paras. 315–317. They had the choice to buy the PGP or the SMP or to walk away. They had not ceded the power to make that decision to the appellant.

[173] However, the trial judge found that the appellant had an *ad hoc* fiduciary obligation under the PMAs to prudently and carefully manage Weihe's investment of the Project Development Funds, and that he failed to do so. The trial judge pointed out that it was incumbent on Mr. Guo to ensure that Weihe's money was being properly spent before directing or advising Ms. Tian to make further payments, and that from this, there was a breach of fiduciary duty owed to the respondents: *RFJ* at paras. 435–437, 441.

[174] In my view, more was required for the trial judge to conclude that the appellant had breached his duty as a fiduciary. Not every breach of a contractual duty or act of negligence by a fiduciary is a breach of a fiduciary duty: *Meng Estate v. Liem*, 2019 BCCA 127 at paras. 33–35. To establish a breach of a fiduciary duty, after the fiduciary relationship has been established, the plaintiff must show that: (2) the defendant acted in a manner inconsistent with that fiduciary relationship (for instance, breach of the duty of loyalty, acting in the face of a conflict, preferring a personal interest, taking a profit, acting dishonestly); and (3) that loss or damage occurred: *Testar Estate v. Leslie*, 2023 BCSC 611 at para. 46, *aff'd* 2024 BCCA 129; *Meng Estate* at para. 35. Though the third requirement was clearly met, the trial judge erred in law by not considering whether Mr. Guo acted in a manner inconsistent with the fiduciary relationship in particular, in concluding that he had breached his fiduciary duty owed to the respondents.

[175] I am not satisfied that this element of the test is met. The appellant did not make a profit. He did not act dishonestly. He did not prefer his own interests over those of the respondents'. As the trial judge acknowledged, he did not benefit from the misappropriation of Project Development Funds. He held that Mr. Guo "did not engage in a deliberate course of conduct to take advantage of the plaintiffs or line his own pockets with their money. Unlike Mr. Nath and Mr. Horvath, Mr. Guo received nothing of the plaintiffs' money": *RFJ* at para. 539. In fact, it was against his own interests to abdicate his responsibilities under the contract, due to the indemnity clause. The mere fact that the appellant, as a fiduciary to the respondents, breached his obligations under contract does not, without more, amount to a breach of fiduciary duty.

[176] I would conclude that the trial judge erred in law by not considering whether the appellant had, as a fiduciary, acted in a manner that was inconsistent with the fiduciary relationship. I would allow the appeal on this ground.

The Indemnity

[177] The appellant argues that the trial judge erred in holding the appellant liable under the indemnity clause found in the Second PMA.

[178] Contractual interpretation is generally an exercise involving questions of mixed fact and law, the standard of review being palpable and overriding error: *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20 at paras. 27–28 [*Earthco*]; *Housen v. Nikolaisen*, 2002 SCC 33 at para. 21. This is because contractual interpretation is inherently a fact-specific exercise: *Earthco* at para. 28, citing *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 54–55, *Housen* at para. 36.

[179] However, extricable questions of law in contractual interpretation are reviewable on a correctness standard: *Earthco* at para. 27. Extricable questions of law here will be rare: *Earthco* at para. 28.

[180] The appellant argues that the trial judge’s finding in interpreting the indemnity clause (that the losses were “undoubtedly due to” the appellant) does not accord with his other finding that the PGP was never viable and “doomed to fail”: *RFJ* at paras. 259, 285.

[181] This argument cannot succeed when the trial judge’s reasons are read in context. The trial judge said:

[259] ...the Prince George project was hopelessly mismanaged by Mr. Nath and Mr. Horvath and not managed at all by Mr. Guo. I find it was doomed to fail and did fail because of that gross mismanagement.

[182] It is clear from the reasons that the trial judge used the phrase “doomed to fail” in hindsight, in light of the gross mismanagement by Horvath, Nath, and the appellant.

[183] Similarly, the trial judge said the PGP was never viable in the following context:

[285] ...given that the project was never viable in the first place and the many problems that were caused by Mr. Nath and Mr. Horvath’s mismanagement and Mr. Guo’s abdication of his management responsibilities, McElhanney’s work ultimately added no value to the land.

[Emphasis added.]

[184] That the project was doomed to fail, or never viable because of the appellant’s mismanagement, was a factual finding that attracts deference.

[185] The appellant argues that the respondents never vested any real authority in him in any case, and so he should not be liable under the indemnity clause. Once again, the appellant has not identified an error in fact or law that would warrant intervention from this Court. As the trial judge found, the appellant had real power under the PMAs, he just did not act on it until early 2017, after finding out the contractors had not been paid: *RFJ* at para. 210. Further, when the appellant was shut out from the project, he simply acquiesced: *RFJ* at para. 212.

[186] The appellant further argues that the trial judge did not adequately consider the meaning of the phrase “undoubtedly due to Guo” in the Second PMA indemnity clause. The appellant argues that the trial judge erred in law in this sense by not applying the correct legal test—in particular, that more than a “but for” standard of causation is required in respect of an indemnity for loss “arising out of” a particular cause. The appellant cites *Vernon Vipers Hockey Club v. Canadian Recreation Excellence (Vernon) Corporation*, 2012 BCCA 291. I agree with the respondents that this is a new argument that was not made before the trial judge and should not be addressed by this Court.

[187] I see no basis to interfere with the trial judge’s finding of liability under the indemnity clause of the Second PMA.

Interest

[188] The trial judge found that the interest incurred by Ms. Tian in mortgaging two of her properties to help buy the PGP and the SMP, and to finance the development of the PGP project would have been foreseeable as a consequence of Mr. Guo’s negligent misrepresentation and Mr. Guo’s breach of fiduciary duty: *RFJ* at para. 532.

[189] Having found that the trial judge erred in his conclusions on the breach of fiduciary duty and negligent misrepresentation, I would set aside the order that Mr. Guo pay interest on the value of the mortgages.

Conclusion

[190] Although, as described above at paras. 173–175, I disagree with the trial judge’s finding regarding the appellant’s breach of fiduciary duty, the appellant’s liability for the Project Development Funds does not change because the trial judge also found the appellant liable for the Project Development Funds due to his breach of contract under the PMA’s, and found him liable under the indemnity clause in the Second PMA. I do not interfere with those findings.

[191] In sum, the appellant is liable for the following damages:

Item	Amount	Assignment and Apportionment of Liability
Market value overpayment for the Prince George Property	None	
Project Development Funds	\$2,649,500	Joint and several with Nath and Horvath.
Sumas Mountain Lidar Survey	\$82,000	Joint and several with Nath and Horvath.
Teare Creek Settlement	\$307,500	Joint and several with Nath and Horvath.
Investment Interest	None	

“The Honourable Justice MacNaughton”

I AGREE:

“The Honourable Mr. Justice Harris”

I AGREE:

“The Honourable Madam Justice Horsman”