

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wang v. Liu*,
2023 BCSC 972

Date: 20230607
Docket: S208964
Registry: Vancouver

Between:

Emma Wang and Good Castle Real Estate Development Ltd.
Plaintiffs

And

Jun Liu also known as Kimberly Liu
Defendant

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiffs:

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(January 23–24, 26–27, 2023)

The Defendant, appearing in person:

J. Liu

Place and Dates of Trial:

Vancouver, B.C.
January 16–19, 23–24, 26–27 and
February 24, 2023

Place and Date of Judgment:

Vancouver, B.C.
June 7, 2023

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Introduction

[1] The plaintiff, Emma Wang, and the defendant, Kimberly Liu, were once friends and had a variety of dealings with each other. They are no longer friends. There are three aspects to this action.

[2] First, Ms. Liu agrees that she asked Ms. Wang, operating through the plaintiff company, Good Castle Real Estate Company (“Good Castle”) (collectively, the “plaintiffs”), to act as the construction manager on the construction of a new residential home located at 2010 Queens Avenue, West Vancouver, BC (the “Liu Property”). Ms. Wang says that she was not fully paid for her services. There was no written contract.

[3] Second, Ms. Wang claims that Ms. Liu defamed her in two YouTube videos posted on April 15, 2020 (the “Videos”) and in two WeChat posts made on October 10, 2020 (the “October WeChat Post”) and December 19, 2020 (the “December WeChat Post”) (collectively, the “WeChat Posts”).

[4] Third, Ms. Liu has filed a counterclaim claiming that she is owed money for various services she provided to Ms. Wang and Ms. Wang’s company, Good Castle, and saying she was defamed by Ms. Wang.

[5] I will provide an overview of the parties and the relationships of the parties, set out the issues to be canvassed, comment on the credibility of the parties and witnesses, address the evidentiary disputes, and then consider each of the claims advanced.

[6] Many issues in this trial require the consideration of translated WeChat message between the parties. Some of these translations include the parties’ initials before the messages to identify which party sent the message, other translations do not. To ensure there is clarity as to who has sent each message, I have added the initials of the sending party to the start of each message, “EW” for Ms. Wang and “KL” for Ms. Liu.

[7] I further note that Ms. Liu represented herself in this trial. She did struggle to understand the rules of procedure and how to properly ask questions. That is understandable. In my view, Ms. Liu was respectful and tried her best to act appropriately throughout the trial. I appreciate how much stress she was under and how upsetting this process was for her. Ms. Liu explained that she was representing herself since she did not have the funds to hire a lawyer— a plight that too many self-represented litigants face in trying to navigate the complex and costly litigation system.

The Parties and Their Relationship

[8] Ms. Wang was born in China and comes from Tianjin, a city close to Beijing. She obtained a bachelor's degree in design in China. She immigrated to Canada in or about 2007. Ms. Wang studied construction management at the British Columbia Institute for Technology where she ultimately obtained a bachelor's degree in construction management. Ms. Wang is the principal of Good Castle.

[9] Good Castle, a construction management company, was incorporated in 2013. It provides early-stage project management services, including applying for the building permits, designing the projects, organizing trades, scheduling, and budgeting, until the occupancy permits are issued. It also obtains the mandatory "2-5-10" years construction warranties. Ms. Wang confirmed that Ms. Liu helped her to register or incorporate Good Castle in BC.

[10] Ms. Wang testified that between 2013 and 2016, she was involved in the construction of four new houses. Only one had been completed before the construction started on the Liu Property.

[11] Sunnymead Construction Ltd. ("Sunnymead") is another construction company that Ms. Wang was involved in. Sunnymead is not a party to this action. Xue Jun Shan ("Mr. Shan") is a principal of Sunnymead and is Ms. Wang's business partner.

[12] Ms. Liu graduated from a University in Tianjin, China in computer science. In 1992, she went to Singapore to work for Motorola, working with the Oracle Database and providing technical support. Ms. Liu worked in Singapore for over ten years. In 2001, she immigrated to Canada. However, as she could not find any IT work in Canada, she changed her studies to accounting. She worked in an accounting firm during the day and studied for the certified general accountant program at the University of British Columbia at night. In 2007, she passed all of her exams. She obtained the designation of certified general accountant, now called chartered professional accountant.

[13] Ms. Liu has engaged in several different forms of employment to support her and her family. In 2007, she started up a small accounting firm which she sold in 2010. At that time, she decided to move from Richmond to West Vancouver. She commenced working at the West Vancouver Care Centre, a senior care home, doing staff scheduling and payroll for the nurses. After a-year-and-a-half, she quit. In 2016, Ms. Liu commenced work as a construction accountant at Atti Group, a luxury house builder based in West Vancouver.

[14] In November 2015, Ms. Liu got her licence to be a life and critical illness insurance broker. She started working for London Life Freedom 55 in December 2015. She continues to hold her licence, but conceded she was not very good at that type of business.

[15] In July 2016, Ms. Liu became qualified to act as a realtor. She worked with Interlink Realty which was based in Richmond. She stopped working for Interlink Realty at the end of 2018.

[16] Ms. Wang reports that she and Ms. Liu were introduced in 2008 through a mutual acquaintance. Ms. Liu provided accounting services to Ms. Wang and between 2013 and 2018, Ms. Liu also provided accounting services to Good Castle through a numbered company, 0737096 B.C. Ltd. (the “096 company”). Ms. Wang described Ms. Liu as her accountant, a person she saw about once or twice a year. The 096 company is not a party to this action.

[17] Ms. Liu could not remember if she met Ms. Wang in 2005 or 2008, but it was before 2010. Ms. Wang attended at her office in Richmond to consult on foreign income for her personal income tax return. Ms. Liu did Ms. Wang's personal tax return for 2008, 2009, and 2010. When Ms. Liu sold her accounting firm and moved to West Vancouver, she stopped doing Ms. Wang's personal tax returns.

[18] In 2013, Ms. Wang asked Ms. Liu to set up Good Castle. Ms. Wang received an invoice for this work and she paid it. After Good Castle was set up, Ms. Wang asked Ms. Liu to do the bookkeeping for Good Castle. Ms. Liu charged an annual fee of \$2,000 for her bookkeeping work. She invoiced Good Castle in 2014, 2015, and 2016 for \$2,000 each year and these invoices were paid.

[19] Ms. Liu also set up Sunnymead at Ms. Wang's request. Ms. Wang asked Ms. Liu to also do the bookkeeping for Sunnymead. Ms. Liu did, but she says she was never paid for this work. She also says she was not paid for the bookkeeping work she performed for Good Castle in 2017 and 2018.

[20] The parties predominantly communicated in Mandarin via WeChat. There were 4,704 lines of WeChat text extracted from Ms. Wang's phone (the "Extracted WeChat Thread"). Only a small number of the WeChat messages were admitted into evidence with certified translations.

[21] There were four screenshots of alleged WeChat messages that Ms. Liu produced. The plaintiffs assert that these four screenshots were fabricated by Ms. Liu in an effort to support her case (the "Disputed WeChat Screenshots").

Issues

[22] The following issues are for my consideration:

1. Was there a binding agreement between the parties for the provision of construction management services for the Liu Property?
2. Are there any outstanding amounts owed by Ms. Liu to the plaintiffs in respect to the construction management services provided by Good Castle?

3. Is Ms. Wang and/or Good Castle liable to Ms. Liu for any of the amounts claimed in the counterclaim?
4. Did either party defame the other?
5. If any statement was defamatory, what is the appropriate quantum of damages in the case?
6. Should there be an injunction issued against Ms. Liu and/or Ms. Wang restraining them from any future defamatory statements?

[23] Before considering the issues, I will address concerns respecting the credibility of the parties and the witnesses as well as the evidentiary issues raised.

Credibility and Reliability of the Parties and Witnesses

Legal Principles

[24] The factors to be considered when assessing credibility are usefully summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013). Justice Wilkinson, in *M.L. v. R.H.*, 2022 BCSC 1580, has articulated the *Bradshaw* factors in the following questions:

[25] [...]

1. Is the witness able to resist the influence of interest in modifying their recollection?
2. Does the witness' evidence harmonize with independent evidence that has been accepted?
3. Does the witness change their evidence during examination for discovery, direct examination and cross-examination, or is it otherwise inconsistent in their recollections?
4. Does the witness' evidence seem generally unreasonable, impossible, or unlikely?
5. What demeanour did the witness exhibit when testifying?

[25] Such an assessment is aimed at considering whether the evidence is “consistent with the probabilities affecting the case as a whole and shown to be in existence at the time”: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356, 1951 CanLII 252 (B.C.C.A).

[26] Of some significance is that both Ms. Wang and Ms. Liu originate from China and English is not their first language. Much of the testimony was provided through the use of interpreters. Assessing credibility in this context, I am mindful of the comments of Justice Griffin, as she then was, in *Fu v. Zhu*, 2018 BCSC 9:

[39] Some caution had to be exercised in assessing credibility because the witnesses were from another country and culture and did not speak English. Often cultural and linguistic differences can affect the demeanour of witnesses in ways not necessarily understood by the trier of fact. [...]

[40] I have approached the evidence aware that nuances might be lost in translation, both in terms of the translation of the question to the witness and in the answer. Word choice and word order in a sentence might be an interpreter's preference and I have been careful not to form judgment based on the wording of a single answer. Rather, I have considered the whole tenor of the evidence in coming to conclusions as to the facts. In my view it would be a mistake to take a single passage from a witness's evidence as a conclusive admission against interest, given the nuances that might be lost in translation.

[41] As well, I have kept in mind that motives and conduct that might seem improbable to a person raised in a Canadian culture might not be improbable in another cultural context. The very structure of the transactions at issue in this case was unusual in the Canadian context, as it involved large sums of money changing hands over several years, without any written agreements in place or any common accounting practices. I have been mindful that different cultural contexts can affect the court's perspective as to inherent probabilities or improbabilities.

[42] On the other hand, certain characteristics probably cross all cultures, and that includes the instinct and ability to be self-serving in one's memory so as to advance one's own interests, especially when it comes to matters of money.

Positions of the Parties

The plaintiffs

[27] The plaintiffs submit that Ms. Liu's evidence lacks credibility and reliability for the following reasons:

- a. she was argumentative, evasive, and prone to making submissions in lieu of answering the question asked while testifying;
- b. much of her evidence was contradicted by other evidence; and
- c. she admitted to having a poor memory on multiple occasions.

[28] The plaintiffs assert that Ms. Wang gave her evidence in a straightforward and careful manner. On many issues, Ms. Wang’s evidence was not significantly impeached on cross-examination.

[29] The plaintiffs submit that where Ms. Liu’s evidence conflicts with the evidence of Ms. Wang, it should be given no weight.

The defendant

[30] Ms. Liu submits that in Ms. Wang’s evidence, there were a number of contradictions. She provides the following examples:

- a. Ms. Wang and counsel hid the WeChat message dated February 1, 2016, relevant to the issue of the amount of the management fees to be paid;
- b. discrepancies in the evidence between Zhi Qing Xu (“Mr. Xu”), a witness called by the plaintiffs, and Ms. Wang on when they met;
- c. contradiction in Ms. Wang’s evidence on how long she had lived at 1765 Queens Avenue, West Vancouver (“1765”);
- d. a discrepancy in the evidence of who was the builder of 1765; and
- e. a discrepancy on when Ms. Wang divorced her husband, Zhenhui Liang.

[31] Ms. Liu also provides other examples, such as the services she says Ms. Wang provided, whether a \$6,000 cash payment was made, and who made introductions to various clients. I would characterize those as the parties each giving their version of events and not any contradiction made by Ms. Wang in her testimony.

[32] Ms. Liu suggested that Ms. Wang and Mr. Xu colluded on what evidence would be given. She suggests that Mr. Xu lied when he testified that he met Ms. Liu through Ms. Liu’s husband. Ms. Liu claims that they first met when she was acting as an interpreter for Atti Group at a construction site.

[33] Ms. Liu also raised as a concern that prior to Zhihai Fu (“Mr. Fu”), a certified Chinese-English translator, returning to the stand to give evidence about an issue of one of his translations, she saw him speaking to Ms. Wang and her counsel outside

of the courtroom. Ms. Liu's view is that it was in an effort to get Mr. Fu to testify favourably for the plaintiffs. Ms. Liu goes so far as to suggest that Mr. Fu was asked to conduct his translations in a manner that favoured the plaintiffs. In her closing submissions she suggests: "[t]heir behavior was really contempt of court".

Discussion

[34] Before canvassing issues relating to the credibility of the parties, I will address the accusations Ms. Liu has made against the witness, Mr. Xu and the interpreter, Mr. Fu. As I explained to Ms. Liu during her closing submissions, there was nothing inappropriate with Mr. Fu speaking to Ms. Wang and counsel. Mr. Fu was not under cross-examination. He had come to the courthouse with the understanding that he was going to be acting as an interpreter if Ms. Wang got back on the stand to give rebuttal evidence. He was not aware that he was going to have to get into the witness box again to testify about a specific issue on one of his translations. It was appropriate for the counsel and Ms. Wang to advise him of that.

[35] There is no evidence that Mr. Fu was asked to give evidence to favour the plaintiffs. Ms. Liu's submission that there has been a contempt of court has no merit at all. It is unfortunate that Ms. Liu felt the need to make such an accusation. During the trial when she raised the issue that she had seen this meeting Mr. Fu had with Ms. Wang and her counsel, I advised her that, if she felt it were necessary, she was permitted to ask Mr. Fu questions about the meeting during cross-examination. She asked Mr. Fu if he had met with counsel outside of the courtroom. He testified that he had. Ms. Liu asked no further questions on this point.

[36] I reject any suggestion that Mr. Fu was anything other than an objective, unbiased, witness who did his best in providing accurate certified translations for the Court.

[37] I also reject the suggestion that Ms. Wang and Mr. Xu colluded together. What is clear from Mr. Xu's evidence was that he was not coming to court in an attempt to assist Ms. Wang. Some of his answers clearly did not support Ms. Wang's defamation claim. The suggestion by Ms. Liu that Mr. Xu lied when they first met

each other is simply Ms. Liu's view of what happened. I note that this is referring back to early 2017, about six years ago. I accept that a witness's recollection as to such a minor event of when he might have been introduced to someone may well have faded.

[38] The passage of time can impact everyone's memory—a sentiment that Mr. Xu agreed with when he testified that no one would recall certain items such as when they may have read a WeChat post. Mr. Xu testified that although he remembers he had a conflict with a construction company, he does not recall that Ms. Liu was acting as an interpreter.

[39] I accept that Mr. Xu did his best to answer the questions posed. His testimony did not appear to be in favour of the plaintiffs.

Credibility of Ms. Wang

[40] Dealing first with the issues raised concerning the alleged contradictions in the evidence of Ms. Wang.

[41] First, Ms. Liu says that Ms. Wang and her counsel tried to “hide” a particular WeChat Message that Ms. Wang sent. A copy of this WeChat message is in evidence and one needs to read the proceeding message for context. On February 1, 2016 at 03:08:17 Ms. Liu says:

Your old Wang “brother” said yesterday that, basically, you built his house. I'm thinking about a question, will the cost of building a house increase significantly this year?

Ms. Wang replies at 03:40:16:

The amount is easy, you can decide it.

[42] This exchange had to do with the cost of building a house. It had nothing to do with the management fees and is not relevant to the issues in this trial. There is no merit to the allegation that Ms. Wang and her counsel “hid” this message from the Court.

[43] Second, I agree that the evidence of Mr. Xu and Ms. Wang were not exactly the same. I do not attribute this to anything more than both of them attempting to recall an event that occurred many years ago. It is understandable that individuals' recollections may differ.

[44] Third, Ms. Liu raises several alleged inconsistencies in Ms. Wang's evidence. Ms. Liu is correct that, in direct examination, Ms. Wang said she had lived at 1765 since 2017. In cross-examination, when Ms. Liu asked when Ms. Wang had physically lived in 1765, Ms. Wang said January 20, 2021. Ms. Wang explained she purchased 1765 in 2017 and, in direct examination, she thought that that was what her counsel was asking. I accept Ms. Wang's explanation for the error she made.

[45] During cross-examination, Ms. Wang gave evidence that there were two builders of 1765, being Good Castle and Sunnymead. Ms. Liu claimed that Mr. Shan, who was called by Ms. Liu to give evidence, says the only builder was Sunnymead. Mr. Shan did testify that his understanding was that the builder was Sunnymead. It is clear that Sunnymead took over the construction of Ms. Wang's home at 1765, but, as Ms. Wang explained, there was a period of time in July 2017 when Good Castle continued with the construction when Sunnymead had to obtain a business licence . I am not persuaded this supports that Ms. Wang gave inaccurate evidence on this issue.

[46] Ms. Liu argues that Ms. Wang should know when she divorced her husband, Mr. Liang. Ms. Wang testified it was in 2014 or 2015, and Ms. Liu argues it was in 2018. On the evidence before me, I am unable to tell when Ms. Wang and Mr. Liang got divorced. However, I have a concern on one of the responses Ms. Wang gave to a question I posed. Ms. Wang was called back in rebuttal to address the Disputed WeChat Screenshots that had been adduced by Ms. Liu. Each one of the Disputed WeChat Screenshots was put to Ms. Wang by her counsel. One contains the following:

EW: Mr. Liang is quite impressed with West Vancouver, saying that West Vancouver is the true area with mansions with views of the sea.

[47] In reference to the message, I asked Ms. Wang who Mr. Liang was. She responded “I don’t know”. I then asked whether Mr. Liang was her husband, as Ms. Liu had stated in her testimony. Ms. Wang then agreed that Liang was the last name of her ex-husband and that, in 2016, they had been separated for over two years.

[48] It is not clear to me why Ms. Wang initially claimed she did not know who Mr. Liang was, unless it was an attempt to distance herself from the words written in this message. A witness failing to be candid when answering questions is concerning, particularly when posed by the trial judge.

[49] I am further concerned by Ms. Wangs evidence regarding the clients Ms. Liu referred to her. As will be discussed below, Ms. Wang accepted the name of only one individual that Ms. Liu referred to her; however, the Extracted WeChat Thread seems to contain multiple references to referrals made by Ms. Liu.

[50] Overall, I find that Ms. Wang presented her evidence in a credible fashion, however, I am left with a sense that she is prepared to be less than candid when answering some questions to benefit her case.

Credibility of Ms. Liu

[51] The plaintiffs submit that Ms. Liu was evasive on the stand. I disagree with this characterization. Ms. Liu appears to be deeply entrenched in her views that Ms. Wang has treated her unfairly. This manifested in her evidence, where she attempted to argue her case, as opposed to answering questions. She also gave hearsay evidence on many occasions. I am inclined to believe these difficulties came from Ms. Liu’s lack of understanding of the difference between evidence and argument, a general ignorance of the rules of evidence, some confusion in understanding the importance of the questions, and her decision to answer questions in English, which is not her first language.

[52] Ms. Liu was candid in admitting that she has memory issues, which she attributes to her depression. On a number of occasions, she became quite emotional when giving her evidence and trying to explain herself.

[53] From my perspective, it is necessary to carefully review her evidence to ensure its reliability. Of particular assistance is the extent the parties' communication is recorded in WeChat messages.

[54] I reject the plaintiffs' submissions that Ms. Liu's evidence should be given little or no weight where it conflicts with Ms. Wang's. I am of the view that I must examine both of their evidence carefully with a particular reference to the documentary evidence adduced.

The Evidentiary Issues Relating to Some of the Documents

[55] There were a number of disputed evidentiary issues. They are:

- a. the admissibility and reliability of the Extracted WeChat Thread;
- b. the admissibility and authenticity of the Disputed WeChat Screenshots submitted by Ms. Liu which do not appear in the Extracted WeChat Thread;
- c. the admissibility and reliability of the budget sheets produced by Ms. Liu in support of her counterclaim; and
- d. issues relating to the translations from Mandarin to English of certain WeChat messages.

Relevant Statute

[56] The relevant sections of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 provide:

Authentication of electronic documents

31.1 Any person seeking to admit an electronic document as evidence has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic document is that which it is purported to be.

Application of best evidence rule — electronic documents

31.2 (1) The best evidence rule in respect of an electronic document is satisfied

- (a) on proof of the integrity of the electronic documents system by or in which the electronic document was recorded or stored; or
- (b) if an evidentiary presumption established under section 31.4 applies.

Printouts

(2) Despite subsection (1), in the absence of evidence to the contrary, an electronic document in the form of a printout satisfies the best evidence rule if the printout has been manifestly or consistently acted on, relied on or used as a record of the information recorded or stored in the printout.

Presumption of integrity

31.3 For the purposes of subsection 31.2(1), in the absence of evidence to the contrary, the integrity of an electronic documents system by or in which an electronic document is recorded or stored is proven

- (a) by evidence capable of supporting a finding that at all material times the computer system or other similar device used by the electronic documents system was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic document and there are no other reasonable grounds to doubt the integrity of the electronic documents system;
- (b) if it is established that the electronic document was recorded or stored by a party who is adverse in interest to the party seeking to introduce it; or
- (c) if it is established that the electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party and who did not record or store it under the control of the party seeking to introduce it.

[57] I will deal individually with each of the disputed evidentiary issues.

Extracted WeChat Thread

[58] The plaintiffs called Miravic Manuel, a senior project manager at Triage Data Solutions (“Triage”), to give evidence on the extraction of data from Ms. Wang’s phone.

[59] Ms. Manuel’s evidence in direct was entered in through her affidavits numbered 1, 3, and 4. Ms. Manuel’s evidence was that Triage used its electronic discovery tools to extract a WeChat conversation thread between Ms. Wang and Ms. Liu, along with its underlying metadata. She discovered the WeChat conversation thread was incomplete and so she located a complete copy stored at the Triage offices and provided it to plaintiffs’ counsel. The complete copy of the

WeChat thread was attached to the affidavit of Kerstina Kane and is described as the Extracted WeChat Thread.

[60] Ms. Wang testified that she did not delete any WeChat messages between herself and Ms. Liu. Ms. Wang was never cross-examined by Ms. Liu on this point.

[61] Mr. Fu gave evidence that he viewed the WeChat conversation thread between Ms. Liu and Ms. Wang on the WeChat app on Ms. Wang's phone. He also listened to the voice messages contained in the conversation thread and compared them to the translations he performed.

[62] I accept that the Extracted WeChat Thread is admissible and reliable. Ms. Wang's phone continues to have the data on it. Ms. Liu could have requested an expert to examine the phone. She did not.

Disputed WeChat Screenshots

[63] Ms. Liu submitted the Disputed WeChat Screenshots into evidence. She says they are screenshots of WeChat messages between the parties that she downloaded onto her computer for safekeeping. The Disputed WeChat Screenshots do not appear in the Extracted WeChat Thread and are not dated. They are as follows :

1. EW: Also, how many payments for management fees have been paid for 1497 Queens? Should I give the 10% of yours to you now?
KL: We should stop giving back and forth. I should give you some money, too. Just count it as money I give you! You always refuse to take it every time when I tried to give it to you. [emoji]
EW: OK then. When you come to the office tomorrow, I'll write a note.

The second page is an image of the receipt for \$6,000 referencing the management fee for 2010 Queens Ave and the date February 22, 2018.

2. EW: I have something to trouble you with.
KL: There is no such a thing as troubling between the two of us. Go ahead.
EW: I want to buy a piece of land with a view of the sea in West Vancouver.

KL: Does your current home have a view of the sea? Want to buy more?

EW: Mr. Liang is quite impressed with West Vancouver, saying that West Vancouver is the true area with mansions with views of the sea.

KL: No problem. We have a realtor license, and can view houses any time.

EW: Thank you in advance.

3. KL: Could you please ask the cabinet maker you found for me when the drawer will be fixed and returned to me? It was supposed to be solid wood. Just one blow, and a hole was made!

EW: All cabinets are solid wood, especially the vertical facades. Even if it's solid wood, it would not stand such a blow from you.

KL: They look just like cardboard brushed with a bit of paint.

EW: Impossible. Your cabinets were made with the best wood and painted with the best paint.

4. EW: When will you pay me? I need it now.

KL: If you had said before building the house that you would ask for so much money, I wouldn't ask for your help. I don't have any money. I referred so many clients to you who build houses, and you only gave me a commission of 6,000.

EW: All that work is not done, and you will be paid only when they're done. Your work is done.

KL: I don't have so much money for you. We agreed that you would work with Zou and me to save some money. You want too much.

[64] Ms. Liu claims that she took screenshots of these messages because her phone deleted messages when its memory was full and she wanted to preserve these important messages. As a result of this process, the actual dates and times of the WeChat messages were not preserved. She claims that the Disputed WeChat Screenshots were produced in the lawsuit on her list of documents in 2020. Ms. Liu testified that her phone has since been destroyed and was not available for review.

[65] Ms. Liu's theory is that Ms. Wang, upon seeing the Disputed WeChat Screenshots on the list of documents, deliberately deleted them from her cell phone before giving it to Triage. This explains why the WeChat messages depicted in the Disputed WeChat Screenshots were not part of the Extracted WeChat Thread.

[66] Ms. Wang's theory is that Ms. Liu created the Disputed WeChat Screenshots and that the conversations depicted never occurred. Ms. Wang testified that she did

not delete, change, or add anything to the WeChat messages on her cell phone. She testified she had never seen any of the messages in the Disputed WeChat Screenshots before the litigation. She denied ever saying what is set out in them.

[67] Ms. Liu cross-examined Ms. Manuel on the possibility of the Extracted WeChat Thread missing content such as text, picture and audio files. Ms. Manuel testified that she did not know whether data could go missing when transferred from one device to another.

[68] It is difficult to ascertain which party is telling the truth. I have no expert evidence to support whether the Disputed WeChat Screenshots are ones that might have been fabricated on a computer, as alleged by the plaintiffs. Ms. Manuel states in her first affidavit:

6. Triage also utilizes third-party forensic technicians to scan through devices for deleted documents and messages. Through this scan, forensic technicians can often determine, on a case-by-case basis, when a particular document was deleted from a device by locating and obtaining residual metadata [...]

[69] I have no evidence that Triage used this process to determine if any data had been removed from Ms. Wang's phone.

[70] It is not clear to me whether a screenshot from a cell phone would display the date and time, like the ones extracted from Ms. Wang's phone, which are missing from the Disputed WeChat Screenshots. If Ms. Liu fabricated the messages, I am puzzled as to why she did not fabricate other messages that would more clearly support her position.

[71] In the end, I conclude that I am unable to place reliance on the Disputed WeChat Screenshots since I cannot be assured they reflect conversations between the parties that actually took place. To be clear, I am not finding that Ms. Liu fabricated the messages, just that I cannot be assured of their reliability. As such I place no reliance on them.

Budget Documents

[72] Ms. Liu testified that in 2020 she took a number of budget sheets from a computer at the front desk of the Sunnymead office. She says that Mr. Shan gave her access to this computer.

[73] Although Mr. Shan testified, he was not questioned by either party about providing Ms. Liu access to the computer.

[74] The budget sheets were not put to Ms. Wang. It was also open to Ms. Liu to cross-examine Ms. Wang on the various construction costs for the other projects and the amount of management fees she received. She did not do so.

[75] The budget sheets were not prepared by Ms. Liu. It is clear that some of the information in them is not accurate. Ms. Liu confirmed that the property at 1416 Chartwell Drive was still in the demolition and architecture design phase and, as such, the entire management fee would not be payable. In her closing submissions, she attempted to address this issue by reducing the management fee from \$195,408.63 to \$50,000. This further supports the lack of reliability of the budget sheets.

[76] I find that the budget sheets are not reliable and are inadmissible to establish the amounts owing for any alleged referral fees.

Translation Issue

[77] There was some discrepancy in the translation of a WeChat message dated September 19, 2016. The translation of this WeChat by Mr. Fu was:

KL: In the future, when I'm granted my loan, I will give it to you in a few phases. Will it be OK to do 50K with GST, and 50K in cash? Or do more with GST charged?

[78] Ms. Liu claims that she meant she would pay \$50,000 plus GST or \$50,000 in cash.

[79] The original Mandarin message shows only a comma between the reference to 50K with GST and 50K cash. There is no conjunction such as “and” or “or”. As a result of this concern respecting the translation, Mr. Fu was called back to the stand to address his translation. He agreed that there was a Mandarin character for the word “and” but it was not present in this message. He explained he added the word “and” in the English translation to make it more grammatically correct. He accepted that “and” could be deleted, but disagreed that the word “or” could be inserted.

[80] I am not prepared to accept the evidence of Ms. Liu on the correct translation over that of a certified translator: *Lu v. Shen*, 2020 BCSC 490 at paras. 166, 168.

[81] Further, when one reads the whole message, it is clear that Ms. Liu is talking about paying in phases and not referring to one payment of \$50,000. This is further supported by other evidence of a \$100,000 budget estimate for construction management fees.

[82] I find that this WeChat message should not be read with an “or” to indicate only one payment of \$50,000. This finding will be further explored in issue two in regard to outstanding payments owed to the plaintiffs.

Issue 1: Was There a Binding Agreement Between the Parties for the Provision of Construction Management Services?

Legal Principles

[83] The parties agree on the terms needed to create a binding contract.

[84] Ms. Liu relies on the statements in the G.H.L. Fridman, *The Law of Contracts in Canada* (Toronto: Thomson Carswell, 2006) that in order to create a binding contract there must be a clear offer, certainty as to the essential terms, consideration and a meeting of minds. She further relies on *Cissell et al v. Fern et al*, 2023 BCSC 193 at para. 32 [*Cissell*].

[85] A binding contract requires a *consensus ad item*, in other words, a meeting of the minds. Determining whether there has been a true meeting of the minds is not a question of merely identifying the subjective beliefs or expectations of the parties.

The test for determining whether the parties formed a *consensus ad item* is an objective one, requiring a consideration of the outward expressions of the intent of the parties: *Hodder Construction (1993) Ltd. v. Topolnisky*, 2021 BCSC 666 at para. 114 [*Hodder*]; *Cissell* at para. 33, quoting *Berthin v. Berthin*, 2016 BCCA 104 at para. 46.

[86] It is not necessary to pinpoint a precise time of offer and acceptance, provided that it can be determined from the whole of the circumstances that a consensus has been reached as to the essential terms of a contract. In this regard, part performance can be a good indication of the intention of the parties to create a binding contract: *Hodder* at para. 115.

[87] A court will be reluctant to find a contract void for uncertainty, recognizing that certainty of terms is balanced with the reality of transactional negotiations, particularly once the agreement has become operational: *Gaukel v. Buksh*, 2021 BCSC 1751 at para. 179.

[88] When the alleged contract is oral, the court must consider what the parties said and did, and assess objectively whether, in the context, their words and actions establish an intention to be bound. In determining whether the parties entered into a binding contract, the court may consider the parties' conduct prior to and after the alleged formation of the contract. Subsequent conduct may be considered in assessing the credibility of the parties' evidence regarding the circumstances at the time of contracting: *Gaukel* at para. 182.

[89] Subsequent negotiations are not necessarily inconsistent with a binding contract formed at an earlier time. In lengthy negotiations, it may be difficult to determine precisely when an offer and acceptance were made. The court must look to the whole of the negotiations and determine whether the parties had reached an agreement. If they did, continued negotiations will not normally affect the existence of the contract unless the negotiations amount to an agreement to rescind the contract: *Gaukel* at para. 183.

Position of the Parties

The plaintiffs

[90] The plaintiffs claim that Ms. Liu and Ms. Wang reached an oral agreement in 2016 whereby Good Castle would provide contract management services for the construction of the Liu Property. The plaintiffs say that the terms of the agreement included that Ms. Liu would pay Good Castle a management fee consisting of a percentage of the total construction budget of \$1.6 million (the “Management Fee”). They assert that the exact amount of the Management Fee would be agreed upon at a later date and was payable on completion of the Liu Property. They claim the project was completed in September 2018.

[91] The plaintiffs assert that on September 24, 2018, the parties agreed that the Management Fee would consist of 7% of the original construction budget of \$1.6 million, for a total amount of \$112,000.

[92] The plaintiffs agree that the sum of \$59,455.77 was paid by Ms. Liu to Good Castle towards the Management Fee. They claim the remaining amount owed is \$52,544.23. Since September 2018, various demands for payment were made.

The defendant

[93] Ms. Liu’s position is that while Ms. Wang did provide some services, there never was an agreement as to the amount, either as a percentage of the construction budget or as a set fee. Ms. Liu claims that she could decide the amount to pay Ms. Wang, and that Ms. Wang never communicated a specific amount. Ms. Liu agrees that Ms. Wang provided help, but only as a friend, and that she voluntarily paid Ms. Wang to show her appreciation.

Relevant Evidence

[94] The parties appear to agree that Ms. Wang provided some services to Ms. Liu in the construction of the Liu Property. Ms. Wang testified that she did not have a written contract with Ms. Liu because they were friends. The main dispute is what

agreement, if any, was reached for the compensation of Ms. Wang's and Good Castle's services.

[95] It is unfortunate that these parties did not enter into a written agreement. If they had, this dispute would likely be unnecessary. I accept Ms. Liu's submission that there should always be a formal written contract to provide construction management services. However, she also bears some responsibility for not insisting on a written contract. This case is an example of what happens when friends provides services but fail to properly write out a contract.

[96] Ms. Wang's evidence was that in 2015, the parties entered into discussions about Ms. Wang providing construction management services for the construction of the Liu Property. The discussions are confirmed in WeChat messages sent on November 10, 2015. Ms. Liu decided to proceed with the construction on January 24, 2016. This was set out in a WeChat message from Ms. Liu to Ms. Wang:

KL: My son and I both agree to have our West Vancouver house remodeled. You can just get the ball rolling as to how we go about it.

[97] Ms. Wang testified that they discussed the services to be provided. She says that she was to deal with the overall organization from the very beginning up to obtaining the occupancy permit. The beginning was the arrangement for a topographical survey on the Liu Property and the obtaining of a building permit. By the end of January 2016, the topographical surveyors had already begun work on the Liu Property. The next services were submitting the package to obtain the building permit from the District of West Vancouver (the "District"). The building permit application form was filed on June 13, 2016 and signed by Ms. Wang, with Good Castle named as the contractor.

[98] At the beginning of September 2016, the construction project was in the "preconstruction" phase and Ms. Wang sent to Ms. Liu a budget sheet for the construction of the Liu Property. The budget item for construction management services was \$100,000. This budget was not produced at the trial by either party.

[99] Ms. Wang testified that the services provided included obtaining the necessary permits, making referrals for all consultants, sourcing materials and the trades, supervising during the construction period, producing and overseeing the budget, and being involved in all of the engineering and government inspections to ensure that the house could get the “2-5-10” year warranty. Ms. Liu disputes that Ms. Wang carried out some of the services. She says that the site supervision was done by her husband and that she and her husband were involved in negotiating with the sub-contractors on fees.

[100] Based on the evidence before me, there was an agreement reached that Ms. Wang would provide some management services for the construction of the Liu Property. Ms. Liu concedes that Good Castle was named as the contractor on the permit application and that Ms. Wang provided the names and contact information for all of the suppliers and subcontractors. There are multiple WeChat messages referencing the work being performed by Ms. Wang.

[101] It is further clear that Ms. Liu did pay Ms. Wang and Good Castle for some of the services provided.

[102] The following WeChat message exchange occurred on August 12, 2017:

KL: Thanks for persisting in the work despite illness.

EW: That’s fine

KL: I need to pay you some money.

EW: Not in a hurry.

[103] On November 10, 2017, the following WeChat message exchange took place.

Ms. Liu: I’ll give you some more money. I made some more money. [Grin] [Grin]
[Grin] [Grin]

Ms. Wang: [Grin] [Grin] You keep it.

Conclusion

[104] I accept Ms. Wang’s evidence that she was retained by Ms. Liu to carry out construction management services.

Issue 2: Are There Any Outstanding Amounts Owed by Ms. Liu to the Plaintiffs in Respect of the Construction Management Services Provided by Good Castle?

[105] The challenging aspect is determining the agreement on the payment of construction management fees.

Position of the Parties

[106] The plaintiffs' position is that the initial estimate for the fees was \$100,000, as set out in the budget, but that the amount of \$112,000 was subsequently negotiated between the parties.

[107] The defendant's position is that she only agreed to pay \$50,000 and it was up to her to determine what else she would pay. She describes it as voluntarily giving money to Ms. Wang to thank her for the help she provided.

Analysis

[108] Ms. Wang testified that the first discussion about payment for the construction management services took place on January 30, 2016, when the surveyor attended to conduct the topographical survey at the Liu Property. Ms. Wang refers to WeChat messages that took place on January 31, 2016:

KL: The surveyors were here. [Two emojis] I was still sleeping. [Two emojis] After I calculate the wages, I'll email you. Also, give me a figure for the labor costs for building the house for me. I'll have to owe it to you for two months. [Two emojis]

EW: What labor costs?

KL: For the construction work, of course.

EW: You mean the designing fees and construction costs?

KL: [Voice Message] Nope. Have to, have to, have to give you, the big supervisor the money for your work. The work has already started. The surveyors are already here.

EW: For my management fees, it'll be fine even if you don't pay until 6 months later! Hehe

EW: [Voice Message] No need for the supervisor. It'll be OK to delay it for the supervisor for six months. It doesn't matter.

EW: Wait till the day the supervisor is totally broke, the [I] will ask you for it.

[109] Ms. Wang testified that she was “just joking” when she said she was in no rush and to wait until she was broke.

[110] Ms. Liu says she paid approximately \$50,000 and that paying more was at her discretion.

[111] Ms. Wang says that ultimately the parties agreed that the amount should be fixed at 7% of the budget of \$1.6 million for the construction of the Liu Property. This amounts to \$112,000.

[112] There are three options:

1. The parties agreed the amount would be \$50,000 for the construction management fees with the option of Ms. Liu paying more at her sole discretion.
2. The parties agreed the amount would be \$100,000 for the construction management fees.
3. The parties agreed the amount would be \$112,000 for the construction management fees.

[113] The evidence in support of the \$50,000 fee comes from two potential sources. First, Ms. Liu testified that her previous employer, Atti Group, offered to charge \$50,000 to provide construction management. She decided not to go with that company since they built luxury homes and she felt their supplies and sub-trades would be too expensive.

[114] Second, as noted, there was some discrepancy in the translation of a WeChat message dated September 19, 2016. Ms. Liu claims that what she meant in the WeChat was that she would pay \$50,000 plus GST or \$50,000 cash. However, I have concluded that when one reads the whole of the WeChat message, it is clear that Ms. Liu is talking about paying in phases and not referring to one payment of \$50,000. I accept the evidence of Mr. Fu that one cannot interpret this message with an “or” being inserted.

[115] The evidence in support of the \$100,000 fee is that at some time before the WeChat message of September 19, 2016, Ms. Wang prepared and sent a budget to Ms. Liu. The budget was not produced by either party in this action, but both Ms. Wang and Ms. Liu confirm that the amount set out in the budget was \$100,000 for management fees.

[116] It is my view that the WeChat message of September 19, 2016 further support that the \$100,000 fee, as reflected in the budget, was to be made in phases with two payments of \$50,000. The issue being addressed in the WeChat messages was whether some of the \$100,000 would be paid in cash, so as to avoid the payment of GST. This WeChat does not support a \$50,000 fee. Rather, it supports a \$100,000 fee.

[117] Further more, a WeChat message of September 24, 2018 appears to reference the \$100,000 fee. Ms. Liu states (in part):

KL: [...] I remember that, at that time, we said that, we would build this house, then, I said, not more, not less than should be given. I said 100,000 bucks should be given. We, initially, probably decided like this [...]

[118] The evidence in support of the \$112,000 fee is Ms. Wang's evidence that she discussed with Ms. Liu that she would base the management fee on a percentage of the budget. Ms. Wang testified that the first time she mentioned a \$112,000 fee was in September 2018. Ms. Wang explained that for each project there is a budget and then a settlement of the account once the project is completed. Ms. Wang testified that the construction was completed and an occupancy permit had been issued in September 2018. In support, she relies on the following WeChat exchanges.

On September 24, 2018:

KL: [...] I mean to ask you how much money you need from your end. Please give me the amount in total. Then, I can use the North Vancouver house as security to take a small loan out [...] Then, how much more are you still owed? Then, I'll see if I can ask him to increase the amount of the loan to me.

[...]

EW: On my end, what do you think of this? We will not base the calculation on the final result, rather still on the 1.6 million as agreed in the beginning as

the base number, then, as I remembered that, at the time, Lily, the person we went to, said 6%. Then, if we had gone to Fucheng, it would have been 8%. Lily had no licence or anything like that. Anyways, can you make 7% when you calculate this for me? Would you feel OK with this? If you feel it's too expensive, we can discuss about it further. I am agreeable either way...Please let me know if this is OK.

[...]

KL: [...] I remember that, at that time, we said that, we would build this house, then, I said, not more, not less than should be given. I said 100,000 bucks should be given. We, initially, probably decided like this [...]

[...]

KL: That's why, at the time, when you said to me that it was too expensive, I did not explain in detail these things to you, because more explanations would make it more confusing. That's why I just want to talk to you about these things now. At the moment, my situation is quite troublesome. It's just that the money cannot be withdrawn. So what I can do is try my best to figure out a way. Because as a friend, I always try my best to be more considerable towards a friend from my perspective. I did not have to make money off you or anything like that, I meant to say that 7% would mean one hundred and twelve thousand. No problem. I am OK either way. I will have the small loan person over at my home tomorrow and talk about this matter.

[...]

KL: [...] And, tomorrow, I will ask that kid to come over, then, to see if some moneys can be taken out on the North Vancouver, or on the current, our newly built house here, because its value has now increased, has gone up, I then will pay up all the balance of the payment, and include your part.

On June 19, 2019:

EW: Liu Jun, I am very sympathetic to your situation. That's why I did not confront you regarding how much money you have paid me up to the completion of the project. We negotiated that my remuneration would be calculated at 7% on 1.6 million, totalling 112 K. I also agreed to honor your referral fees. This was what we agreed on at your home when the project was completed. You have paid 50 K to me.

And on July 7, 2019:

EW: My pay is 112,000. You have paid 10,000 three times and 20,000 once.

[119] The following invoices were issued by Good Castle to Ms. Liu:

- 1) Invoice dated September 20, 2016 for Pre-Construction Phase service fee of \$10,000 + GST 5%, Total: \$10,500.00

- 2) Invoice dated April 11, 2018 for Construction Management Service \$20,000, GST \$1,000, Total: \$21,000

[120] Ms. Liu agrees she made the following payments by cheques towards the management fee:

- 1) A cheque of \$10,500 dated September 19, 2016;
- 2) A cheque of \$10,500 dated May 20, 2017; and
- 3) A cheque of \$10,500 dated September 30, 2017.

[121] Ms. Wang testified that in April 2018, Ms. Liu had just come back from a vacation and she had run out of cheques. Ms. Wang was given a bank draft for \$150,000 dated April 5, 2018 to pay some of the subcontractors. Good Castle then issued cheques to four subtrades for a total of \$128,044.23. This left the sum of \$21,955.77 which Good Castle kept towards the management fee.

[122] The parties disagree with whether a \$6,000 cash payment was made in February 2018. Ms. Wang says she received a payment of \$6,000 in cash from Ms. Liu for management services. There is a receipt that Ms. Wang provided to Ms. Liu that reads: "Received 2010 Queens Ave MGMT fee \$6,000 cash on Feb. 22, 2018." signed by Ms. Wang. Ms. Wang testified that she wrote out this receipt and then took a picture of it, and sent a copy of it to Ms. Liu via WeChat on February 23, 2018.

[123] Ms. Liu claims that the \$6,000 in cash was never exchanged. She says that the \$6,000 referenced is a referral fee Ms. Wang owed Ms. Liu for referring Mr. Xu to her, and that the \$6,000 is 10% of the \$60,000 construction management fee Ms. Wang had collected from Mr. Xu for the construction of 1497 Queens Ave. Ms. Liu testified that she told Ms. Wang to keep the money and to put it towards other funds Ms. Liu owed her, as not to have money unnecessarily transferred back and forth between them.

[124] I reject Ms. Liu's evidence. The receipt is clear and a copy of the receipt was sent by WeChat to Ms. Liu on February 23, 2018, which appears in the Extracted

WeChat Thread. Ms. Liu did not dispute at the time that it was paid towards the management fees owed for 2010 Queen Ave, nor did she seek to cross-examine Ms. Wang on this.

[125] Ms. Liu's payments to Ms. Wang add up to \$59,455.77, which is more than what Ms. Liu says she was obliged to pay. This further supports that the amount owed for management fees was more than \$50,000.

[126] Ms. Wang testified that from April to September 2018, she provided further services to the construction of the Liu Property, consisting of the interior and exterior finishing. She continued to refer different trades, source materials and supervise the work. This continued until the final inspection in September 2018. The District did the final inspection and an occupancy permit was issued by the District on September 13, 2018.

[127] The plaintiffs claim that the amount owing for the construction management fees is \$112,000 minus the payments made of \$59,455.77, for an outstanding amount of \$52,544.23.

[128] The defendant says she owes no further funds. In her closing, she described Ms. Wang as an "effortless bystander" who did nothing to control the costs of the project as the project manager.

Conclusion

[129] I find on the evidence before me that the parties initially discussed a payment of \$100,000, as reflected in the budget that was provided in September 2016, but later agreed to a fee of \$112,000 once the construction had been completed. This agreement is clear in the WeChat messages. There is no WeChat message from Ms. Liu denying that such an agreement was reached. Rather, Ms. Liu states on September 24, 2018: "[...], I meant to say that 7% would mean one hundred and twelve thousand. No problem. I am OK either way." This is a confirmation of the agreement that was ultimately reached. I reject Ms. Liu's evidence that she was "forced" to give this answer since the project was not finished.

[130] As of September 2018, there may have been some unfinished items, but there is no evidence that Ms. Liu was under any duress to provide the answer she did. Ms. Wang had left open the opportunity for Ms. Liu to negotiate a different amount. There is nothing in Ms. Wang's words that suggest that she was pressuring Ms. Liu. The opposite is true as Ms. Wang stated: "Would you feel OK with this? If you feel it's too expensive, we can discuss about it further. I am agreeable either way [...] Please let me know if this is OK."

[131] There is no merit in Ms. Liu's submission that she was in some fashion forced or coerced to accept the \$112,000 amount.

[132] I find that the agreed amount to be paid for the construction management fee was \$112,000. The amount that remains owed by Ms. Liu to the plaintiffs is \$52,544.23.

Issue 3: Is Ms. Wang and/or Good Castle Liable to Ms. Liu for any of the Amounts Claimed in the Counterclaim?

[133] The thrust of the counterclaim is that Ms. Liu has not been paid for a number of bookkeeping services she provided to Ms. Wang and Good Castle. She further claims that certain work done in the Liu Property was not as promised. She seeks judgment in the amount of \$337,600 for these services in her counterclaim.

[134] Ms. Wang testified that she agreed that Ms. Liu could offset amounts owing to Good Castle by amounts Ms. Wang had promised to pay Ms. Liu. She testified that if she promised to pay certain amounts, then she would acknowledge them and would pay them.

[135] The various services, expenses, and costs Ms. Liu claims are as follows:

- 1) Commission for Ms. Liu acting as the buyer's agent for locating land for Ms. Wang in West Vancouver in the amount of \$62,000, reduced to \$48,070 plus GST, for a total of \$50,473.50.
- 2) Outstanding invoices owed to Ms. Liu for bookkeeping services performed for Good Castle and Sunnymead in the amount of \$12,600 plus GST, for a total of \$13,230.

- 3) Commission for referrals of clients to Ms. Wang of approximately \$80,000.
- 4) After the final inspection by the District, the cost to re-draw plans and to renovate the Liu Property in accordance with the District's requirements in the amount of \$92,414.48 plus GST, for a total of \$96,914.48.
- 5) An outstanding invoice owed to Ms. Liu for research for a construction site in the 1400-1500 block of Marine Drive, in the amount of \$3,000 plus GST, for a total of \$3,150.
- 6) The cost to replace all the cabinets in the Liu Property with wood cabinets as allegedly promised of \$69,800 plus GST, for a total of \$78,176 .

[136] Ms. Liu further alleges in the counterclaim that, as a result of Ms. Wang's actions, she became depressed and had to take medication for depression. In her closing submissions, she asserts that she is no longer able to do the previous "high-intensity" accounting work and as a result has lost income. She has quantified her previous earnings at \$72,800 per year. She says she can only work part-time now, and thus quantifies her lost income at \$36,400 per year until her retirement in 14 years, totaling \$509,600.

[137] The plaintiffs raised a variety of defences from a lack of any contract, to technical defences that the party who suffered the loss has not sued, and limitation defences.

Analysis

[138] I will deal with each claim on an individual basis.

Claim for commission

[139] Ms. Liu claims that Ms. Wang asked her to look for property in West Vancouver with a view. She agrees there was no written agreement entered into. She relies on one of the Disputed WeChat Messages, as well as other WeChat messages between April 6 and 16, 2017, in which Ms. Liu provides information to Ms. Wang about various homes for sale in West Vancouver. Her belief was that Ms. Wang was going to use her exclusively to locate a property since she was

familiar with West Vancouver. There are no WeChat messages that support such a proposition.

[140] Ms. Liu relies on WeChat messages from June 23, 2017 to support that Ms. Wang promised to compensate her. The WeChat messages are:

EW: The seller's realtor promised to cut the price and charge less commission on the condition that I hire him as my realtor, so he does not need to share money with others.

EW: I owe you this time. I can only make it up later [Hug][Hug]

[141] Ms. Liu testified that Ms. Wang went behind her back and purchased 1765 on May 12, 2017 for \$4 million. Ms. Liu relies on the listing that sets out the commission of "3.22% FIRST \$100,000 & 1.15% BAL". She calculates that she is entitled to \$48,070. Ms. Liu confirmed that she understood that Ms. Wang had already paid commission to the seller's agent. She further testified that she was aware that the commission was owing as of June 2017 when the property was purchased.

[142] Ms. Wang testified that she verbally entered into an agreement with Ms. Liu to use her as a realtor to look for properties. She did not agree to pay Ms. Liu for these services. She asked for Ms. Liu to look for a property or land in West Vancouver that had an ocean view and was priced at less than \$3 million.

[143] Ms. Wang says that she also asked for other realtors to look for properties as well. Ms. Wang was not cross-examined on this evidence.

[144] Ms. Wang testified that she discovered 1765, which she purchased in June 2017, while driving in the area and saw the for sale sign. She contacted the realtor who was asking \$4.5 or 4.6 million. She attended at the realtor's home with her business partner and was able to negotiate the price with the realtor. These negotiations took place when Ms. Liu was not in BC. The price was negotiated down to \$4 million on the condition that another realtor from the same real estate office act as Ms. Wang's realtor.

[145] Ms. Wang claims that the limitation period for making a claim for a real estate commission allegedly owed in June 2017 has expired. The claim is covered by the two-year limitation period which expired in June 2019. The counterclaim was filed on September 25, 2020.

[146] On the evidence before me, I am not persuaded that Ms. Liu has established that she had an exclusive agreement with Ms. Wang to find a house in West Vancouver for her. There is conflicting evidence on who found the property. Even if Ms. Liu had a claim for a commission, the limitation period for bringing a claim is two years from the date the claim was discovered: *Limitation Act*, S.B.C. 2012, c. 13, s. 6. Ms. Liu testified that she was aware of the purchase price as of June 22, 2017. This is confirmed in the WeChat message of June 23, 2017. I accept that the limitation period expired on June 22, 2019.

Outstanding bookkeeping invoices

[147] Ms. Liu claims that she was engaged to do bookkeeping work for Good Castle in 2017 and 2018, rendered invoices, and that the invoices were not paid.

[148] Ms. Liu, through her 096 company, rendered invoices on February 28, 2017 and February 28, 2018, for \$2,000 each plus GST for a total outstanding amount of \$4,200.

[149] Ms. Wang does not dispute that Ms. Liu provided bookkeeping services for Good Castle. She agreed that Ms. Liu did accounting work for Good Castle and Sunnymead. Ms. Wang testified that she had not seen the invoices from Good Castle for the bookkeeping services rendered. This appears to be her explanation as to why these amounts were not paid. Although, on July 5, 2017, Ms. Wang sent a WeChat to Ms. Liu stating: "The good castle hasn't paid you yet". Ms. Wang also asked in a WeChat message on July 7, 2019: "Please send me the invoice for the company's accounting".

[150] I find that Ms. Liu did provide the bookkeeping services and Good Castle is obliged to pay her for the bookkeeping services provided. However, two defences were raised by Ms. Wang.

[151] The first is that the services provided were provided by the 096 company, which is not a party to this litigation. As such, Ms. Liu cannot advance a claim in her personal capacity for monies owing to her professional corporation. The second defence is that any debt claim arising from the non-payment of bookkeeping fees expired on February 2020, just prior to the suspension of the limitation periods due to the COVID-19 pandemic in March 2020. I accept the two defences result in the failure of this claim.

[152] Ms. Liu also produced three invoices issued by the 096 company to Sunnymead for services relating to setting up the company, assisting with training of accounting staff, the preparation of tax returns, and other services for a total of \$9,030, including GST. Ms. Wang provided no explanation on why these invoices remained unpaid.

[153] Unfortunately, as with the bookkeeping services provided to Good Castle, in this action, there is a legal hurdle in awarding this sum of money to Ms. Liu. Neither Sunnymead, nor the 096 company, are parties to this proceeding and, as such, there is no legal basis to award money to 096 Company.

[154] Accordingly, there is no award made for any of the accounting fees. However, I do point out to Ms. Wang that if Good Castle and Sunnymead received the benefits of accounting work done by Ms. Liu, the companies should be paying for those services.

Commission on referral of clients

[155] Ms. Liu claims that there was an arrangement with Ms. Wang that if she referred a client to Ms. Wang and that client proceeded to retain Ms. Wang as the construction manager, then Ms. Liu would be paid a commission. She claims that

Ms. Wang said she never charges less than 10% for her work as a construction manager.

[156] Ms. Liu's evidence varied on the terms of this agreement. She initially claimed the parties agreed that the commission would be 10% of the construction management fee that Ms. Wang received from each referred client. Later in her evidence, she added that she would get the commission regardless of whether Ms. Wang was paid her fee.

[157] Ms. Wang disputes that there was any type of commission arrangement. Ms. Wang testified that she never agreed to pay a 10% referral fee, nor any specific amount, for clients referred to her by Ms. Liu. She testified that she did not agree that Ms. Liu had referred clients to her. Although she did concede that there was one client that was referred to her by Ms. Liu, someone by the last name of Jia. Ms. Wang does acknowledge in the following WeChat messages that Ms. Liu made referrals:

On November 29, 2016 at 23:52:22:

KL: This is the WeChat account of the woman who wants to build a house, and her name is Yahui.

EW: Thanks.

On May 21, 2017 at 11:33:27:

EW: [...] I don't know how to thank you for referring so many customers to me.

On May 21, 2017 at 02:40:35:

KL: Yesterday Zou said that you got in touch with Yahui. She needs to buy more land to build a house, and I can help her buy land.

EW: Yes, this person contacted me two months ago. She is not an immigrant. She said she has to pay 15% tax.

EW: I was confused at the time. How did someone I didn't know find me [Grin] [Grin] Thank you!

On September 5, 2018 at 05:15:27:

EW: Someone will come at 12:30 noon tomorrow, who was also introduced by you.

KL: Is it the same person?

EW: Her husband's surname is Jia.

LK: Then it's not the same person.

EW: You also referred this person by the surname Jia. His wife is a realtor and works in the same company as you.

LK: It's the same group of people. Two of them want to build houses.

EW: Okay.

On June 19, 2019 at 12:05:41:

EW: Since you want to settle it so desperately, it is okay. I will fulfill all my promises for the clients you referred and give a commission to you. Please list the customers you referred and how you calculated the amount, and let's see how many there are, and it's not too late to say who owes whom.

On June 19, 2019 at 15:28:53:

EW: [...] I also agreed to honor your referral fees. This was what we agreed on at your home when the project was completed. [...]

June 19, 2019 at 15:34:06:

EW: In respect to the referral fees, the statement "all clients in West Vancouver were referred by me" is not true. Lao [Lao means old.] Xu was indeed referred by you. I will make good on that promise. I asked Shirley and she said that it was Yahui who referred her to me. [...] If there were referral fees in Shirley's case, I should pay it to Yahui because it was Yahui who made the referral. If Yahui is willing to give it all to you or give part of it to you, that will be a matter between the two of you. As to Yin Jie [Jie means older sister], Xiao [Xiao means Young] Shan and Lao [Lao means old.] Shu in North Vancouver, all these cases are at the designing stage and none of the construction work has been started yet. Not sure if they would be started and when they would be started. I do not have income yet. What can I use to prepay you your referral fees? It's just like if there is someone who refers 100 clients for insurance to you, but none of them purchased insurance from you yet, would you give the person who made the referrals 10 million as referral fee in advance, would you do that? So, your treating me this way is improper. [...]

KL: Shirley's is what I told Yahui. We can confront each other. Isn't the referral fee for these two houses tens of thousands of dollars? I have said

many times, based on you, that your company has not paid fees for two years, and neither has the company you opened in West Vancouver. [...]

EW: Adding up the referral fee plus my service fees, how much money do I owe you?

KL: You do the math for me too.

On July 19, 2019 at 07:34:41:

KL: Please settle my pay and Xu's referral fee as well

[158] Mr. Xu testified and was asked how he knew Ms. Wang. He explained that he obtained the name of Ms. Wang's company from a person who owned a house next to him and who wanted to build a new house. The two of them went to the office of Sunnymead and that is where he met Ms. Wang. He then showed Ms. Wang's business card to an acquaintance who gave Ms. Wang a positive reference. This evidence conflicts with the evidence of Ms. Liu that she was the one that made the referral.

[159] Ms. Wang agreed that she did promise to pay a referral fee to Ms. Liu for the referral of Mr. Xu, but that after sending the WeChat message on June 19, 2019 her understanding changed. Ms. Wang testified that she found out from Mr. Xu it was not Ms. Liu who referred him.

[160] It is clear Ms. Wang did promise to Ms. Liu to pay her a commission for the referrals of clients. The challenge is determining which clients were referred and what the commission should be for each. Ms. Liu presented a schedule listing the names of the individuals she referred to Ms. Wang and her estimates of how much she says is owed. In her closing submissions, she provided a revised schedule which provides:

Name of client	Project Address	Data from Wang's office's computer	Wang's Service Fee	Commission should paid to Liu	
Shan, Xue Jun	308 Menzies Street, Victoria, BC	425,497.05	42,549.71	4,254.97	Exhibit 58

Shan, Xue Jun	299 28 th Street, West Vancouver, BC V7V 1L9	1,094,331.40	109,433.14	10,943.31	Exhibit 59
Shan, Xue Jun	1416 Chartwelll Drive, West Vancouver, BC V7S 2S1	1,954,086.26	50,000.00	5,000.00	Exhibit 60
Xu, Zhi Qing	1497 Queens Avenue, West Vancouver, BC V7T 2J1	1,999,111.26	199,911.13	19,991.11	No argument
Xue, Li/Hui, Ya	2276 Lawson Avenue, West Vancouver, BC V7V 2E4	1,265,801.43	126,580.14	12,658.01	Exhibit 61
Li, Yu Dan	7310 Fredrick Ave, Burnaby BC V5J 3Y2	1,390,223.92	139,022.39	13,902.24	Exhibit 62
Yin, Chang Hong	North Vancouver heritage house	10,000.00	1,000.00	100.00	No argument
Shu, Xinsheng	2520 Westhill Dr, West Vancouver BC V7S 2Z5	20,000.00	2,000.00	200.00	No argument
			670,496.51	<u>67,049.65</u>	
			GST 5%	<u>3,352.48</u>	
				<u>70,402.13</u>	

[161] Ms. Liu testified that the information listed under “Data from Wang’s office’s computer” are the budgets of each project, which she obtained from the budget sheets she took from the front desk computer at Sunnymead. I discussed these documents above and have found that the budget sheets are not reliable evidence.

[162] Mr. Xu testified that Ms. Wang provided construction management services for the construction of his house at 1497 Queens Ave. He was not asked how much he paid for this service.

[163] Ms. Wang testified that it was Shirley Li, whose Chinese name is Xue Li, who first introduced her to Ya Hui. Ms. Wang does concede that “maybe later on” Ms. Liu introduced Ya Hui to her. Ms. Wang agreed that Ms. Liu shared Ya Hui’s WeChat account with her.

[164] Ms. Wang testified that Ms. Liu did not refer Ping Gao and Xue Li to her. She remembers that a Chinese male referred one of these individuals to her, and cannot remember who referred the other. She conceded that they came to view the Liu Property and afterwards they had a meal together.

[165] Mr. Shan testified that he was introduced to Ms. Wang by Ms. Liu for the purpose of building a house. He agreed that he went to South Surrey to Ms. Wang’s house and that he first met with Ms. Wang in 2015 or 2016. He agreed that after the introduction was made, Ms. Wang was involved in the construction of a gas station and the renovation of a property at 299 28th Street in West Vancouver.

[166] I note that the amounts in the schedules prepared by Ms. Liu contradict the contracts that she adduced into evidence. For example, in the contract documents, Ms. Wang agreed to charge Yue Li a flat fee of \$80,000 plus GST for construction management services for 2276 Lawson Ave. Ms. Liu’s original schedule listed the management fee as \$126,580.14. Ms. Liu agrees she does not know if that is what was paid, or whether there was a cash payment in addition to the contract amount.

[167] Ms. Liu conceded that there were errors in her schedule and submitted a revised schedule in her closing submissions; however, the revised schedule continues to list Ms. Wang’s construction management fee for Xue Li’s home as \$126,580.14. I do not accept the reliability of the schedule prepared by Ms. Liu.

[168] On the evidence before me, I am unable to calculate the appropriate amount of commission that is owed by Ms. Wang to Ms. Liu for any referrals. I am also not able to determine if the parties ever agreed to a percentage for the referral.

[169] The onus was on Ms. Liu to establish the evidence to support this claim. Unfortunately, on the evidence presented I am not able to determine which clients

were referred, except for Mr. Shan who testified he was. Further, I am unable to determine what amount Ms. Liu was to be paid for each referral.

[170] Accordingly, I award nothing for the claim for referral fees.

Costs relating to the Liu Property

[171] Ms. Liu claims that after the final inspection of the Liu Property conducted on July 29, 2019, someone, she alleges it was Ms. Wang, phoned the District reporting a bylaw contravention. Ms. Wang denies that she did. As a result, the District conducted further inspection and ultimately required further plans drafted and work done. Ms. Wang testified that she had nothing to do with any plans that were redrawn for the Liu Property.

[172] Ms. Liu testified that the bylaw contravention that the District discovered occurred before the final inspection. She claims that she was required to get a building permit to correct all of the unauthorized work. Ms. Liu produced in support a letter from the District dated April 21, 2021 which states:

Further to our letter dated February 25, 2021, regarding work completed at this address without the required permits, your property remains in non-compliance with the West Vancouver *Building Bylaw No. 4400, 2004*.

In an email from you dated March 11, 2021 you stated that the “final inspection has the same structure as the current”, as per the building inspection conducted July 29, 2019, the District confirmed the structure has been altered and the property is in contravention. ...

You are required to obtain any required permits and correct the unpermitted work by **March 11, 2021**. To date no permit has been obtained. ...

You are required [to] obtain a building permit and correct all unauthorized construction work.

[173] It appears from Ms. Liu’s evidence that she wanted to add a secondary suite on the Liu Property.

[174] Based on the evidence presented by Ms. Liu, the work that was done in non-compliance with the bylaws was performed after the final building inspection was conducted. I see no basis for any claim against Ms. Wang and Good Castle for this issue.

Research fee

[175] Ms. Liu testified that Ms. Wang asked her to carry out research on properties located between the 1400 to 1500 block of Marine Drive in West Vancouver. She says it was agreed that Ms. Wang would pay for this research. Ms. Liu testified that she did the following:

- Researched the titles to the properties;
- Researched the companies registers to determine the names of the directors and shareholders of the companies;
- Wrote letters to the directors of the companies; and
- Made appointments and talked to the various owners.

[176] On February 8, 2018, Ms. Liu provided an invoice to Good Castle in the amount of \$3,000 plus GST for a total of \$3,150. The invoice was delivered in July 2018. Ms. Wang agrees that some information was provided, but denies that she requested it or agreed to pay for the research.

[177] Ms. Liu reported the results of her search to Ms. Wang in a WeChat message dated February 9, 2018, confirming that she had carried out a title search on all six properties and that she would be doing a search for the addresses of each holding company's shareholders and sending them letters. Ms. Liu further contacted a number of the owners to discuss if they were willing to sell.

[178] I am satisfied that Ms. Liu was asked by Ms. Wang to carry out the research, but there was no agreement on the hourly rate, a budget, and no detail on the invoice on how much time was spent. Ms. Liu explained the invoice included the various expenses incurred. At no time did Ms. Wang contest the amount in this invoice or ask for further particulars. I do accept that this amount should be paid. Due to the suspension of limitation periods due to the COVID-19 pandemic, the limitation period on this claim was not expired when Ms. Liu brought her counter claim. I am persuaded Good Castle owes Ms. Liu \$3,150 for the services she provided.

Replacement of cabinets

[179] Ms. Wang confirmed that she referred the cabinet maker to Ms. Liu. Ms. Liu claims that she was promised that all the cabinets would be solid wood but, that instead, they were made of “paper fibre”. She claims that she will need to replace all of the cabinets in order to resell the house. She has not carried out that work. She initially claimed the costs would be \$100,000, but reduced the expense to \$69,800 plus GST in her closing submissions. There was no evidence provided on how this figure was arrived at.

[180] The specifications for the cabinets was not produced at trial. Ms. Liu made a complaint about the cabinets in a WeChat message dated November 23, 2018 at 08:42:08 to Ms. Wang which reads:

KL: Today, a group of people who know how to build a house came and said that the cabinets made too much money and the quality of these kinds of cabinets was extremely poor.

[181] Ms. Wang responded the same day at 09:56:55 with:

EW: The manufacturer who made the cabinets for us also made them for my own house and several other projects. The quality is outstanding, and the price is reasonable. The owner of the factory is also very experienced.

[182] Ms. Wang testified that the body of the kitchen cabinets were made of plywood and the doors made of a material called “MDF”, topped with a plastic poly and painted to leave a smooth and shiny finish. The other cabinet doors were made of hardwood. I am not persuaded that the specifications for the cabinets in the Liu Property required that all of the cabinets be solid wood. Ms. Liu has produced no evidence in support of what the specifications called for.

[183] My understanding is that Ms. Wang simply made the referral. If the cabinet maker was contracted to provide solid wood cabinets but did not, that is an issue Ms. Liu ought to have raised with the cabinet maker.

[184] I see no basis in making an award against Good Castle for the failure to provide solid wood cabinets.

Claim for lost wages

[185] The final issue is that Ms. Liu claims that as a result of the actions of Ms. Wang she has become depressed, needs to take medication, and is unable to work at the same type of jobs.

[186] In essence, Ms. Liu is making a claim of the intentional infliction of mental suffering. The elements of the tort of intentional infliction of mental suffering are: (a) flagrant or outrageous conduct; (b) that is calculated to produce harm; and (c) results in a visible and provable illness: *Universe v. Fraser Health Authority*, 2019 BCCA 234 at para. 23.

[187] I am not persuaded that Ms. Liu has proven these elements. There was no flagrant or outrageous conduct on behalf of Ms. Wang that was calculated to produce harm. There was some testimony by Ms. Liu that she has suffered from depression and for a period of time was admitted to a hospital for psychiatric treatment. There was no medical evidence tendered.

[188] Ms. Liu also complains that the various applications the plaintiffs brought against her in this action caused her mental suffering. I accept that being involved in this litigation and having to deal with the various applications sought would be stressful and distressing. However, there is no claim that can be advanced for the stress caused by being sued: *Grifone v. Moline and Moline*, 2005 BCSC 126 at para. 25. I have found that Ms. Liu owed money to the plaintiffs, which supports that the litigation was necessary for the plaintiffs to recover what was owed. I reject any suggestion that counsel acted in any inappropriate fashion in bringing the applications they brought.

[189] I would dismiss this claim.

Conclusion

[190] I find that the amount that Ms. Liu has proven Good Castle and Ms. Wang owe her is \$3,150 for the research she provided. I find that she is entitled to set-off

this amount from the amount she owes for the outstanding management fees, being \$52,544.23.

[191] The result is that Ms. Liu owes Ms. Wang and Good Castle the sum of \$49,394.23.

Issue 4: Whether There is a Defamation Claim by Either Party?

Legal Principles

[192] To obtain judgment in a defamation action, the plaintiff must prove three things: (i) that the impugned words were defamatory; (ii) that they referred to the plaintiff; and (iii) that they were published, meaning that they were communicated to at least one other person. Where the plaintiff establishes these elements, falsity and damage are presumed and the onus shifts to the defendant to advance a defence in order to escape liability. Defamation is a tort of strict liability, therefore, it is unnecessary to prove that the defendant was careless or intended to cause harm: *Lu v. Shen*, 2020 BCSC 490 at para. 174.

[193] Words that tend to lower the plaintiff's reputation in the eyes of a reasonable person are defamatory. The central question is whether the meaning conveyed by the impugned words genuinely threatened the plaintiff's actual reputation. A plaintiff must show that the alleged defamatory words lowered her reputation in the estimation of right-thinking members of society generally, or exposed her to hatred, contempt or ridicule: *Lu* at para. 175.

[194] Where a plaintiff is not specifically named, the question is whether the statements would lead reasonable people who know the plaintiff to conclude that they refer to the plaintiff: *Lu* at para. 181.

[195] Ms. Liu referred me to *Zhao v. Corus Entertainment Inc.*, 2021 BCCA 385, a decision which involved an application by the respondents in our Court of Appeal seeking security for costs and other ancillary relief. I have read that decision and it is not clear to me what relevance it has to the issues before me. I also reviewed the chambers decision indexed at 2020 BCSC 1533, which provided a helpful summary

of the law on the tort of defamation and the various available defences. I quote as follows on the defence of justification, which is the only defence raised by Ms. Liu:

[78] The elements of the defence of “justification” were conveniently summarised by Adair J. in *Casses [v. Canadian Broadcasting Corporation]*, 2015 BCSC 2150] at para. 550 as follows:

[550] Justification is an absolute defence to defamation. It applies to statements of fact. It will succeed if the defendant proves, on a balance of probabilities, the truth of what is alleged to be defamatory. However, what is required to be proven is not the truth of each and every word or the literal truth of the statement. Rather, a defendant must only prove on a balance of probabilities that the gist or sting of the defamation was true, and it is sufficient if the defendant proves that a defamatory expression was substantially true. Minor inaccuracies do not preclude a defence of justification so long as the publication conveyed an accurate impression. The test is whether the defamatory expression, as published, would have a different effect on a reader or listener than what the pleaded truth would have produced. ...

[79] The elements of the defence were also summarised conveniently by Funt J. in *Taseko [Mines Limited v. Western Canada Wilderness Committee]*, 2016 BCSC 109] at paras. 20–23, as follows:

[20] A complete defence to a defamation claim is justification (truth). The meaning of the words (or expression) must be true or substantially true in order for the defence to succeed.

...

[22] Raymond E. Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2nd ed. (Toronto: Carswell, 1999) (loose-leaf updated 2013, release 1) vol. 3 describes the substantially true test (at 10-45 to 10-48):

Substantial truth is the test. “An allegedly defamatory statement is not actionable if it is substantially true”. “It is sufficient if the substance of the allegation is justified.” The defence applies if the words are true in substance and in fact. If the defence is pleaded to multiple imputations, the court must consider whether the evidence is sufficient to prove that each of the imputations is substantially true.

“A statement is substantially true where the alleged defamatory statement is no more ignominious in the mind of the average listener than a true statement would have been.” Minor inaccuracies are acceptable and will be ignored. The literal truth of the precise statement made does not have to be shown. The law “overlooks minor inaccuracies and concentrates upon substantial truth.” The test is substantial, not literal, accuracy. “A technically false statement may nonetheless be considered substantially true if, viewed

‘through the eyes of the average reader,’ it differs from the truth ‘only in insignificant details.’” If the defamatory charge is true in substance, it is immaterial that there are slight inaccuracies in the details of the expression, or with respect to secondary items of importance.

If a false statement in the publication is immaterial to the gist or sting of the libel, it does not render an otherwise true statement defamatory.

And further (at 10-56 to 10-57)

The test is “whether the libel as published would have a different effect on the mind of the reader from that which the pleaded truth would have produced.” In other words, does the publication make the plaintiff significantly worse off than a literally true publication would have, or would the plaintiff have been exposed to any more opprobrium if the publication had been free from error? It must be “so misleading that it produces a different effect on a reader’s mind than would the truth”. If “the truth is so near to the facts as published that fine and shaded distinctions must be drawn and words pressed out of their ordinary usage to sustain a charge of libel, no legal harm has been done.”

[23] In short, in order for the defence of justification to succeed, the defendants must justify the sting by showing that it is true or substantially true.

Defamatory Claim by Ms. Wang

[196] The initial claim for defamation was made on behalf of Ms. Wang and Good Castle. During the closing submissions, counsel for the plaintiffs agreed that there was not evidence to support that Good Castle had suffered any damage. As such, the defamation claim was only being advanced by Ms. Wang against Ms. Liu.

[197] There is some discrepancy between the wording of the defamatory statements as alleged in the amended notice of civil claim and in the Videos and WeChat Posts. The discrepancy relating to the Videos is that at the time the notice of civil claim was filed on August 24, 2020, the plaintiffs did not have, or at least Ms. Wang did not remember she had, a copy of what was said. Plaintiffs’ counsel advised that the defamatory words in the notice of civil claim was based on an articulated student’s listening to the original Video prior to them being taken down from YouTube, and translating them into English.

[198] Ms. Wang recalled that she had made, using her cell phone, a recording of the Videos. These recordings were provided to Gerrie Ying Wagner, certified court interpreter, who translated their contents.

YouTube Video statements

[199] Ms. Wang testified that she learnt of the existence of the Videos around April 2019 when three friends and clients advised her of them. Ms. Wang says that after watching the Videos she felt shocked and embarrassed.

[200] Though Ms. Wang and Good Castle are not directly mentioned in the Videos, Ms. Wang says it would have been obvious within her community that the Videos were referring to her. In the Videos, Ms. Liu discussed the lessons she learned during her home renovation project and mentioned a “friend” assisting her. The Videos also included images of the Liu Property. Ms. Wang had brought many clients and potential clients to view the Liu Property. As such, Ms. Wang submits that it would be clear to many people that the Videos were referencing her, resulting in a significant impact to her reputation.

[201] The alleged defamatory statements the plaintiffs say are contained in the Videos in the amended notice of civil claim were reduced during the closing submissions. Ms. Wang submits that only one of the statements contained in the second video of the Videos is defamatory, being:

Near the end of the project, I got familiar with some sub-trades. Upon hearing that I was a real estate accountant, they tried to cozy up with me and asked me to refer clients to them. They also promised to pay me some kickbacks. From them, I learned that they had to pay a kickback to get a project. I told them that if they did a good job for my house, I would refer clients to them without taking any kickbacks.

[202] Ms. Wang denied ever paying kickbacks.

[203] Ms. Liu denies that she was speaking of Ms. Wang in the Videos. She testified that she was approached by the plumber and electrician who offered to pay her kickbacks if she made referrals. She was not suggesting that Ms. Wang had received any kickbacks.

[204] Mr. Xu testified that he understood that Ms. Liu was referring to Ms. Wang in the Videos, who he understood had built Ms. Liu's home. He did not completely watch the second video of the Videos as he testified his view was that it was "meaningless". He noted that it involved conflicts between Ms. Liu and Ms. Wang and that there were "rumors" surrounding how Ms. Liu's house was built.

The October 2020 WeChat Post

[205] The same issue arises with the alleged defamatory statements in the WeChat Posts. The amended notice of civil claims sets out the alleged defamatory statements, but the words are slightly different in the certified translations of the WeChat Posts. I will reference the wording in the certified translations. The alleged defamatory statement in the October WeChat Post is:

The person suing me, you are soon going to be sued [emoji], too! You cheated others for their investment, up to three hundred some thousand, putting all the costs in the books of other people's company and putting the income under yourself. Yet luckily, your partner has so much trust in you! People who work as partners with you are not easily bullied like I was! He who does unjust things is doomed to self-destruct [two emojis]!

[206] Ms. Liu admitted that she posted a picture of the cover page of the notice of civil claim that identified Ms. Wang and Good Castle as plaintiffs, and her as the defendant.

[207] The next post then includes a screenshot of a text message exchange which reads: "She moved everything out of 1381 Marine Dr". This was the address of Sunnymead's office.

[208] Ms. Wang testified that she received the October WeChat Post from Mr. Xu, a client and friend, who forwarded it to her on October 10 or 11, 2019. Mr. Xu testified that he understood that this was referring to Ms. Wang.

[209] Ms. Wang testified that she felt shocked and was concerned how her clients would think of her after reading the October WeChat Post. She denies that she cheated others out of \$300,000 and that she put costs in the books of other companies and income under herself.

[210] Ms. Liu testified that she was referring to Ms. Wang and that the contents of the message were true. She continued to assert that it stated “the truth” in her closing submissions. She argues that the person who was cheated was Mr. Shan. She bases this allegation on her review of documents on the Sunnymead front desk computer, during which she says she learnt the following:

- 1) Sunnymead paid the rent on the office at 1381 Marine Dr.;
- 2) The front desk salary was paid by Sunnymead; and
- 3) Ms. Wang said that after 2017 all business would be done by Sunnymead.

[211] In Ms. Liu’s closing submissions, she argues that it was not “moral or legal” for Ms. Wang to use the space rented by Mr. Shan and the front staff paid by Mr. Shan to do work for Good Castle and another of her companies.

[212] I note this ignores Mr. Shan’s evidence that since he was back in China for a couple of years due to the pandemic, there still needed to be done an accounting or settlement of the accounts.

[213] Ms. Liu claims the October WeChat Post was only sent to several friends who had experienced with being sued or suing.

The December 2020 WeChat Post

[214] The December WeChat Post consist of a WeChat message Ms. Liu posted on her “WeChat Moments”, which could be seen by all of her WeChat contacts, on December 19, 2020. Ms. Liu testified that she had received a text message from some unknown person which had included the name and address of Ms. Wang and Good Castle. Ms. Liu decided to redact the information that could identify Ms. Wang and her company and divide the message into two messages before posting the redacted message on her WeChat Moments. The same translation issue arises and I have referenced the certified translation which was provided at trial and not what is contained in the amended notice of civil claim. She posted the following:

Received a sensational text today. It is truly bloody. Without pixilating, it will be too close to the bone. [Two Emojis]

Vancouver's _____, (Phonetic translation _____, also known as _____) and her construction company G_____ R_____ I Estate Ltd. and her current partner _____ (Phonetic translation _____, also known as _____), Company name _____.

Drive, West Vancouver to lease office for them, hired office workers. For _____'s company _____ Construction, caused a loss of a few hundreds of thousands CAD. _____ put the undertaken project under their own company. They have committed an offence of commercial fraud. Stay away from such a deceitful contractor! Let that old bag, who is treacherously scheming other people's money, and be abandoned by her husband and son, hold in her arms [...]

[215] Ms. Liu testified that she did not know the person who sent the original message, nor where they got the information. She testified that she believed no one would know the name of the company after she redacted it, although some of the name was still visible. Again, she testified that she posted the message to several friends.

[216] Ms. Wang received a copy of the December WeChat Post from a friend of hers who was a contact with Ms. Liu on WeChat. When she read it, she was once again "very much shocked" and felt very embarrassed. Ms. Wang denies that her company caused a loss of a few hundred thousand dollars and that she committed the offence of commercial fraud.

[217] Ms. Liu maintained that the allegations were true and admitted that:

- 1) She had no idea who sent the underlying text message that she reproduced and did not know anything about the person;
- 2) She did not know what their actual knowledge of Ms. Wang was;
- 3) She did not know if the author knew Ms. Wang;
- 4) She did not know if the author had ever met Ms. Wang; and
- 5) She did not know where the author got the information in the text message.

[218] Ms. Liu testified that the reasons she published this WeChat post was because she wanted to determine if Ms. Wang was monitoring her and to make Ms. Wang upset.

[219] Mr. Xu testified that from reading the WeChat Post, he understood that they were referring to Ms. Wang, but he has no specific memory of reading them. He dismissed them as “like some type of tabloid news” that one would glance at and not remember.

Conclusion

[220] I am not persuaded that the “kickback” allegation in the second video of the Videos can be interpreted as referring to Ms. Wang. When the Videos are viewed in their whole, the predominant purpose appears to be Ms. Liu providing general information to viewers about the construction trade. Ms. Liu is clear in the Videos where she is specifically referencing the construction of her home. She does not reference her home when she says that the trades persons explained they have to pay kickbacks to get projects. Rather, she is generally communicating what the trades persons told her. I am not persuaded that the plaintiffs have met their onus of establishing that the alleged defamatory words referred to Ms. Wang.

[221] I am persuaded that words in the WeChat Posts were defamatory, referred to Ms. Wang, and were published. The evidence supports that the two WeChat posts were published in BC by Ms. Liu and read by individuals in BC.

[222] The allegations that an individual has cheated someone out of \$300,000 and has committed “commercial fraud” are serious allegations and are likely to lower Ms. Wang’s reputation in the eyes of a reasonable person. Ms. Wang is in the business of construction management, which involves an element of trust as she is responsible for handling the monies of her clients. I have no hesitation in concluding that the words used were defamatory.

[223] Ms. Liu maintained the truth of these allegations. It is her burden of proving on the balance of probabilities that each of the statements were substantially true: *G.J.V.M. v. S.L.H.*, 2014 BCSC 2044 at para. 102.

[224] The basis for Ms. Liu’s allegation that Ms. Wang was a cheat and had committed commercial fraud was that Ms. Liu believed that Ms. Wang had

wrongfully claimed the rent and salary paid to the front-line staff to Sunnymead when it should have been charged to Good Castle. Ms. Liu had no direct knowledge of what arrangement Ms. Wang had with her business partner, Mr. Shan. Mr. Shan was called as a witness by Ms. Liu and he testified that he and Ms. Wang had not yet done a verification and settlement of the business, and it had not yet been dissolved.

[225] Mr. Shan did not testify that he had been cheated out of any money. There were no questions asked of Mr. Shan, nor Ms. Wang, on what type of arrangement had been made for the payment of the rent nor the front-line staff. In my view, Ms. Liu jumped to a conclusion based on what she saw were the expenses without any basis for doing so.

[226] I would reject the defence of justification on the part of Ms. Liu.

[227] I find that the statements in the two WeChat Posts were defamatory. Before addressing the issue of damages, I will consider the defamation claim made by Ms. Liu against Ms. Wang.

Defamation Claim by Ms. Liu

[228] Ms. Liu claims that Ms. Wang said “bad words” about Ms. Liu, being that Ms. Liu charged too much for doing accounting work.

[229] She further claims that in a WeChat message from Mr. Shan to herself, Mr. Shan says that Ms. Wang told him that she thought Ms. Liu was “arrogant” and she should not be allowed to be the two companies’ accountant. Although Mr. Shan, testified, was not asked about this.

[230] Finally, Ms. Liu claims that Ms. Wang told other people she would sue Ms. Liu and be awarded her legal fees.

[231] The counterclaim is deficient in respect to the claim of defamation since it does not comply with the requirements to particularize the precise words that were said: *Christian Advocacy Society of Greater Vancouver v. Arthur*, 2013 BCSC 1542

at para. 107. In defamation claims, pleadings are particularly important in that they define the issues of facts and law for determination: *Lu* at para. 41. It is a requirement that Ms. Wang know the case she is called upon to meet: *Lu* at para. 48.

[232] It is unclear to me the precise words Ms. Liu claims were defamatory. Ms. Wang is entitled to her personal opinion that Ms. Liu charged too much for accounting services. I am not persuaded that Ms. Liu has established a defamation claim against Ms. Wang and that claim is dismissed. Ms. Liu seeks a public apology from Ms. Wang. As Ms. Liu has not established that the statements were defamatory, I will not consider whether an order of an apology is within the jurisdiction of the court on these facts: *John v. Lee*, 2009 BCCA 313 at para. 9.

Issue 5: If any Statement was Defamatory, What is the Appropriate Quantum of Damages in the Case?

Legal Principles

[233] Defamation is a strict liability tort and damages are presumed: *Lu* at para. 193; *Wood v. Jaffer*, 2018 BCSC 85 at para. 83.

[234] The Court in *G.J.V.M.* set out a summary of cases where defamatory statements were published to a limited group. In their written submissions, the plaintiffs rely specifically on the following cases summarized in *G.J.V.M.* at para. 116:

- a. In *Insulpro v Monoglass*, (24 May 1996), Vancouver C943580 (B.C.S.C.) the court awarded \$30,000 plus punitive damages where the president of the defendant wrote to the municipal building inspector alleging that the plaintiff was using a substandard product and would attempt to mislead the inspector about it. The court noted a particular concern about discrediting a company within the context of its business environment, especially with respect to honesty.
- b. In *Urbanowski v Harris*, 2006 BCSC 1741, \$10,000 in damages was awarded where the defendant sent two emails, to ICBC and auto trade association officials accusing the plaintiff of defrauding the defendant's auto collision repair business.
- c. In *Wright v Van Gaalen*, 2011 BCSC 797, \$15,000 in damages was awarded where the defendant sent an email to the main client of his

sprinkler design partnership, disparaging his partner's reliability and accusing him of overcharging the client.

Analysis

[235] Before assessing damages, I will consider whether there are any mitigating factors. A potential mitigating factor is a "full and unqualified apology": *Wood* at para. 69. Ms. Liu has not apologized, nor offered a retraction or withdrawal of what she posted. Ms. Liu did remove the WeChat Posts when requested to do so by plaintiffs' counsel.

[236] In my view, the cases cited by the plaintiffs are not analogous to these facts. They involve sending defamatory statement to trade organizations, the main clients, and to a city building inspector, whereas Ms. Liu sent her defamatory comments to her friends and acquaintances.

[237] The plaintiffs submit that an appropriate award in the circumstances would be in the range of \$30,000 to \$40,000.

[238] In this case, I am influenced by the extent to which the defamatory material was actually communicated. It is not clear how many people Ms. Liu published the WeChat Posts to. She testified that they only went to a group of individuals who knew that she had been sued. Her estimate was 12 to 20 individuals.

[239] Another influential factor is whether most of the recipients disregarded the allegations, or formed some negative opinion of Ms. Wang as a result of them. Of some note is the evidence of Mr. Xu on his views of the impact of the WeChat Posts. He dismissed them as "like some type of tabloid news" that one would glance at and not remember. He could not recall even reading them.

[240] I note in *G.J.V.M.*, where the court found the recipients of defamatory emails were the doctor's own family members and there was no evidence that they were affected by the defamatory contents, an award of \$5,000 in general damages was appropriate: *G.J.V.M.* at para. 128.

[241] Considering all of the circumstances here, I am of the view that an appropriate award is \$7,500. I accept that for Ms. Liu this is a very significant sum of money as she struggles to deal with mental health challenges she has and the impact those challenges have on her ability to work.

Issue 6: Should There be an Injunction Issued Against Ms. Liu and/or Ms. Wang Restraining Them From any Future Defamatory Statements?

[242] In addition to damages, the parties each seek from the other an injunction to restrain from publishing any defamatory materials or make any defamatory statements in the future. There is no reason for an injunction against Ms. Wang since I found she did not make any defamatory statement.

[243] A permanent injunction should only be granted if there is a likelihood that the defendant will continue to publish defamatory statements: *Pan v. Gao*, 2018 BCSC 2137 at para. 460. I am not persuaded on the evidence that Ms. Wang has established on a balance of probabilities that this will happen. Since the December WeChat Post made in December 2020, there has been no evidence that Ms. Liu has continued to make any defamatory statements against Ms. Wang. I further anticipate that these reasons will aid Ms. Liu in understanding the possible consequences of publishing any further defamatory material.

[244] A form of injunction on future publication is “an exceptional remedy which will only be imposed by the courts in the clearest of cases”: *Pan* at para. 464. This is not one of those cases. I decline to issue an injunction against Ms. Liu.

Conclusion

[245] I make the following orders:

- 1) The defendant owes the plaintiffs the sum of \$52,544.23 for construction management fees.
- 2) The plaintiff, Good Castle, owes the defendant the sum of \$3,150 for research services provided, which can be set-off against the outstanding construction management fees owed.

- 3) The net amount that the defendant owes the plaintiffs is \$49,394.23 plus pre- and post-judgment interest.
- 4) The other claims advanced in the counterclaim are dismissed.
- 5) The claim in defamation by Good Castle against Ms. Liu is dismissed.
- 6) The claim in defamation of Ms. Wang against Ms. Liu is granted.
- 7) Ms. Wang is entitled to the sum of \$7,500 in general damages against Ms. Liu.
- 8) The claim in defamation by Ms. Liu against Ms. Wang is dismissed.
- 9) The request for a permanent injunction is dismissed.

Costs

[246] The plaintiffs were predominantly successful and should get costs of the action and the counterclaim from the defendant. If the plaintiffs intend to seek an order for special costs they must do so in writing. The following schedule must be complied with:

- 1) the plaintiffs must deliver to the defendant and to the court the plaintiffs written costs submissions within 30 days of these reasons being pronounced;
- 2) the defendant will have until 30 days from the delivery of the plaintiffs written costs submissions to deliver to the plaintiffs and provide to the court the defendant response costs submissions; and
- 3) the plaintiffs have 7 days from the delivery of the defendant response costs submissions to deliver and provide to the court any reply costs submissions.

[247] If the plaintiffs do not deliver any written costs submissions, then the plaintiffs are entitled to their costs at Scale B from the defendant for this proceeding, including the defence of the counterclaim.

“Forth J.”