IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vassilakaki v. Vassilaki & Sons Investments Ltd. (Last Call Liquor Mart),* 2026 BCSC 474

Date: 20260319
Docket: KE-S138584
Registry: Kelowna

Between:

John Vassilakaki

Plaintiff

And

Vassilaki & Sons Investments Ltd. dba Last Call Liquor Mart

Defendant

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiff:	M. Sheard
Counsel for the Defendant:	J. Dawson
Place and Dates of Trial:	Kelowna, B.C. May 28–30 2025
Place and Date of Judgment:	Kelowna, B.C. March 19, 2026

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Introduction

[1] This summary trial concerns allegations that the plaintiff was wrongfully dismissed from his employment at the defendant's liquor store business and is the latest installment in this longstanding dispute between family members. The defendant submitted that the termination of the plaintiff was lawful and with just cause because it is alleged that the plaintiff, a director and officer of the defendant, breached his duty to be a faithful and honest fiduciary of the defendant by:

a) misappropriating funds of the defendant;

b) causing the defendant to make unauthorized and unwarranted payments to himself and his family members;

c) neglecting his employment duties, falsifying or allowing his subordinates to falsify payroll records and to forge his signature upon request; and

d) for being found liable by this Court for committing battery against Nicholas Vassilakakis, a director of the defendant, resulting in damages assessed in the amount of $14,000 together with costs.

[2] The plaintiff has admitted to much of the alleged misconduct in this case and does not deny that the defendant would ordinarily have just cause for his termination. He argues, however, that the defendant condoned his misconduct and therefore could not then rely on this misconduct to terminate him for cause, and seeks damages for wrongful dismissal. The defendant counterclaims for damages in the amounts misappropriated by the plaintiff in the course of his employment with the defendant and in breach of his fiduciary and statutory duties.

Background

The "dramatis personae"

[3] The plaintiff, John Vassilakaki (who refers to himself as "John Vassilaki"), is the husband of Barbara Vassilaki ("Barbara"). They are the parents of Florio William

Vassilaki (known as “Fred”). Fred is married to Tania Vassilaki (“Tania”), the daughter-in-law of the plaintiff and Barbara.

[4] Nicholas Vassilakakis (“Nick”) is the brother of the plaintiff and the father of Florio Michael Vassilakakis (“Florio”) and George Ioannis Vassilakakis (“George”).

[5] The plaintiff and Nick have two sisters. One is named Athena Demosten (“Athena”). The other is estranged from the Vassilakakis family and was not involved in any of the events that are referred to in this litigation. As most of these parties share a family name, or some variation of it, I will refer to each by their first names for greater clarity and mean no disrespect in doing so.

Vassilaki & Sons Investments Ltd.

[6] The defendant, Vassilaki & Sons Investments Ltd. (“VSI”), was incorporated on September 29, 2004 by the plaintiff and Nick. VSI owns a commercial property in Penticton, BC where it operates a liquor store called the “Last Call Liquor Mart” (the “Liquor Store”) which opened in late 2004. There are 144 issued and outstanding common shares in VSI: the plaintiff and Nick each hold 48 shares, while Fred, Florio and George each hold 16 shares.

[7] During the period from September 29, 2004 until January 17, 2023, the plaintiff was a director and president of VSI, and worked as the manager of the Liquor Store (with some interruptions, as I describe below). Nick was the second director of VSI during this period. Fred, Florio and George managed the Liquor Store’s day-to-day operations and were supervised by the plaintiff. Barbara and Tania began to work at the Liquor Store in August 2006 and 2008, respectively. Nick and Florio have been VSI’s directors since January 17, 2023.

Other family businesses

[8] The plaintiff, Nick, Fred, George and Florio are also the shareholders of another company called JPN Holdings Ltd. (“JPN”), which was incorporated by the plaintiff and Nick on March 5, 2004. JPN previously operated a nightclub called the

"Element" in Castlegar, BC. The Element has since closed and JPN no longer conducts business.

[9] JPN has issued 900 Class "A" voting shares, and 900 Class "B" preferred shares. The plaintiff and Nick each own 300 Class "A" voting shares and 300 Class "B" preferred shares in JPN. Fred, Florio and George each own 100 Class "A" voting shares and 100 Class "B" preferred shares in JPN.

[10] After incorporating both companies in 2004, Nick primarily dealt with JPN while the plaintiff managed VSI and the Liquor Store with Fred, Florio and George. When JPN opened the Element in 2006, George left VSI to work for his father at JPN that year. Florio would do the same in 2009.

[11] The plaintiff, Nick, and Athena are also shareholders in several other family-owned companies, including JNA Investments Corp. ("JNA") which owns commercial property in Penticton.

Litigation ensues

[12] These family members were already embroiled in litigation over the various family businesses as the events underlying the instant claim unfolded.

[13] In August 2021, the plaintiff commenced an action against Nick, Florio, and George for alleged breaches of trust and conspiracy. He also named as a defendant a company separately owned by Nick and Athena for damages arising from the alleged breach of a lease. Nick counterclaimed against the plaintiff for damages for battery, arising from an altercation in which the plaintiff physically assaulted Nick at Athena's home in June 2020.

[14] When this action proceeded to trial on July 31, 2023, the plaintiff discontinued his claim, leaving only Nick's counterclaim for battery. Justice Hardwick found the plaintiff liable and awarded Nick $14,000 in damages: *Vassilaki v. Vassilakakis*, 2023 BCSC 1487.

[15] In late December 2022, Nick, Florio, and George requisitioned special shareholders meetings for both VSI and JPN. These meetings took place on January 17, 2023, during which the plaintiff was removed as a director of both companies, while Nick and Florio were elected.

[16] On February 23, 2023, the plaintiff and Fred brought shareholder oppression proceedings against Nick, Florio, George, VSI and JPN, challenging the validity of the meetings and seeking to remove Nick as a director of each company in favour of Fred (the "Oppression Proceeding").

[17] On June 6, 2023, Justice Hardwick dismissed the Oppression Proceeding and ordered special costs against the plaintiff: *Vassilaki v. Vassilakakis*, 2023 BCSC 960. The decision was upheld on appeal, though the special costs award was overturned: *Vassilaki v. Vassilakakis*, 2024 BCCA 15.

[18] Relevant to this proceeding, the plaintiff admitted that he used VSI's funds to pay portions of his legal fees in the Oppression Proceeding. I will return to this point later.

The plaintiff's employment

[19] As noted above, the plaintiff was a director and officer of VSI from September 29, 2004, until January 17, 2023. During this time, he also worked for VSI as the manager of the Liquor Store. However, he did not work for VSI continuously and there were at least three periods where he was not being paid wages by VSI:

a) July 15, 2015, to September 1, 2016;

b) February 28, 2018, to June 30, 2018; and

c) May 1, 2021, to October 15, 2022.

[20] Further, VSI was not the plaintiff's sole employer. He worked in the other family businesses while employed at the Liquor Store; in particular, the defendant notes that from April 10, 2015, until October 31, 2018, the plaintiff caused JNA to

pay him $104,341.59 on account of property management services which he provided to JNA.

[21] From 2002 to 2022, the plaintiff also pursued a lengthy career in municipal politics. From 2002 to 2014, the plaintiff was a councillor for the City of Penticton. From October 2018 to October 2022, he served as the Mayor of Penticton and a director of the Regional District of Okanagan-Similkameen (the "Regional District"). He ceased his employment with VSI and the other family businesses during his tenure in local government.

[22] The City of Penticton and the Regional District paid the plaintiff for his employment. As Mayor, he was paid an annual salary of roughly $80,000 and received up to an additional $36,000 per year from the Regional District in his role as a director.

[23] After he lost the 2022 mayoral election, the plaintiff put himself back onto VSI's payroll on October 16, 2022, at the manager's salary of $84,000 per year, notwithstanding that that salary was already being paid to Fred who had taken over the plaintiff's position upon his election.

[24] VSI terminated the plaintiff's employment on or about October 3, 2023.

Alleged misconduct

[25] In support of its claim that it had just cause for termination, the defendant points to what it says is a history of unfaithful and dishonest conduct by the plaintiff throughout his employment with VSI. As noted at the outset, much of this conduct was admitted to by the plaintiff in the form of an agreed statement of facts and notices to admit prior to the summary trial.

Use of VSI's funds

[26] Between September 2009 and July 2020, the plaintiff used VSI's funds to pay his personal expenses, such as home insurance, vacation expenses, and postage stamps that he purchased at auctions for his numismatic collection. Notwithstanding

these expenses were utterly unrelated to the business of VSI, the plaintiff, who was the senior employee of VSI and responsible to protect the business assets of VSI, did not seek board approval to use VSI's funds in this manner. Nick was not made aware of these payments before August 2020.

[27] Further, in October 2022, the plaintiff caused VSI to pay him a total of $22,982.99 which he used to pay his personal income taxes. Again, this occurred unbeknownst to the VSI board or Nick. While the plaintiff subsequently repaid $20,000 to VSI, the balance of $2,982.99 remains outstanding.

[28] Finally, as noted above, the plaintiff used VSI's funds to pay the $5,000 retainer required by the plaintiff's lawyer in the Oppression Proceeding. This amount also remains outstanding.

Paying excessive wages to family

[29] The plaintiff further admitted to having caused VSI to pay himself, Barbara, Fred, and Tania wages that were excessive, or for times when they were not working for VSI or on vacation, in circumstances where each had already been paid their vacation pay.

[30] The payments to the plaintiff were as follows:

a) In 2010, VSI paid the plaintiff a regular salary of $2,250 per month;

b) On or about January 16, 2011, the plaintiff caused VSI to pay him an hourly wage of $11 per hour, in addition to his regular salary of $2,250 per month;

c) On or about February 1, 2011, the plaintiff caused VSI to increase his hourly wage from $11 per hour to $14 per hour;

d) On or about March 16, 2011, the plaintiff caused VSI to pay him a second hourly wage at a rate of $11 per hour;

e) From on or about April 16, 2011 to on or about July 15, 2011, the plaintiff caused VSI to pay one or the other of the plaintiff's first hourly wage of $14 per hour or his second hourly wage of $11 per hour, in addition to the plaintiff's regular salary of $2,250 per month;

f) On or about September 1, 2011, the plaintiff caused VSI to increase his regular salary from $2,250 per month to $2,812.50 per month;

g) On or about January 1, 2015, the plaintiff caused VSI to increase his regular salary from $2,812.50 per month to $3,412.50 per month;

h) On or about July 31, 2015, the plaintiff stopped working for VSI, and on or about September 1, 2016, the plaintiff caused VSI to put him back on VSI's payroll at a regular salary of $5,600 per month;

i) From on or about July 1, 2018, until on or about April 30, 2021, the plaintiff caused VSI to put him back on the payroll of VSI at a salary of $3,500 per month, despite the plaintiff being employed as the Mayor of Penticton for much of this period;

j) On or about October 16, 2022, after losing the mayoral election, the plaintiff caused VSI to put him back on the payroll at a salary of $7,000 per month, despite this salary already being paid to Fred, who was managing the Liquor Store at that time; and

k) Throughout this time, VSI alleges that the plaintiff would engage in an "income splitting scheme" where he would periodically reduce his salary, particularly during times when he was not actively working for VSI, and subsequently increase Barbara's salary by the corresponding amount.

[31] The payments to Barbara were as follows:

a) In or around June 2007, the plaintiff caused VSI to start paying Barbara a regular salary of $1,750 per month, in addition to an hourly rate of $10 per hour;

b) In or around July 2007, the plaintiff caused VSI to increase Barbara's hourly wage from $10 per hour to $11 per hour;

c) In or around August 2007, the plaintiff caused VSI to increase Barbara's regular salary from $1,750 per month to $3,500 per month until in or around September 2007, at which point VSI reverted the salary to $1,750 per month;

d) In or around May 2009, the plaintiff caused VSI to increase Barbara's hourly wage from $11 per hour to $14 per hour;

e) On or about September 1, 2011, the plaintiff caused VSI to increase Barbara's regular salary from $1,750 per month to $2,187.50 per month, and her hourly wage from $14 per hour to $15 per hour;

f) From September 2011 to June 2013, the plaintiff caused VSI to pay Barbara both her regular salary of $2,187.50 per month and her hourly wage of $15 per hour;

g) On or about July 16, 2013, the plaintiff caused VSI to increase Barbara's hourly wage from $15 per hour to $16 per hour;

h) On or about January 1, 2015, the plaintiff caused VSI to increase Barbara's hourly wage from $16 per hour to $18 per hour;

i) On or about August 1, 2015, the plaintiff caused VSI to stop paying Barbara's regular salary;

j) From on or about November 1, 2016 to about December 31, 2016, the plaintiff caused VSI to pay Barbara bonuses of $3,000 per month, in addition to Barbara's hourly wage of $18 per hour;

k) From on or about October 16, 2017 to on or about June 30, 2018, the plaintiff caused VSI to resume paying Barbara's regular salary of $4,500 per month, in addition to Barbara's hourly wage of $18 per hour;

l) From on or about March 1, 2018 to on or about June 30, 2018, the plaintiff caused VSI to pay Barbara bonuses of $3,000 per month, in addition to her regular salary of $4,500 per month;

m) From on or about July 1, 2018, the plaintiff caused VSI to increase Barbara's regular salary from $4,500 per month to $5,000 per month;

n) On or about May 1, 2021, the plaintiff caused VSI to increase Barbara's regular salary from $5,000 per month to $8,500 per month; and

o) On or about October 16, 2022, the plaintiff caused VSI to reduce Barbara's regular salary from $8,500 per month to $7,000 per month.

[32] The payments to Fred were as follows:

a) On or about October 1, 2010, VSI began to pay Fred an hourly wage of $20 per hour;

b) On or about December 16, 2010, the plaintiff caused VSI to increase Fred's hourly wage from $20 per hour to $24 per hour;

c) On or about February 1, 2011, the plaintiff caused VSI to decrease Fred's hourly wage from $24 per hour to $14 per hour;

d) On or about September 1, 2011, the plaintiff caused VSI to increase Fred's hourly wage from $14 per hour to $31.43 per hour; and

e) On or about January 1, 2015, the plaintiff caused VSI to increase Fred's hourly wage from $31.43 per hour to $35 per hour.

[33] The payments to Tania were as follows:

a) In or around August 2008, the plaintiff caused VSI to hire Tania as an entry-level sales associate at an hourly wage of $10 per hour, and this hiring was not approved by VSI's board;

b) On or about January 16, 2011, the plaintiff caused VSI to increase Tania's hourly wage from $10 per hour to $14 per hour;

c) On or about February 1, 2011, the plaintiff caused VSI to increase Tania's hourly wage from $14 per hour to $24 per hour;

d) On or about February 1, 2013, the plaintiff caused VSI to increase Tania's hourly wage from $24 per hour to $31.43 per hour;

e) On or about March 1, 2013, the plaintiff caused VSI to pay Tania a second hourly wage at $14 per hour;

f) On or about July 16, 2013, the plaintiff caused VSI to increase Tania's second hourly wage from $14 per hour to $16 per hour;

g) From on or about March 1st, 2013 to on or about September 30, 2013, the plaintiff caused VSI to pay both of Tania's hourly wages;

h) On October 1, 2013, the plaintiff caused VSI to stop paying Tania's first hourly wage of $31.43 per hour and begin only paying Tania's second hourly wage;

i) On or about January 16, 2014, the plaintiff caused VSI to increase Tania's hourly wage from $16 per hour to $31.43 per hour; and

j) On or about April 1, 2016, the plaintiff caused VSI to increase Tania's hourly wage from $31.43 per hour to $35 per hour.

[34] At no time did the plaintiff notify Nick, the other director of VSI, of any of the increases or decreases in monies paid to the plaintiff, Barbara, Fred, or Tania for regular salary or bonuses. Further, at no time did the plaintiff seek or obtain the approval of the board of VSI for such increases or decreases.

[35] While the plaintiff agreed that no such notice was ever given, he took the position that there was no requirement to notify or gain the approval of Nick or the

VSI board. Nick, on the other hand, presented evidence that he expected the plaintiff to consult with him and to obtain his consent on all major decisions involving the business, including with respect to all major hiring decisions.

[36] The plaintiff further admitted that he was responsible for ensuring that VSI's hourly employees were only paid for the hours that they worked, while conceding that he knowingly caused VSI to pay his, Barbara's, Fred's, and Tania's wages while they were on vacation, having also received vacation pay-in-lieu in each pay period. In furtherance of these schemes, he would permit his family members to prepare and submit inaccurate payroll records.

Nick's written warning

[37] On August 20, 2020, Nick wrote to the plaintiff reporting that VSI was paying the plaintiff and his immediate family members excessive wages. In the email, Nick warned the plaintiff that any future bonuses or pay increases had to be approved by VSI's board of directors, and reminded the plaintiff that he was required to manage VSI's affairs in a manner that benefitted all shareholders.

[38] Nick also told the plaintiff that he and Fred had to stop borrowing funds from VSI and that VSI must not be treated as his personal bank account. Nick also demanded that a shareholders meeting be held.

[39] Later that day, the plaintiff responded to Nick's email denying any wrongdoing and refusing to attend a shareholders meeting. As is evident from the admissions outlined above, Nick's email had little effect in deterring the plaintiff's misconduct, which continued unabated for several more years.

Investigation and termination

[40] In April 2023, Nick and Florio discovered that the plaintiff had used VSI's credit card to pay his lawyer's $5,000 retainer in respect of the Oppression Proceeding. This caused them to become concerned that the plaintiff had misused corporate funds before, among other issues.

[41] On April 27, 2023, Nick and Florio informed the plaintiff and Fred that as of May 15, 2023, other than cheques payable to third party suppliers or non-related employees, they no longer had the sole authority to write cheques on VSI's behalf. Rather, cheques had to be signed by two authorized signatories, including at least one director. Further, cheques payable to third party suppliers or non-related employees had to be signed by at least two authorized signatories.

[42] Further, on May 16, 2023, VSI retained Paula Krawus of PortaLaw, a law firm specializing in internal workplace investigations, to conduct an investigation in respect of funds received by the plaintiff, Barbara, Fred, and Tania and in relation to the affairs of VSI.

[43] A summary of the allegations against the plaintiff being investigated were set forth in a letter authored by Ms. Krawus on May 22, 2023. That same day, Ms. Krawus wrote to the plaintiff to schedule an interview, which took place on May 25, 2023.

[44] On July 7, 2023, Ms. Krawus delivered her report regarding the plaintiff's conduct to the directors of VSI, in which the plaintiff admitted to much of the alleged misconduct. Nick and the remaining shareholders only learned the full extent of the misconduct upon reading the report and watching a recording of the plaintiff's interview. The plaintiff displayed serious insolence towards Nick and the other shareholders through various statements made to Ms. Krawus during the interview and investigation process.

[45] After considering Ms. Krawus' report, in late July 2023, Nick and Florio decided that VSI would terminate the plaintiff's employment. Further, Nick and Florio decided that VSI would demote Fred from his role as the Liquor Store's manager, and that it would also demote Barbara to the role of sales associate.

[46] However, Nick and Florio decided that VSI would not terminate the plaintiff's employment immediately, but that it would only do so after first finding a new store manager to replace the plaintiff and Fred.

[47] On July 18, 2023, Florio contacted a recruiter called JRoss Recruiters to find a replacement store manager. This recruiter subsequently learned of the battery incident between the plaintiff and Nick and decided that it would not work for VSI. As a result, Florio had to hire another recruiter. Emails sent on July 18, 2023, between Florio and JRoss Recruiters were put into evidence, and demonstrate that VSI was actively seeking a new manager for the Liquor Store within a month of deciding that it would terminate the plaintiff's employment.

[48] On July 27, 2023, Florio engaged a second recruiter, Hays Recruitment, to locate a candidate for the Liquor Store manager position.

[49] By August 9, 2023, the recruiter had identified a suitable candidate, Tammy Peterson, for the position. Ms. Petersen was interviewed by Florio shortly after.

[50] While this hiring process was ongoing, forest fires devastated West Kelowna. As a result, Ms. Peterson and many others had to evacuate from Kelowna.

[51] On September 15, 2023, Florio on behalf of VSI made an offer to Ms. Peterson to become the Liquor Store manager. On September 20, 2023, Ms. Peterson accepted VSI's offer, and gave her then-employer the required notice of her resignation.

[52] On October 3, 2023, VSI terminated the employment of the plaintiff with VSI. Ms. Peterson began working for VSI on October 10, 2023.

Affidavit Evidence

[53] In defence of the excessive wages paid to his family members, the plaintiff claimed that their salaries were commensurate with the level of work being done by them at the Liquor Store. For instance, he claimed that Barbara assumed many of

the managerial duties while the plaintiff was Mayor, and often worked double shifts, while also asserting that Fred would work up to 104 hours in a pay period.

[54] In response to these assertions, VSI tendered affidavit evidence from two current employees of the Liquor Store and from an expert hired to conduct a labour market evaluation.

[55] Stacy Isted had been a full-time employee of VSI for eight years as of May 2024. Her position with VSI was as a sales clerk who worked both day and night shifts at the Liquor Store. During her employment, she worked with the plaintiff, Barbara, Fred, and Tania.

[56] Ms. Isted confirmed that the plaintiff worked as the manager of the Liquor Store as did his son, Fred. Ms. Isted asserted that she continued to work with the plaintiff until early October 2023, when his employment was terminated by VSI. Ms. Isted also testified that although the employment of Tania was not terminated, as at April 2024, she had not worked in the Liquor Store for a period of months.

[57] Ms. Isted testified that after the plaintiff became the Mayor of Penticton from 2018 to 2022, Fred managed the Liquor Store—duties which he had undertaken even before the plaintiff became the Mayor. The evidence was that the plaintiff did not like to answer the phone and the frequent task of taking delivery orders by phone was pushed onto other employees. The plaintiff also did not have computer skills and, as a result, he did not process orders or handle any tasks that required the use of a computer. While he was in the Liquor Store, the plaintiff's time was spent watching television in the Liquor Store's office.

[58] Ms. Isted further testified that Barbara's work did not increase when the plaintiff became Mayor, and that she never saw Barbara work a double shift nor had Barbara ever told her such. Ms. Isted also testified "without any hesitation whatsoever" that Tania rarely worked at the Liquor Store prior to October 2023, and did not work 40 hours per semimonthly pay period.

[59] Further, after Ms. Peterson became the manager of the Liquor Store, for a short period of time, Tania worked 15 hours per pay period at the Liquor Store, but she stopped working at all shortly thereafter. Ms. Peterson was the sole manager of the Liquor Store, rather than the three managers prior to her hiring.

[60] Prior to October 2023, Fred requested that Ms. Isted sign a letter which he would prepare regarding the number of hours that Tania had worked. She agreed to sign such a letter, but only provided that the information the letter contained was accurate. Ms. Isted did not hear again from Fred for this purpose.

[61] Another employee, Jenna Jones, began as a sales clerk at the Liquor Store in July 2023. She also confirmed that, prior to October 2023, the managers of the Liquor Store were the plaintiff and Fred, and that Barbara also worked in the Liquor Store.

[62] Ms. Jones testified that, for the period from July to October 2023, Fred typically worked the night shift while his parents worked the day shift. Ms. Jones stated that “John didn’t do a lot of work when he was at the Liquor Store.” Similar to Ms. Isted, she stated that the plaintiff lacked computer skills and so did not deal with tasks that required the use of the computer such as ordering inventory, inputting new stock into VSI’s inventory management software, or even preparing sales tags. Ms. Jones asserted that because the plaintiff did not like to answer the phone and would not deal with customers who wanted to place delivery orders by phone, he would direct other staff to answer the phone when he was in the office.

[63] The plaintiff rarely stocked shelves or worked at the till but he spent most of his time at work watching television in his office. The management role according to Ms. Jones was worked by Fred.

[64] Ms. Jones also stated that Barbara did not do much in the Liquor Store, would “often come and go as she pleased, and when she was at work she would also watch television with [the plaintiff] in his office”.

[65] According to Ms. Jones, neither the plaintiff nor Barbara liked to arrive to work early, and so the Liquor Store was only opened to staff at the same time that it opened to the public at 9:00 a.m. or later, with the result being that staff were unable to prepare cash registers prior to having to tend to customers which delayed sales transactions.

[66] Ms. Jones testified that Fred handled most management tasks for the Liquor Store before he and his father were replaced by Ms. Peterson. Fred was an hourly employee paid on a semimonthly basis. Ms. Jones understood that VSI's payroll records reflected that Fred worked 104 hours every semimonthly pay period. From July to October 2023, she worked in the Liquor Store, and testified that for Fred to work that many hours, it would have been necessary for Fred to work multiple day and night shifts each week, to which Ms. Jones asserted "that simply did not happen".

[67] Ms. Jones further understood from VSI's payroll records that Tania reportedly worked 40 hours per week every semimonthly pay period from July to October 2023. Ms. Jones asserted in her affidavit that Tania was seldom in the Liquor Store, and when present she would work for an hour or so and then leave. Prior to October 3, 2023, Ms. Jones stated that she had not seen Tania work an entire shift. Tania rarely worked a cash register or tended to a customer. Ms. Jones did see Tania dusting or cleaning windows or dealing with other tasks which took little time. After such tasks, she would report she was leaving to deal with her children. Ms. Jones reported that Tania never worked 40 hours in any pay period and at most she worked 5 to 10 hours on a semimonthly basis.

[68] With respect to the evidence of Ms. Isted and Ms. Jones, there was no contradicting evidence tendered by the plaintiff or his family members in response, or at all.

[69] A third supporting affidavit was tendered by VSI from Michael Sileika, of the firm MNP LLP, who was hired as an expert to prepare a report for the Court on two questions as follows:

a) what were liquor store managers and sales associates typically paid working in liquor stores in Penticton, BC from 2010 to 2023; and

b) assuming that the plaintiff, Barbara, Fred, and Tania received more remuneration from VSI than other liquor store managers and sales associates typically received in the subject period, how much extra compensation did the four mentioned receive from VSI?

[70] The answer to question (a) showed in great detail that the amounts paid to the plaintiff, Barbara, and Fred at least doubled from 2010 to 2023, and to Tania as a sales associate increased from $32,400 to $44,500 in the same period.

[71] In answer to question (b) the excess of compensation paid to the four employees compared to notional compensation of four employees in the same community showed excess payments in every year except 2010, together with an excess of salary payments of $631,269 over the noted period.

[72] As with the affidavits of Ms. Isted and Ms. Jones, no responding evidence to the affidavit of Mr. Sileika was presented by the plaintiff.

Issues

[73] As noted earlier, at the opening of this summary trial, the plaintiff alleged that he was employed by the defendant from 2004 to 2023 when he was terminated without cause. On the second day of this trial, the plaintiff's counsel advised the Court that the plaintiff admitted that the defendant had cause to terminate his employment.

[74] The remaining claim of the plaintiff was that the defendant had condoned the actions of the plaintiff which it now relies on for its just cause argument. The plaintiff asks the Court to draw an inference of the intention of the defendant to condone the misconduct because of what the plaintiff alleges was a six-month delay in terminating the employment of the plaintiff. In other words, the plaintiff says that VSI should have terminated him in or around April 2023 when Nick and Florio first

suspected him of misappropriating funds, and that by only doing so in October 2023, VSI condoned the misconduct that substantiates its just cause claim. In furtherance of this, the plaintiff says the workplace investigation was simply a ruse, and also points to his continuation of his misconduct after Nick's August 2020 warning.

[75] The position of the defendant was simply that there was no such delay and therefore, no condonation. It says it took proper steps to the plaintiff's termination by hiring Ms. Krawus to conduct an investigation before making a decision, and that it only learned the full extent of the misconduct through Ms. Krawus' final report. Further, it says that once it formed the intention to terminate the plaintiff, it acted immediately to begin seeking a replacement, which efforts were only delayed through no fault of VSI's, and thus, there was no six-month delay amounting to condonation.

[76] In light of the foregoing, there are three issues to be decided:

a) Did VSI condone the plaintiff's misconduct?

b) If not, did VSI have just cause for termination?

c) Is the plaintiff liable to VSI for damages?

Analysis

Condonation

[77] An employer who is made aware of misconduct that could constitute just cause must elect whether to terminate the employment relationship or condone the misconduct by allowing the employment relationship to persist, notwithstanding the misconduct. The employer's election must be made within a reasonable time of learning of the misconduct. Misconduct that the employer has condoned no longer constitutes just cause unless new facts, such as further misconduct, come to light: *Acumen Law Corporation v. Ojanen*, 2019 BCSC 1352 at para. 35, aff'd 2021 BCCA 189.

[78] The employer must have full knowledge of the nature and extent of the misconduct. Condonation is further subject to an implied condition of future good conduct, and whenever any new misconduct occurs, the old offences may be invoked and may be put in the scale, against the offender as cause for dismissal: *Breen v. Foremost Industries Ltd.*, 2023 ABKB 552 at para. 287.

[79] Whether the employer has condoned the conduct of an employee is a question of fact. The employee bears the onus of proving condonation: *Nardulli v. C-W Agencies Inc.*, 2012 BCSC 1686 at para. 306.

[80] The plaintiff bears the onus of establishing that VSI condoned the misconduct of the plaintiff. The plaintiff argued that the workplace investigation of Ms. Krawus was a ruse, but no evidence was presented to support this argument. The plaintiff advanced no evidence of VSI's supposed condonation, but simply asked this Court to draw such an inference from the six-month period between Nick and Florio first suspecting the plaintiff of misconduct and when he was ultimately terminated in October 2023.

[81] In response, VSI submits that:

a) The investigation was not a ruse, but an appropriate measure taken as part of its duty as an employer to investigate allegations of misconduct and provide the employee with an opportunity to respond: *Nardulli* at para. 299. The plaintiff was aware of the investigation and actively took part in it.

b) VSI acted immediately. As demonstrated in the evidence, VSI retained Ms. Krawus within a month of first suspecting the plaintiff of misconduct. Less than three months passed between the delivery of Ms. Krawus' report on July 7, 2023, and the termination of the plaintiff's employment, and during this time, VSI considered the report, hired two recruiters, and found a replacement store manager. Nothing that it did during this period constituted unreasonable delay or amounted to condonation.

c) The plaintiff took steps to conceal his misconduct, and VSI only fully learned of its extent upon receiving Ms. Krawus' final report. Among other things, the plaintiff refused to call or attend shareholders meetings and instructed VSI's bookkeeper to not disclose VSI's financial information to Nick and Florio without his consent.

d) The Oppression Proceeding brought by the plaintiff was ongoing throughout this period and contributed to any delay that may have existed: the petition hearing took place in May 2023 and, upon being dismissed in June, was subject to a further appeal brought by the plaintiff in July.

e) The plaintiff conceded that finding a store manager in Penticton could take time, and that the region was under a state of emergency caused by forest fires as Ms. Peterson was going through the hiring process.

[82] In light of the above, VSI says that the actions it took between April and October 2023 were reasonable and cannot be considered delay or evidence of an intention to condone the plaintiff's misconduct.

[83] Regarding the investigation, it was clearly a necessary and reasonable action for VSI to take particularly at a time when the parties were already embroiled in litigation. Ms. Krawus provided the plaintiff with an opportunity to respond to the allegations made by VSI and he did so, choosing to admit to much of the misconduct alleged against him. I agree that the three months that VSI took to find a replacement store manager were not unreasonable in the circumstances, and any delay that might have existed was at the very least contributed to by the plaintiff's own litigation as well as factors beyond VSI's control.

[84] Again, the plaintiff bears the onus of proving condonation; he advanced no evidence in support of this claim but only asked this Court to draw an inference based on the facts. I cannot agree that the facts of this matter evince an intention on the part of VSI to either delay termination or condone the plaintiff's misconduct. As

such, the plaintiff's claim in this regard fails, and VSI is permitted to rely on the plaintiff's misconduct as grounds for his termination for cause.

Just Cause for Dismissal

[85] An employer may dismiss an employee by giving the employee reasonable notice or pay in lieu of notice. If the employer is able to show cause for dismissal, then the employee may be dismissed without notice or pay in lieu of notice: *Nardulli* at para. 299. The employer carries the onus of proving "just cause" which is behaviour, viewed in all of the circumstances, which is seriously incompatible with the employee's duties—"conduct which goes to the root of the contract, and fundamentally strikes at the employment relationship": *Shalagin v. Mercer Celgar Limited Partnership*, 2023 BCCA 373 at para. 32. The Supreme Court of Canada has prescribed a contextual analysis based on the principle of proportionality, and in particular, "[a]n effective balance must be struck between the severity of an employee's misconduct and the sanction imposed": *McKinley v. BC Tel*, 2001 SCC 38 at para. 53.

[86] The Court is required to:

a) determine the nature and extent of the misconduct;

b) consider the surrounding circumstances; and

c) determine whether dismissal for cause is a proportionate response; that is, determine whether the misconduct in its proper context has led to a breakdown of the employment relationship or is otherwise irreconcilable with the continuation of the relationship.

See *Stevens v. Port Coquitlam (City)*, 2022 BCSC 2090 at para. 31.

[87] The court is entitled to consider the cumulative effect of an employee's misconduct when conducting the contextual analysis mandated by *McKinley*. Even a single incident, assessed in context, may justify summary dismissal if sufficiently

serious and incompatible with the duties of the employee. Quoting Justice Skolrood, as he then was, in *George v. Cowichan Tribes*, 2015 BCSC 513 at para. 127:

> All of the cases however are simply different applications of the principles emanating from *McKinley* that mandate a contextual analysis and a proportionate approach to discipline. Again, the central issue to be considered is whether the employee's misconduct, if proven, is so egregious as to effectively render continuation of the employment relationship impossible.

[88] Where the employer provides the court with a *prima facie* case of misconduct against the employee, the burden of proof shifts to the employee to explain that the misconduct was not dishonest or worthy of dismissal: *Breen* at para. 285.

[89] Misconduct involving the misappropriation of funds or intentional misleading of the employer is generally characterized as dishonest, giving rise to cause for dismissal. These cases of intentional misrepresentation can be contrasted from those where the employee acts on a failure or error of judgment: *Smith v. Pacific Coast Terminals Co. Ltd.*, 2016 BCSC 1876 at para. 234, aff'd 2017 BCCA 197.

[90] In the case at bar, the plaintiff acknowledged his misconduct was worthy of dismissal. The misconduct involved causing VSI to pay excessive salaries to the plaintiff and to members of his family, payment of salaries for employees while on vacation where such holiday pay had already been paid regularly with pay cheques on a monthly basis, paying three sets of management salaries which were demonstrably unnecessary given the size of the business of VSI, and causing VSI to give him interest-free loans and pay personal expenses for additions to the plaintiff's personal stamp collection, household insurance and payments of personal income tax in the amount of $20,000. All of this was coupled with intransigent insolence that no doubt was so egregious that it rendered the continuation of the employment relationship impossible.

[91] The plaintiff was also warned on August 20, 2020, to seek board approval for pay increases, interest-free loans and payment of personal expenses that the plaintiff had caused VSI to pay. His misconduct persisted despite this warning.

[92] Given the plaintiff's admissions and the uncontested evidence in this case, I have no difficulty finding that VSI had just cause for the plaintiff's termination. In these circumstances, VSI is able to rely upon the misconduct of the plaintiff both before and after August 2020 to justify his dismissal, as I have found that no condonation occurred.

[93] It is clear that the plaintiff's behaviour was seriously incompatible with his duties as the manager of the Liquor Store, and that the employment relationship could not viably persist after the workplace investigation concluded and its results were made known to VSI and its board. Accordingly, the plaintiff's claim for wrongful dismissal is dismissed.

Damages

[94] I now deal with VSI's counterclaim to have the plaintiff pay damages in the amounts that he admits having misappropriated from VSI throughout the course of his employment at the Liquor Store and time as a director.

[95] In response to the counterclaim, the plaintiff initially advanced a limitations defence but later abandoned it.

[96] Based on the evidence presented, including the agreed statement of facts dated November 12, 2024, and the expert report of Michael Sileika, VSI seeks an award of damages in the amount of $814,681.99 payable by the plaintiff forthwith to VSI as follows:

a) $631,269 based on the diversion of funds of VSI to himself, Fred, Barbara and Tania through the payment of excessive wages;

b) $108,500 on account of wages which the plaintiff improperly caused VSI to pay him from 2018 to 2021, a period of time when the plaintiff was not working for VSI;

c) $56,850 on account of wages which the plaintiff improperly caused VSI to transfer to Barbara from 2021 to 2022;

d) $7,280 which the plaintiff improperly caused VSI to pay to Fred when Fred was vacationing in Mexico;

e) $2,800 which the plaintiff caused VSI to improperly pay to Tania when Tania was vacationing in Mexico;

f) $2,982.99 on account of unpaid loans drawn from VSI by the plaintiff; and

g) $5,000 on account of funds drawn from VSI that the plaintiff caused VSI to pay to the plaintiff's personal lawyer.

[97] The plaintiff admits that the salary of $7,000 per month he had VSI pay to him was excessive, however he also paid the same salary to Barbara which must therefore also be excessive. Sections 147–149 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [*BCA*], deal with director conflicts of interest in a company's management, and make clear that a director who receives profits or benefits or causes profits or benefits to be paid to others, in which they hold a disclosable interest, must have such benefits approved by other directors after full disclosure.

[98] The plaintiff kept these excessive payments to himself, Barbara, Fred and Tania secret and refused to disclose such payments to Nick or other shareholders. The plaintiff also attempted to force Nick and other shareholders to convey their shares to the plaintiff, without disclosing his improper use or borrowing of the funds belonging to VSI. During the examination for discovery of the plaintiff, he admitted that he had a duty to maximize the profits of VSI and would not take corporate funds of VSI for himself or his family.

[99] Shareholders meetings were demanded by Nick and other shareholders, but the plaintiff refused to call such meetings until they were forced upon the plaintiff after he created a deadlock on the board of directors of VSI. Both Nick and Florio testified that they were unaware of the variety of transactions involving payments of unreasonable amounts to the plaintiff, Barbara, Fred and Tania. Had Nick and Florio known of the amounts being paid to these four people, they would have put an

immediate stop to the payments. As they were unaware of the payments, their ability to stop such conduct was not within their capacity.

[100] The plaintiff admitted that he was obliged to deal with the monies held by VSI as a fiduciary, and not rely on the monies held by VSI as a personal financial backstop. The plaintiff simply refused to obey his fiduciary responsibilities for which he was responsible towards VSI. In a business with a total of nine employees, the plaintiff placed three of them in managerial positions paying well above the going rate given their duties and responsibilities in the Liquor Store.

[101] The expert report of Michael Sileika clearly demonstrated that the plaintiff, Barbara and Fred were each being overpaid as managers and Tania was being overpaid as a sales associate. These gross overpayments occurred in circumstances where shareholders other than the plaintiff and Fred had no idea what was occurring with the assets of VSI, and the plaintiff was not prepared to share information with other shareholders short of a court order.

[102] The plaintiff did not contest nor call evidence to dispute the amount of damages claimed by the defendant, provided that the Court was satisfied that condonation did not defeat the claim by VSI. This Court is satisfied that VSI did not condone the actions of the plaintiff where funds belonging to VSI were improperly taken by the plaintiff, and the plaintiff concealed the removal of those funds deliberately. VSI has proven its counterclaim that the plaintiff acted in breach of the fiduciary duties contained in s. 142 of the *BCA* which the plaintiff was bound by. The plaintiff has also acted, by hiding his acts, in a conflict of interest which was both substantially and procedurally unfair to VSI through his undisclosed personal loans, payment of personal expenses and the excessive or unearned wages.

[103] The defendant and plaintiff by way of counterclaim, VSI, is awarded damages in the amount of $814,681.99 payable forthwith by the plaintiff, John Vassilakaki. VSI’s claim for punitive damages was adjourned by consent until these reasons were published, as was the issue of costs.

Conclusion

[104] The plaintiff's wrongful dismissal claim is dismissed.

[105] The defendant's counterclaim is successful. VSI is awarded damages of $814,681.99 payable forthwith by the plaintiff, John Vassilakaki.

[106] VSI shall provide written submissions on the issues of punitive damages and costs within 30 days of the publication of these reasons, and any response by the plaintiff on the same issue shall be submitted within 60 days of these reasons. Submissions of the parties shall not exceed 20 pages double spaced.

"Ball J."