

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wang v. Sun*,  
2026 BCSC 28

Date: 20260108  
Docket: S136114  
Registry: Vancouver

Between:

**Hongli Wang**

Plaintiff

And

**Xue Jin Sun and Xiao Ri Hou**

Defendants

Before: The Honourable Justice Gropper

## Reasons for Judgment

Counsel for the Plaintiff:

G. Nesbitt

Counsel for the Defendants:

S. Warnett  
M. Xin

Place and Date of Hearing:

Vancouver, B.C.  
October 1, 2025

Place and Date of Judgment:

Vancouver, B.C.  
January 8, 2026

**Introduction**

[1] The defendants apply to:

- (1) strike certain paragraphs of the plaintiff’s amended notice of civil claim filed February 12, 2016 (the “ANOCC”) under *Supreme Court Civil Rules*, B.C. Reg. 168/2009 Rule 9-5(1)(a);
- (2) dismiss the claims against the defendant Xiao Ri Hou; and
- (3) dismiss the plaintiff’s counterclaim.

If the first two orders are granted, they seek:

- (4) an order that the defendant Xue Jin Sun be granted leave to file an amended response to civil claim (“ARTCC”); and
- (5) to cancel the certificate of pending litigation to be registered against title to real property owned by Ms. Hou in Richmond, British Columbia.

[2] The defendants say that the plaintiff’s “pre-settlement claims” in its notice of civil claim dated August 14, 2013 (“NOCC”) were superseded in a settlement agreement entered into on July 14, 2022 (the “Settlement Agreement”) (amendment incorporated on July 22, 2014). They say that in the Settlement Agreement the plaintiff accepted the defendants’ promises to pay as satisfaction of pre-settlement claims, not their performance of those promises.

[3] In the alternative, the defendants’ position is that the pre-settlement claims should be struck because the plaintiff’s ANOCC seeks damages and thus, constituted an election to accept Mr. Sun’s repudiation of the Settlement Agreement and to sue in damages for its breach. In doing so, Mr. Wang elected to strike out his pre-settlement claims.

[4] The defendants assert that Ms. Hou was not a party to the Settlement Agreement and it is not alleged that she breached it. Thus, the CPL filed against her property must be discharged.

[5] The plaintiff disagrees with those assertions. It also says that the defendants' application to strike relies on evidence that is not in the pleadings and is inadmissible under Rule 9-5(1)(a).

## **Background**

### **The Plaintiff's Claims**

[6] On August 14, 2013, the plaintiff Hongli Wang commenced this action by NOCC against the defendant Xue Jin Sun. Mr. Sun was the sole shareholder in a Chinese company that owned a piece of property in Liaoning Province, China known as Dalian Jinrijunjian Park.

[7] In September 2011, Mr. Wang entered a contract with Mr. Sun to provide certain services in relation to a real estate project in China, and in exchange for payment of a fee in the amount of 20,000,000 RMB (the "Fee"). The Fee was to be paid into a bank account in Canada (the "BMO Account"). The plaintiff alleged that the defendants Mr. Sun and his wife, Xiao Ri Hou breached the services agreement when they received funds from the sale of the project but then failed to pay him the Fee (the "Services Agreement Breach").

[8] The plaintiff sought damages and judgment in the Canadian dollar equivalent to 20,000,000 RMB in its NOCC.

[9] The NOCC also pleaded breach of trust, knowing assistance and receipt, and fraudulent conveyance claims (together with the Services Agreement Breach, the "Pre-Settlement Claims") in relation to the defendants' handling of the funds received into the BMO Account, including that they were used to purchase certain lands located in Richmond, British Columbia (the "Lands") and registered in the name of the defendant, Xiao Ri Hou. The plaintiff also filed a certificate of pending litigation against the Lands, which was duly registered on August 19, 2013, under registration number BB3011082 (the "First CPL").

[10] On February 7, 2014, the defendants filed a response to civil claim ("RTCC") and counterclaim disputing the plaintiff's claims.

### The Settlement Agreement

[11] On July 14, 2014, the parties entered into a settlement agreement. It was amended on July 22, 2014.

[12] In the settlement agreement, the parties agreed to settle the plaintiff's action on certain terms, including:

- a) on or before July 24, 2014, Mr. Sun would pay to the plaintiff the sum of 7,000,000 RMB by cheque deposited to a bank account in China to be specified by the plaintiff (the "China Account", which was subsequently named in the amendment);
- b) upon receipt of the above payment, the plaintiff would provide a letter authorizing the release of the First CPL (the "CPL Release Letter");
- c) Mr. Sun, who had commenced legal proceedings in China against Coastal (the company in China that purchased the real estate project) would: (i) "use best efforts" to recover certain funds from Coastal; and (ii) assist the plaintiff in his efforts to facilitate further payment by Coastal to Mr. Sun. Similarly, the plaintiff agreed to endeavor to facilitate payment by Coastal to Mr. Sun of such funds (the "Best Efforts Obligations"); and
- d) Mr. Sun would, within seven days of receipt of payment or recovery in the Chinese legal proceedings against Coastal (the "Chinese Legal Proceedings"), pay to the plaintiff the amount received up to the Canadian dollar equivalent of 13,000,000 RMB (the "Fee Balance"), by way of deposit to a bank account in Canada to be specified by the plaintiff.

[Underlining added.]

[13] Further paragraphs in the Settlement Agreement provided the process to be undertaken after the defendants had discharged their obligations:

7. Sun and Hou will each instruct their legal counsel to endorse and deliver to counsel for Wang two consent judgment orders, one in the amount of CNY 20,000,000 (the "**CNY 20 Million CJO**") and one in the amount of

CNY 13,000,000 (the “**CNY 13 Million CJO**”). Wang will instruct his legal counsel to hold the consent judgment orders in escrow and deal with them only as follows:

- (a) if Sun fails to make the first payment of CNY 7,000,000, counsel for Wang may enter and execute upon the CNY 20 million CJO;
- (b) if Sun makes the first payment of CNY 7,000,000, counsel for Wang will deliver the original CNY 20 Million CJO to counsel for Sun and Hou, unentered;
- (c) if Sun fails to make timely payment of any of the Payments pursuant to paragraph 4 of this Agreement, or fails to make timely payment to Wang of any amount payable pursuant to paragraph 5 or 6 of this Agreement, counsel for Wang may enter and execute upon the CNY 13 Million CJO provided they first endorse and enter an Acknowledgement of Payment equivalent to the total of all Payments made to Wang by Sun pursuant to paragraph 4 of this Agreement; and
- (d) upon satisfaction of all of Sun and Hou’s obligations under this Agreement, counsel for Wang will deliver the original CNY 13 Million CJO to counsel for Sun and Hou, unentered.

...

10. Immediately upon execution of this Agreement, the parties will instruct their legal counsel to endorse a consent dismissal order dismissing both the Claims and the Counterclaims by consent on a without costs basis (the “**CDO**”). Wang shall instruct his legal counsel to deliver the CDO to counsel for Sun and Hou on undertakings to hold the CDO and enter it immediately upon, and only upon, receipt of written notice from counsel for Wang confirming that Sun and Hou have fulfilled their obligations under this Agreement.

11. Upon the fulfillment by Sun and Hou of all their obligations hereunder, the Parties will execute a mutual release of all claims...

16. Each of the Parties agrees to execute such further ancillary documents and take such further actions as may be reasonably necessary or desirable to effectuate the terms set forth in this Agreement.

[14] On July 23, 2014, in accordance with the Settlement Agreement, the defendants made the first payment of 7,000,000 RMB deposited into the China Account. The CPL Release Letter was provided, and on July 30, 2014, the CPL was discharged from title to the Lands.

[15] In October 2015, through counsel, Mr. Wang wrote to Mr. Sun to advise that he attempted to contact Mr. Sun to fulfill his Best-Efforts Obligations, and by failing to return Mr. Wang’s calls, Mr. Sun had breached his Best-Efforts Obligations. He

added that it was unknown whether Mr. Sun had received any payment from Coastal that he had failed to remit further to the payment provisions.

[16] The letter demanded that Mr. Sun pay the Fee Balance to Mr. Wang pursuant to the Settlement Agreement, being “CNY 13 million or, as of today’s date, CAD \$2,691,338” and if he failed to do so, to advise that, “failing payment of the Fee Balance, Mr. Wang would enforce his rights under the Settlement Agreement ...including commencing legal proceedings against Mr. Sun and continuing the Action”. Mr. Wang also registered a new certificate of pending litigation against title to the Lands under registration number CA4773408 (the “Second CPL”).

[17] In December 2015, through counsel, Mr. Wang wrote Mr. Sun, twice.

[18] The letter of December 15, 2015 disputed the assertion by the defendants’ then-counsel that the Pre-Settlement Claims could not be continued, by: (i) citing paragraph 11 of the Settlement Agreement and stating that because the parties had not entered into the mutual release the Pre-Settlement Claims remained extant; and (ii) advising that, should the Fee Balance go unpaid “our instructions remain to continue the original action against both Mr. Sun and Ms. Hou, and we are in the process of amending our Notice of Civil Claim”.

[19] The second letter, dated December 16, 2015 advised of Mr. Wang’s position that (i) during a previous conversation between Mr. Wang and Mr. Sun, Mr. Sun advised that, contrary to his Best Efforts Obligations, he would no longer authorize Mr. Wang to facilitate settlement discussions with Coastal (the “Anticipatory Breach”); (ii) such advice amounted to an anticipatory breach and repudiation of the Settlement Agreement; and (iii) the plaintiff accepted Mr. Sun’s repudiation of the Settlement Agreement with the effect that it was “now at an end”, and that the plaintiff “expressly reserves all rights and remedies available to him”.

**The Amended Notice of Civil Claim**

[20] On February 12, 2016, the plaintiff filed the ANOCC, pleading:

- (a) the Pre-Settlement Claims (including breach of trust, knowing assistance and receipt, and fraudulent conveyance claims; i.e., the basis for the Second CPL);
- (b) the Settlement Agreement, including the Best-Efforts Obligations;
- (c) the first payment;
- (d) the Anticipatory Breach and the plaintiff's acceptance of the defendants' repudiation of the Settlement Agreement; and
- (e) the plaintiff's claim for damages for breach of contract and judgment against the defendants in the amount of the Canadian dollar equivalent of 13,000,000 RMB.

[21] The defendants have not filed a response to the ANOCC.

### **The China Payment**

[22] On June 29, 2018, Mr. Sun was awarded judgment against Coastal.

[23] On November 18, 2018, then-counsel for the defendants left a voicemail for counsel for the plaintiff advising, among other things, that: (a) "contrary to your letter of 2015 (sic)", the Chinese Legal Proceedings had concluded, and the defendants were in the process of recovering funds therefrom; (b) he expected that the defendants would soon pay the Fee Balance under the terms of the Settlement Agreement; and (c) upon the defendants' paying the Fee Balance, they would require a consent dismissal order and a release.

[24] On November 22, 2018, the defendants caused the sum of 13,000,000 RMB to be deposited into the China Account (the "China Payment").

[25] On November 25, 2018, through counsel, Mr. Wang advised Mr. Sun:

Of course there is a hiccup. Apparently there are tax liabilities relating to the funds being paid in China, and Mr. Sun is refusing to pay those taxes. I understand my client is giving Mr. Sun the choice to pay in Canada instead. Let's give this a few days to see if they resolve it before we start preparing the release, etc.

[26] There was no resolution.

[27] Mr. Wang had irrevocably elected to accept the defendants' repudiation of the Settlement Agreement in his counsel's letter dated December 16, 2015.

[28] In July 2019, counsel for the defendants wrote to counsel for the plaintiff: (a) taking the position that the China Payment was made "...in full satisfaction of the Settlement Agreement between the parties dated July 14, 2014"; and (b) demanded removal of the Second CPL.

[29] On April 26, 2021, Mr. Wang filed a notice of intention to proceed. On September 13, 2022, Mr. Wang filed another notice of intention to proceed. Mr. Wang filed yet another notice of intention to proceed on September 27, 2023.

### **Position of the Parties**

#### **The Defendants**

[30] I have set out the defendants' position in the introduction but will expand upon it here.

[31] The defendants argue that in late-2015 Mr. Wang irrevocably elected to treat the Settlement Agreement at an end due to a repudiatory breach by Mr. Sun. The defendants assert that the accepted repudiation did not return the parties to their pre-settlement positions. Rather, it relieved the parties of their obligations under the Settlement Agreement. Mr. Wang could sue for damages for breach of the Settlement Agreement immediately (which he did by way of the ANOCC).

[32] The defendants assert that the parties entered a "Second Settlement Agreement" with the plaintiff in November 2018. They say that Mr. Wang agreed to accept the China Payment "in full satisfaction of any claims" he may have against the defendants.

[33] The defendants say that the Pre-Settlement Claims were superseded by the Settlement Agreement. They are spent and the plaintiff cannot resort to them in the ANOCC. This is the basis for the defendants' application to strike the pleadings and dismiss the actions.

[34] Regarding the claims against the Ms. Hou, the defendants submit that it is not alleged that she breached the Settlement Agreement. The action should be dismissed against her and the CPL registered against the Lands discharged.

**The Plaintiff**

[35] Mr. Wang argues that the defendants seek to strike the claims against them from before their repudiation of a Settlement Agreement, but the Pre-Settlement claims have not been compromised, released, overtaken by operation of law, or disproven at trial.

[36] The plaintiff disagrees with the defendants' argument that the Pre-Settlement Claims are superseded by the Settlement Agreement because the plaintiff accepted the defendants' promises to pay and not their performance under it to be its satisfaction. Simply put, they say that the Settlement Agreement at bar is a special kind of settlement agreement; one that defies the common-sense presumption that actual performance was a necessary part of the exchange.

[37] The plaintiff points out that this is a Rule 9-5(1)(a) application, and thus, no evidence is admissible. The court must assume that the facts pleaded are true.

[38] On its face, the plaintiff asserts that the Settlement Agreement is of the typical kind that requires its performance to be satisfied. The question of the satisfaction under the Settlement Agreement is one of fact (not law), and therefore one that cannot be determined on this application. Correctly viewed, the defendants raise a factual defence to the Pre-Settlement Claims that they may elect to run at trial.

[39] The plaintiff says the defendants' alternative argument, that the Pre-Settlement Claims should be struck because the plaintiff seeks only damages under the Settlement Agreement (and not the original agreement) in the ANOCC, and that the pleadings constitute an election to affirm the Settlement Agreement after he had accepted its repudiation, fails. An election to accept a repudiation is irrevocable, and one cannot choose the satisfaction under an agreement long after it has been entered into.

[40] In response to the defendant's assertion that the parties entered into a second settlement agreement in November 2018 where the plaintiff agreed to accept the payment into the China Account "in full satisfaction of any claims" he may have against the defendants, the alleged second agreement was not in written form. The plaintiff argues that it is only in this application that the defendants have pleaded or suggested: (a) that Mr. Sun repudiated the Settlement Agreement; and (b) the existence of the alleged "second settlement agreement".

[41] Ultimately the plaintiff submits that the defendants have no legal basis to strike the Pre-Settlement Claims, dismiss the action against Ms. Hou, or cancel the CPL against the Lands.

### **Discussion and Analysis**

#### **What was the Nature of the Satisfaction under the Settlement Agreement?**

[42] The defendants' argument is that the plaintiff agreed to accept the mere promises contained in the Settlement Agreement rather than the defendants' performance under it as satisfaction; and therefore, the Pre-Settlement Claims were discharged from the date the Settlement Agreement was made, were not "revived by termination of the Settlement Agreement", is creative but unpersuasive.

[43] The defendants rely on *Rumely Co. v. Gorham* (1912), 4 Alta. L.R. 216 to argue that the consideration in Settlement Agreement was the defendants promise to pay, rather the performance of its terms (paying the amounts agreed to in the manner agreed to).

[44] The Settlement Agreement reflected a compromise of Mr. Wang's position. The defendants agreed to pay to him an amount equal to the Fee. However, the plaintiff agreed to accept only the Fee Balance to be paid in Canada. In doing so, the exchange under the Settlement Agreement was that the plaintiff gave up the substantial benefit of 7,000,000 RMB in Canada in return for early payment of that amount in China, and the defendants received a stay of the Pre-Settlement Claims until they could recover funds from Coastal sufficient to pay the Fee Balance given

that the funds in the BMO Account had been dissipated, including to purchase the Lands.

[45] I have described the terms of the Settlement Agreement. Notably Mr. Sun agreed to pay Mr. Wang, “within seven days of receipt of payment or recovery in the Chinese Legal Proceedings, pay to the plaintiff the amount so received up to the Canadian dollar equivalent of the Fee Balance, by way of deposit to a bank account in Canada to be specified by the plaintiff”.

[46] Instead, Mr. Sun paid the money into the China Account. Mr. Wang refused to accept the deposit in the China Account as satisfying the terms of the Settlement Agreement.

[47] *Rumely* discussed the notion of a party accepting the promises (in this case, the promise to pay), as opposed to the performance of those promises (payment). At 219 the Court of Appeal cites the following passage from *Stewart v. Hawson* (1858), 7 U.C.C.P. 168:

It is settled that a new mutual agreement between the parties may be made, which being binding when entered into, may be accepted as a substitution for, or satisfaction of, a preceding claim for damages arising from the breach of a preceding agreement. On such a plea the jury would have to decide whether the plaintiff agreed to accept the agreement itself or the performance of it.

and at page 220:

... As indicated in [*Stewart*], it would be a question of fact whether it [the second agreement at bar] was to be the satisfaction or its performance. In some cases that fact might be ascertained by a simple interpretation of the terms of the agreement but on the terms of the agreement set out in paragraph 10 it appears to me that it would be quite competent to the defendant to deny that the agreement was the satisfaction and denying that and denying the performance he might still claim under the original cause of action and might at the same time set up an alternative claim under this agreement in the event of its being held that the agreement was itself the satisfaction of the original claim...

[48] That the satisfaction under an agreement is a question of fact is consistent with the passage from Halsbury’s Laws of England, vol. VII excerpted by Scott J. in *Rumely* at page 227:

An accord without satisfaction has no legal effect. The original cause of action is not discharged so long as the satisfaction agreed upon remains executory. A tender of performance is not sufficient. If, however, it can be shewn that what the creditor accepted in satisfaction was the debtor's promise and not the performance of that promise, the original cause of action is discharged from the time the promise was made...

[49] The defendant has cited other cases where it was shown that the one party accepted the other party's promise to pay in satisfaction of its claim, rather than the performance of the promise.

[50] In *Collavino (Nfld.) Ltd. v. Dobbin (Nfld. C.A.)*, [1985] 16 C.L.R. 34, the central issue was whether at a meeting between a contractor and an owner the parties reached a verbal, collateral agreement in which the contractor agreed to accept the owner's undertaking to pay \$100,000 (rather than payment in that amount) in satisfaction of his delay claim under the primary construction contract. In that case, the Court of Appeal held that based on the whole of the evidence, including the parties' pre- and-post meeting correspondence and conduct, it was the owner's promise that was the satisfaction of the collateral agreement.

[51] The defendants refer to several other cases where the courts have followed the *Rumely* principles: *George v. 1008810 Ontario Ltd.*, 2004 CanLII 33763 (ON LRB) at paras. 23, 25, 34; *Wang v. Shi*, 2020 BCSC 1774 at paras. 33, 35, varied on other grounds in 2021 BCCA 296; *Varsanyi v. Mityok*, 2002 ABQB 720 at para. 27; and *Deman Construction Corp. v. 1429036 Ontario Inc.*, 2007 CanLII 26603 (ON SC) at para. 32.

[52] In *Brookes v. Graham*, [1996] B.C.J. No. 1238 (BCSC) the plaintiff obtained a judgment, registered it against property owned by the defendant, and began enforcement. After this, the defendant received an offer to purchase the property, and the parties exchanged letters about settling the judgment debt. The parties subsequently agreed to settle the judgment debt for a reduced sum to be paid in part from the proceeds of the sale of the property and in part by a certain date, upon which the plaintiff would file an acknowledgement of payment. The defendant failed to make the second payment by the specified date, and the plaintiff proceeded with

the underlying action to have costs assessed and to obtain garnishing orders. The plaintiff applied for payment out of the garnished funds, and the defendant opposed saying that the “mere promise of payment” was satisfaction of the judgment debt, which could therefore not be revived.

[53] The Court found that it was the completion of the agreement, that is, the payment, which extinguished the debt, rather than the promise (at paras. 20-22).

[54] The defendants rely on authorities to argue that the determination of whether one party accepted the other party’s promise to pay in satisfaction of their claim is a question of law. The plaintiff has satisfied me that *Rumley* does not suggest it is a question of law but rather of fact. The Court relies on *Stewart v. Hawson* which states clearly that the satisfaction under an agreement is a question of fact.

[55] The distinction is important in the context of an application to strike under Rule 9-5(1)(a) as no evidence is admissible, and the court must assume that the facts pleaded are true.

[56] In his ANOCC, Mr. Wang asserts that the Settlement Agreement required payment of the money owing to satisfy its terms. He does not refer to the defendants’ promise to pay as the satisfaction under the agreement. There are no facts that support the interpretation of the Settlement Agreement that the defendants now assert.

[57] In the defendants’ argument that suggests that the satisfaction under an agreement is a question of law, the defendants refer to certain terms that they say show that the promise to pay is the satisfaction under the agreement. The plaintiff says that the terms of the Settlement Agreement support its position.

[58] I am persuaded by the plaintiff’s argument that the Settlement Agreement required the payment of the amount listed as satisfaction. Paragraphs 10 and 11 expressly provided for the release of the Pre-Settlement Claims only after the defendants had fulfilled their obligations under it (in other words, the Pre-Settlement Claims were partial security for the defendants’ performance, as in most

settlements); the Settlement Agreement contains no language or provisions to suggest that the defendants' mere promises under it would overtake the Pre-Settlement Claims upon signing; the plaintiff also had obligations under the Settlement Agreement (including the Best Efforts Obligations, as well as to provide the CPL Release Letter and deal with the consent judgments and deliver the CDO); and paragraph 16 expressly provided that the parties would all "take such further actions as may be reasonably necessary or desirable to effectuate" its terms.

[59] To reiterate, there are no facts that support the defendants' position that the promise to pay was satisfaction and the Settlement Agreement itself cannot be interpreted that way.

**Was the plaintiff's striking the Services Agreement Breach a "second election" to accept the Settlement Agreement as satisfaction of the Pre-Settlement Claims or was it consistent with his election to accept the defendants' repudiation and applicable law?**

[60] The parties agree that Mr. Sun repudiated the Settlement Agreement and that Mr. Wang irrevocably accepted the repudiation by counsel's letter of December 16, 2015.

[61] The law regarding the repudiation of contracts is set out in *Dosanjh v. Liang*, 2015 BCCA 18 at para. 33:

- a) when faced with another party's repudiation: (i) the innocent party must choose whether to affirm the contract or accept the repudiation; and (ii) such election is irrevocable; and
- b) if the innocent party accepts the repudiation: (i) the contract is at an end, both parties are relieved of their obligations under it; (ii) the innocent party may sue for damages immediately.
- c) if the innocent party accepts the repudiation, they are not entitled to specific performance because that would be inconsistent with their election: specific performance is invoking the court's assistance to enforce the contract.

[62] The parties also agree that Mr. Wang's acceptance of the defendants' repudiation did not result in the Settlement Agreement being rescinded from the beginning. Rather, both parties were discharged from further performance under it, but rights and obligations which arose from the partial execution of the Settlement Agreement and causes of action that accrued from its breach continued unaffected.

[63] I agree with the plaintiff that Mr. Wang's acceptance of the defendants' repudiation meant that the parties were released of their obligations to enter a mutual release, and the plaintiff was released of his obligation to enter the CDO. The Pre-Settlement Claims continued to exist.

[64] As the Court found in *Dosanjh*, at para. 54, the plaintiff was (and continued to be) at liberty to both continue to advance the pre-settlement claims, and to sue for damages under the settlement agreement.

[65] Upon the defendants' repudiation in December 2015, the plaintiff did not delay in electing and pleading that in the ANOCC in February 2016. The parties' prospective obligations under the Settlement Agreement (i.e., post-repudiation) are relevant to the assessment of the plaintiff's damages, in the amount of the Fee Balance.

[66] The plaintiff's election to accept the repudiation and treat the Settlement Agreement at an end, is then entitled to sue for damages, and, in the case of an executory settlement agreement in which the pre-settlement claims have not yet been released, continue to advance the pre-settlement claims. By so doing, the innocent party is pursuing two available remedies as opposed to two inconsistent rights: *Charter Building Co. v. 1540957 Ontario Inc.*, 2011 ONCA 487 at paras. 25-27.

[67] The defendants say that by striking out his claim under the services agreement in the ANOCC, and suing only under the Settlement Agreement, Mr. Wang has clearly elected to treat the Settlement Agreement as itself the satisfaction of the original claims, meaning that Mr. Wang has irrevocably elected to

accept that the original causes of action were discharged at the time the Settlement Agreement was made.

[68] The defendants assert that there was a “second agreement” made orally, where Mr. Sun agreed to pay, and Mr. Wang agreed to accept, CNY 13,000,000 in full satisfaction of any claims that Mr. Wang had against the defendants.

[69] On or about November 11, 2018 Mr. Sun paid Mr. Wang CNY 13,000,000 into the China Account.

[70] The existence of a second settlement agreement is a question of fact. There are no facts that support that there is a second settlement agreement. Mr. Wang does not suggest that there was a second settlement agreement. The defendant paid that money into the China Account, which was not what the parties agreed to in the Settlement Agreement and is a breach of it.

[71] In their application and argument, the defendants seek to trivialize the importance of where the money is deposited. As noted by plaintiff’s counsel in the email of November 25, 2018, there are taxes that must be paid in China. Mr. Sun refused to pay those taxes. As a result, Mr. Wang would not receive the full amount owed to him in the BMO account. It is not a trivial matter; it is a breach of the Settlement Agreement. There is no second settlement agreement whereby Mr. Wang agreed to accept the deposit of the funds to the China Account as satisfaction of his claims or the Settlement Agreement.

[72] I agree with the plaintiff that he irrevocably elected to accept the defendants’ repudiation of the Settlement Agreement in counsel’s letter dated December 16, 2015. On February 12, 2016, the plaintiff filed the ANOCC, which pleaded the Pre-Settlement Claims, his acceptance of the defendants’ repudiation, and a claim for damages under the Settlement Agreement, pursuant to the law of repudiation as set out in *Dosanjh*, the doctrine of election at common law, and correspondence from counsel advising that the plaintiff would do just that.

[73] The plaintiff is entitled to join several claims in the same proceeding, the Pre-Settlement Claims and the plaintiff's claim for damages under the Settlement Agreement neither conflict with nor rely on the Services Agreement Breach and they cannot not be construed as being cumulative.

[74] I accept the plaintiff's argument. The plaintiff's striking the Services Agreement Breach is not a "second election" to accept the Settlement Agreement as satisfaction of the Pre-Settlement Claims. It was consistent with his election to accept the defendants' repudiation and applicable law.

**Should the CPL against Ms. Hou be Cancelled?**

[75] There is no basis for cancellation of the CPL. The Pre-Settlement Claims, including for breach of trust, continue against both defendants so there is no basis to cancel the Second CPL.

[76] Section 215(1)(a) of the *Land Title Act*, R.S.B.C. 1996, c. 250 provides that a party may register a CPL where they are "claiming an estate or interest in land". The defendants have not shown that the Pre-Settlement Claims, including against Ms. Hou, should be struck or dismissed, and plead no other basis upon which the Second CPL should be cancelled.

[77] In his pleadings, the plaintiff has established an arguable case for his claimed interest in the land. In the ANOCC, the plaintiff pleads the services agreement, the trust that came into existence because of it, the defendants' breach of that trust, and the use of trust property to purchase or improve the Lands. The pleadings are sufficient to claim an interest in the Lands, and to maintain the Second CPL.

**Conclusion**

[77] The defendants' application is dismissed. The plaintiff is entitled to costs of this application.

“Gropper J.”