

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Skycope Technologies Inc. v. Jia*,
2026 BCSC 584

Date: 20260402
Docket: S189114
Registry: Vancouver

Between:

Skycope Technologies Inc.

Plaintiff

And

**Junfeng Jia, also known as Jack Jia, Leyuan Pan, also known as Michael Pan,
Kunyu Zhang, also known as Eric Zhang, Qianqi Zhuang, also known as Tim
Zhuang and Bluvec Technologies Inc.**

Defendants

Before: The Honourable Justice Hoffman

Reasons for Judgment

Counsel for the Plaintiff:

R. Cooper, K.C.

Counsel for the Defendant Junfeng Jia, also
known as Jack Jia:

C. Cheng
C. Russell

Place and Date of Re-Trial:

Vancouver, B.C.
February 5–6, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 2, 2026

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Overview

[1] In 2021 and 2023, Justice Iyer (as she then was) heard a 10-day trial in this matter and issued reasons, indexed as 2023 BCSC 1288 (the “Trial Reasons”). The plaintiff appealed, and the Court of Appeal overturned certain findings of the trial judge and remitted two discrete questions back to the trial court, indexed as 2025 BCCA 178 (the “Appeal Reasons”).

[2] The dispute resolved by Iyer J. relates to the breakdown of an employment relationship between Zhenhua “Eric” Liu, the principal of the plaintiff, Skycope Technologies Inc. (“Skycope”), and Junfeng “Jack” Jia, the principal of the defendant Bluvec Technologies Inc. (“Bluvec”). Skycope is a technology start-up company incorporated in 2016, developing technology to detect and disable unwanted drones.

[3] Skycope’s claim against Mr. Jia, Bluvec, and others alleged that Mr. Jia was an employee of Skycope from its inception and that he breached both the terms of his employment agreement and fiduciary obligations owed to Skycope by entering into competition with Skycope and soliciting its customers. Mr. Jia, by counterclaim, sought damages for wrongful termination of his employment, repayment of a loan advanced for start-up costs, an order that 30% of Skycope’s shares vest in him, or, in the alternative, compensation for his unpaid work assessed on a *quantum meruit* basis.

[4] At trial, each party was partially successful. The trial judge concluded that Mr. Jia breached the implied term of confidentiality in his employment agreement by misusing the source code developed by Skycope. The trial judge further concluded that Mr. Jia breached his fiduciary duties to Skycope by using this information to allow Bluvec and a related company, Beijing Lizheng Technology Co. Inc., to compete with Skycope. She awarded general damages to Skycope in the amount of \$800,000.

[5] The trial judge also found that there was a valid and enforceable oral contract of employment between Mr. Jia and Skycope, providing that Mr. Jia would be Skycope’s chief technology officer (“CTO”), would receive \$60,000 in annual salary

and would receive a 30% equity interest in Skycope. The trial judge ordered Skycope to pay Mr. Jia damages equivalent to the value of this interest. Mr. Jia was successful in recovering \$12,475 he had loaned to Skycope and two weeks' pay in lieu of notice.

[6] Given the divided success, the trial judge ordered that each party was to bear their own costs.

[7] On appeal by Skycope, the Court of Appeal did not disturb the trial judge's finding that Mr. Jia breached his fiduciary duties to Skycope. However, the Court of Appeal concluded that:

- a) there was no basis for the trial judge to find that Mr. Jia had a contractual entitlement to a 30% equity interest in Skycope; and
- b) the trial judge failed to fully consider whether Mr. Jia's equity interest in Skycope was replaced by a subsequent arrangement whereby Mr. Jia received shares in another Chinese company, Shenzhen Shengkong Technology Co. Ltd. ("Shengkong"), which, at the time of this arrangement, was the parent company of Skycope.

[8] In light of these errors, the Court of Appeal remitted the following questions to the trial court:

- a) Is there a basis in fact and law other than contract to find that Mr. Jia has an equitable claim to Skycope shares?
- b) Is any such claim, if established, superseded or replaced by the agreement that Mr. Jia would receive equity in Shengkong?

[9] The Court of Appeal overturned the trial judge's order as to costs and also remitted the question of entitlement to trial costs back to the trial court.

[10] Before me, Mr. Jia contends that he has an equitable claim to Skycope shares that was not replaced by the shares he acquired in Shengkong. He says that

he relied on Mr. Liu's promise of shares and accepted substantially reduced compensation for his work with Skycope. Based on either unjust enrichment or the equitable doctrine of promissory estoppel, he seeks either a 18.73% or, in the alternative, a 26% interest in the shares of Skycope. Mr. Jia raised promissory estoppel for the first time on the eve of the hearing before me. Despite the lack of notice, Skycope did not object and engaged with this argument substantively.

[11] Skycope submits that Mr. Jia cannot establish the requisite deprivation because the equity that both he and Mr. Liu contemplated Mr. Jia would receive was satisfied when Mr. Jia received shares in Shengkong. In the alternative, it is submitted that any equitable claim for unjust enrichment fails because there is no juristic reason Mr. Jia should receive equity in light of his breach of fiduciary duties to the company. Skycope further argues that the doctrine of promissory estoppel has no application in this case.

[12] For the reasons that follow, I find that Mr. Jia was entitled to receive an equity position in the enterprise he contributed to as a co-founder with Mr. Lui and that this entitlement was satisfied by his receipt of shares in Shengkong. Accordingly, Mr. Jia's claim for equitable relief cannot succeed.

[13] In my reasons, I will first summarize the important findings of fact by the trial judge relating to the remitted issues. I will then review the relevant findings of the Court of Appeal before moving to my assessment of the two issues remitted by the Court of Appeal.

The Trial Judgment

[14] The trial judge provides a chronology of events in her reasons setting out the background of this matter. I will not repeat all of that background here. Instead, I focus on her summary of the evidence and her key findings of fact relevant to the remitted issues. I also refer to some evidence not referenced in the trial judge's reasons.

[15] At the outset, it is important to note that, for the reasons set out in her judgment at paras. 56–74, the trial judge found that neither Mr. Liu nor Mr. Jia was a credible witness. She did not rely on their testimony unless it was contrary to their interest or corroborated by other reliable evidence.

[16] Mr. Liu and Mr. Jia met between 2007 and 2008 when they were both working in the Beijing Office of Fortinet, a large cybersecurity company. Mr. Liu was a security researcher, and Mr. Jia was a software developer. The two became friends after they both transferred to Vancouver. At this time, Mr. Liu began to pursue the possibility of creating a technology start-up company, specializing in anti-drone technology.

[17] In 2016, Mr. Liu left his paid employment to pursue full time the development of anti-drone technology: Trial Reasons at para. 18. After a proof of concept and prototype was developed with some assistance from Mr. Jia and others, Mr. Liu incorporated Skycope in August 2016 for the purpose of developing the anti-drone technology. Mr. Liu also incorporated Shengkong in China around the same time as a vehicle to attract Chinese investors: Trial Reasons at para. 21.

[18] In a September 2016 WeChat message to Mr. Jia, Mr. Liu encouraged Mr. Jia to leave his job at Fortinet, writing, “you are a matter of life and death to the company, but not to Fortinet.”: Trial Reasons at para. 202.

[19] The trial judge found that Skycope did not dispute that before Mr. Jia joined Skycope, they agreed that Mr. Jia would assume the title of CTO, and he would receive a salary of \$60,000.

[20] In Skycope’s notice of civil claim, Mr. Jia is described as a founder of Skycope.

[21] On July 23, 2026, Mr. Liu sent a proposed equity distribution to Mr. Jia by email (the “Equity Distribution Memo”):

1: Equity distribution Zhenhua Liu (CEO) 60%; Junfeng Jia (CTO) 30%; reserved option pool 10%

- 2: For other partners who joined later, such as market partners, the two founders shall dilute the shares together
 - 3: Vesting agreement: Vesting in 4 years
 - 4: Formulate a reasonable share repurchase agreement
 - 5: The founders shall put the corresponding proportion of initial funds into the company account based on the equity ratio
- Please confirm.

[22] In October 2016, Mr. Jia left his job at Fortinet and joined Skycope as its CTO with overall responsibility for development of the Skycope Technology: Trial Reasons at para. 23. The job he left at Fortinet paid him \$120,000 per year. The terms of his employment with Skycope were disputed at trial; however, there was evidence that various equity arrangements were discussed: Trial Reasons at paras. 91–98.

[23] On December 1, 2016, Mr. Liu sent a draft Skycope shareholder’s agreement to Mr. Jia. It allocated five million common shares for Mr. Liu, three million common shares for Mr. Jia, and 100,000 common shares to a Mr. Ken Lin. This is the only draft of the agreement, and Mr. Jia testified that this agreement was not signed because Mr. Liu advised him that his lawyer was preparing a formal version of the agreement. There was no evidence that anything resulted from this draft agreement: Trial Reasons at para. 97.

[24] Several other individuals, including Dr. Leyuan Pan and other individual defendants were hired to work on the development of the technology: Trial Reasons at paras. 24–32.

[25] From late 2016 to 2017, Mr. Liu spent most of his time in China attracting investors. Mr. Jia led the technical team that included the other defendants and whose work included writing the Skycope anti-drone code and refining the hardware components: Trial Reasons at para. 25.

[26] Although not set out in the trial judgment, there is evidence before me that Mr. Jia signed an employment agreement with Shengkong effective April 1, 2017, and became that company’s CTO.

[27] Mr. Liu's evidence at trial was that although he and Mr. Jia discussed Mr. Jia having an equity interest in Skycope, they never reached a final agreement. He said that, in Skycope's first round of financing, Chinese investors demanded that Skycope be a fully owned subsidiary of Shengkong as a condition of their investment in Shengkong, so Mr. Jia agreed to an equity interest in Shengkong instead: Trial Reasons at para. 93.

[28] On April 18, 2017, Mr. Jia and Mr. Liu executed an agreement whereby Mr. Jia received a 20.1825% interest in Shengkong for the nominal sum of 100 Yuan, which converts to approximately \$20 (the "Share Transfer Agreement"). It was a term of the Share Transfer Agreement that Mr. Jia "shall fulfill his obligation to contribute funds according to the articles of association of the company". This is not addressed in the trial judgment but is established by evidence in the record at trial.

[29] On July 18, 2017, Shengkong, Skycope, Mr. Liu, Mr. Jia, and others entered into a pre-A round investment agreement (the "Shengkong Investment Agreement") whereby Mr. Jia and Mr. Liu are listed as founder shareholders and whereby Shengkong acquired new investors. Following a round of capital contributions to Shengkong, the Shengkong Investment Agreement provides that Mr. Jia would hold 18.73% of the shares in Shengkong: Trial Reasons at para. 256.

[30] Mr. Jia and Mr. Liu each warranted in the Shengkong Investment Agreement that that Shengkong was the sole shareholder of Skycope.

[31] In finding that Mr. Jia was a fiduciary to Skycope, the trial judge concluded that he was indispensable to the company and its success because he was in charge of the team that developed its most valuable asset: at para. 204. He had unfettered access to this development which gave him the power to make decisions affecting Skycope's economic success. The trial judge also found that he played some role in soliciting customers for Skycope. The trial judge made this finding in reliance on evidence from both Mr. Jia and Mr. Liu as well as documentary evidence: at paras. 200–202.

[32] On December 13, 2017, Mr. Liu terminated Mr. Jia’s employment: Trial Reasons at para. 37. In the termination letter, Skycope offered two weeks’ severance in lieu of notice and to repay Mr. Jia \$10,167.06 for “start-up costs”. The letter asked for the return of company property. Mr. Jia refused to accept the payments and did not return a company laptop which had a copy of the Skycope code on its hard drive: Trial Reasons at para. 39.

[33] The termination letter also acknowledged that Mr. Jia’s employment with Shengkong and the options or shares he held in Shengkong pursuant to a vesting agreement were governed by Chinese law and would be addressed by separate correspondence.

[34] Mr. Jia disputed the effect of the notice and sought further and other compensation. A letter from his counsel stated, “our client holds options and/or shares in [Shengkong] and will vigorously pursue his interest in this Chinese corporation and any subsidiaries (including the Company [Skycope] it owns.” Counsel for Skycope responded by denying that Mr. Jia held any shares or right of ownership in Skycope.

[35] Dr. Pan and the other individual defendants resigned from Skycope over the subsequent months. Mr. Jia incorporated Bluevec on March 6, 2018: Trial Reasons at para. 45. Dr. Pan and the other individual defendants began to work for Bluevec between March and July 2018: Trial Reasons at para. 47–49.

[36] After Mr. Jia’s termination, Mr. Liu brought an application to the Beijing Arbitration Commission seeking to enforce a term of the Shengkong Investment Agreement entitling him to repurchase Mr. Jia’s shares in Shengkong for one Yuan. The application was heard by a panel of the Arbitration Commission on December 14, 2020. Both Mr. Jia and Mr. Liu were represented by counsel and made submissions before the panel. The decision of the Beijing Arbitration Commission was released March 12, 2021 (the “Arbitration Decision”).

[37] The Arbitration Decision was tendered into evidence, and the trial judge recognized it under s. 35 of the *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233: Trial Reasons at para. 71. The arbitration panel found that Bluvec was incorporated to compete against Shengkong, contrary to the terms of the Shengkong Investment Agreement disentitling Mr. Jia to his shares in Shengkong and ordering him to transfer his shares to Mr. Liu for the price of one Yuan.

[38] The trial judge made a factual finding, based on the Arbitration Decision, that Mr. Jia paid approximately \$400,000 for his 18.73% interest in Shengkong and relied on this fact to conclude that Mr. Jia's equity interest provided for in the oral employment contract did not become his equity interest in Shengkong: at para. 257.

Findings of the Court of Appeal

[39] Many of the trial judge's findings of fact were not disturbed on appeal. Most notably, the Court of Appeal found that the evidence supported the conclusion that Mr. Liu and Mr. Jia both contemplated that when Mr. Jia joined Skycope, his compensation would include an equity interest in the enterprise: Appeal Reasons at paras. 14, 58. The Court of Appeal described this as an essential term of the contract of employment: Appeal Reasons at para. 58.

[40] With respect to the salary that Mr. Jia received from Skycope, the Court of Appeal found that there was no controversy in the evidence that Mr. Jia's initial salary was to be one dollar per year at Skycope and \$400 per month at Shengkong, and that after investors were found, Mr. Jia would earn \$70,000 per year working for Skycope: Appeal Reasons at para. 14.

[41] As already noted, the Court of Appeal found that there was no evidence of a contractual agreement that in October 2016 Mr. Jia would receive 30% of the shares of Skycope and that those shares would vest immediately on the commencement of his employment in October 2016 or by December 13, 2017, when his employment terminated: at paras. 59 and 61.

[42] The Court of Appeal found that the erroneous finding that there was a contractual agreement for Mr. Jia to receive a 30% equity stake in Skycope, caused the trial judge to reject Mr. Liu's argument that their final agreement on an equity stake was reflected in the Share Transfer Agreement in which Mr. Jia received shares of Shengkong: Appeal Reasons at para. 63.

[43] The Court of Appeal held in the Appeal Reasons that:

[61] It was open to the trial judge to accept Mr. Liu's evidence that there was an agreement that the shareholding ratio in Skycope would be 3:2 in Mr. Liu's favour (and to reject Mr. Liu's evidence that the agreement was superseded by an agreement that Mr. Jia would receive Shengkong shares); or to accept Mr. Jia's evidence that there was an agreement that Skycope shares would be held on a 5:3 ratio in Mr. Liu's favour. ...

[44] With respect to the Arbitration Decision, the Court of Appeal found that the trial judge made a palpable and overriding error in finding that Mr. Jia had paid the sum of 2,081,250 Yuan (a sum roughly approximate to \$400,000) for 18.73% of the shares in Shengkong. At best, the Arbitration Decision is ambiguous as to whether Mr. Jia had made the contribution required by the Investment Agreement. Given this ambiguity and the fact that Mr. Jia did not testify at trial to having made any capital contribution to Shengkong, the Court of Appeal held that there was no evidence to support the finding that Mr. Jia paid \$400,000 for his Shengkong shares: Appeal Reasons at para. 64.

[45] The Court of Appeal also found that trial judge's rejection of the warranty in the Shengkong Investment Agreement as evidence of Mr. Jia's acknowledgement that he never held shares in Skycope as the basis that Mr. Liu gave the same warranty and previously owned shares of Skycope was not well-founded: Appeal Reasons at para. 64.

[46] The Court of Appeal considered, but did not accept, Skycope's submission that in the absence of a finding that Mr. Jia actually paid \$400,000 for the shares in Shengkong, the only inference that could be drawn was that his equity interest in Shengkong, obtained for nominal consideration, was in total satisfaction of any agreements regarding equity interests found to exist between Mr. Liu and Mr. Jia.

[47] Importantly, in rejecting this argument, the Court of Appeal held:

[77] In my view, that conclusion is not the only available inference. The trial judge was not satisfied Mr. Jia had disclaimed any interest in Skycope when he acquired shares in Shengkong. She did not expressly address his claim to an equitable interest in Skycope.

Analysis

[48] I turn now to my assessment of the remitted issues.

Does Mr. Jia have an equitable claim to Skycope shares?

[49] In his amended counterclaim, Mr. Jia alleges that he was promised an equity stake in Skycope in the amount of 3/10 of the shares. Given the failure of his contractual claim, the counterclaim seeks a declaration of a constructive trust in respect of this interest. As these shares were never vested in him, he seeks a declaration that Skycope continues to hold 3/10 of the shares in trust for him. In light of the evidence at trial, Mr. Jia now submits that he is entitled to 18.73% or, in the alternative, a 26% stake in Skycope.

[50] Relying on the well-known principles in the Supreme Court of Canada decision in *Kerr v. Baranow*, 2011 SCC 10, Mr. Jia submits that he has an equitable claim for an interest in Skycope on the basis of unjust enrichment because his work benefited Skycope. These principles require Mr. Jia to establish that Skycope was enriched by him and that, as a result of that enrichment, he suffered a corresponding deprivation: *Kerr* at para. 36.

[51] Enrichment is established when something tangible is given that is received and retained amounting to a benefit. The benefit must be one that can be restored either by returning the benefit to the claimant or through the payment of money: *Kerr* at para. 38.

[52] *Kerr* also requires Mr. Jia to demonstrate that the benefit and corresponding deprivation occurred without a juristic reason: at para. 40. In other words, Mr. Jia bears the onus to establish the enrichment was unjust because there was no established juristic reason for Skycope to retain the benefit.

[53] Established juristic reasons include a contract, a disposition of law, a donative intent or other valid common law, equitable or statutory obligations: *Kerr* at para. 41. If Mr. Jia establishes the absence of a juristic reason in an established category, the onus shifts to Skycope to prove that there is another valid reason to retain the enrichment. At this latter stage of the analysis, the court can look to all of the circumstances and consider both the autonomy and reasonable expectations of the parties as well as public policy considerations: *Kerr* at paras. 41 and 43.

[54] My analysis of whether Mr. Jia can establish an unjust enrichment starts with the observation that the Court of Appeal did not disturb the finding of the trial judge that both Mr. Liu and Mr. Jia contemplated that an essential term of Mr. Jia's agreement to commence work with Skycope was that he would receive an equity interest in the enterprise: Appeal Reasons at para. 58.

[55] There is ample evidence that Mr. Jia's work in developing the anti-drone technology that became Skycope's main asset was a benefit to Skycope. In his role as Skycope's CTO, he was indispensable to Skycope's success. As Mr. Liu put it in his message designed to hasten Mr. Jia's departure from Fortinet, Mr. Jia was a matter of "life and death to the company". Mr. Jia submits that he imparted a benefit to the company over and above the benefit that an employee would provide in return for a salary. Rather, he was a co-founder of the enterprise whose skill and effort was necessary to Skycope's success.

[56] Skycope's notice of civil claim describes Mr. Jia as a co-founder. It also accepts that it benefitted from the work that Mr. Jia performed for the company but takes issue with Mr. Jia's characterization of the amount of work he performed. It submits that there is no reliable evidence to support Mr. Jia's contention that he worked long hours for which he was not adequately compensated by his salary. Skycope further submits that the just over \$10,000 Mr. Jia gave to cover start-up costs cannot form any part of the unjust enrichment analysis because the trial judge already ordered Skycope to repay this amount.

[57] Skyclope also submits that Mr. Jia cannot establish a corresponding deprivation because the trial judge found that he was paid for the work that he performed for the company and Mr. Jia has failed to lead any evidence that would allow the Court to quantify the benefit he provided to the company. Further, Skyclope submits that Mr. Jia cannot establish the requisite correlation between the deprivation relied upon (*i.e.*, the work he performed for the company) and the equitable stake he seeks in the company.

[58] In the alternative, Skyclope argues that to the extent that Mr. Jia can establish a deprivation, his claim for unjust enrichment fails at the third stage of the analysis because to the degree Mr. Jia was entitled to receive an equity stake in the enterprise, this entitlement was satisfied when he received shares in Shengkong. I will deal with this submission in my analysis dealing with the second remitted issue.

[59] In my view, Mr. Jia has satisfied the first two elements of a claim for unjust enrichment. The evidence establishes that it was understood as between Mr. Liu and Mr. Jia that he was more than a mere employee for Skyclope. I acknowledge that there is no evidence of the average income of a CTO for a start-up company. However, it was not disputed that Mr. Jia left a secure job with Fortinet paying \$120,000 per year for a position at Skyclope paying one dollar per year and \$400 per month at Shengkong, with the promise that after investors were secured, Mr. Jia would earn \$70,000 annually from Skyclope. In my view, Mr. Jia suffered a deprivation through the significant financial risk he took in joining Skyclope for dramatically less compensation than what a traditional employee performing the same work would expect.

[60] The evidence also establishes that this deprivation was linked to the promise that he would receive an equity stake in the company. As Mr. Liu testified, this promise and the offer of the title of CTO were made to convince Mr. Jia to join Skyclope. Mr. Liu also acknowledged that given the decrease in salary as between Fortinet and Skyclope, the promise of shares operated as Mr. Jia's incentive to join Skyclope. Accordingly, I do not accept the argument of Skyclope that any deprivation

suffered by Mr. Jia does not correspond to his claim for the monetary equivalent of shares in Skycope. Equally, it cannot be said that the employment compensation Mr. Jia received amounts to a juristic reason for the deprivation. There is no juristic reason for Skycope to have retained the benefit of Mr. Jia's discounted labour and technical contributions without providing him with an equity interest.

[61] In making this finding, I have considered the decision of *Biehl v. Strang*, 2011 BCSC 1373, relied upon by Mr. Jia. While there are some parallels between *Biehl* and the case before me, the finding of unjust enrichment in that case rested on the advancement of almost \$1 million in seed funding made between friends to fund a start-up venture in the absence of a written agreement. I accept the submissions of Skycope that *Biehl* is distinguishable on this basis. While Mr. Jia did advance just over \$10,000 in funds to Skycope to cover start-up costs, Skycope offered to repay this in full upon his termination; an offer which Mr. Jia rejected. Accordingly, I find that Mr. Jia's advancement of funds should play no role in the unjust enrichment analysis.

[62] In *Biehl*, there was expert evidence as to the expectations of investors who advance capital in start-up ventures which the Court considered in its unjust enrichment analysis. Here, Skycope submits, and I accept, that there is no similar evidence to establish an industry practice that someone in the position of Mr. Jia would expect to receive equity. However, such evidence is not necessary given the confirmation by the Court of Appeal that the parties contemplated that Mr. Jia would receive an equity stake in the enterprise.

[63] There is no dispute that Mr. Jia never received shares in Skycope. This leads to an analysis of the second issue, namely whether by virtue of his receipt of shares in Shengkong, any equitable claim to shares in Skycope has already been satisfied.

Is the claim to Skycope shares superseded or replaced by the agreement that Mr. Jia would receive equity in Shengkong?

[64] Mr. Jia submits that there was no evidence before the trial judge that he agreed to replace his entitlement to an equity position in Skycope with shares in

Shengkong. Rather, his evidence is that despite the Share Transfer Agreement, he understood that he would retain his shares in Skycope in addition to acquiring an interest in Shengkong. Mr. Jia submits that his ownership stake in Shengkong was created by a stand-alone bargain with its own consideration and covenants and cannot be treated as having replaced the promise of equity in Skycope agreed to as part of his compensation in 2016. In the hearing before me, Mr. Jia took the position that Skycope bears the onus of establishing that Mr. Jia agreed to give up his entitlement to shares in Skycope.

[65] Given the Court of Appeal's conclusion that there was no basis for finding that Mr. Jia had a contractual claim to receive Skycope shares, Skycope submits that the most reasonable inference to draw from the evidence is that the negotiations between Mr. Liu and Mr. Jia for equity in the Skycope enterprise ultimately resulted in Mr. Jia obtaining that equity interest in Shengkong.

[66] Skycope submits that this was accomplished through the April 18, 2017 Share Transfer Agreement whereby Mr. Jia received his shares in Shengkong for the nominal sum of 100 Yuan (approximately \$20). This agreement, entered into six months after Mr. Jia commenced work with Skycope, gave Mr. Jia 20.8125% of Shengkong's shares. This left Mr. Liu holding 41.0625% of shares in Shengkong. This amounts to a 2:1 ratio which is one of the various shareholding ratios that were discussed in the course of negotiations between Mr. Liu and Mr. Jia. After the dilution of shares to reflect the capital advanced by other investors as set out in the July 18, 2017 Shengkong Investment Agreement, Mr. Jia held 18.73% of the shares of Shengkong.

[67] I am mindful that the Court of Appeal did not accept Skycope's argument that, once the finding that Mr. Jia paid \$400,000 for his shares in Shengkong is set aside, the only available inference that could be drawn from the evidence is that Mr. Jia's shares in Shengkong were meant to satisfy the promise of an equity stake in the enterprise. However, for the reasons I will explain below, when the whole of the evidence is examined for the purpose of assessing Mr. Jia's equitable claim to an

interest in Skycope, it supports the conclusion that Mr. Jia's receipt of shares in Shengkong through the Share Transfer Agreement satisfied his equitable claim to shares in the joint enterprise he co-founded with Mr. Liu and, therefore, provides a juristic reason for Skycope to retain the benefit of his services.

[68] Before setting out the reasons supporting my conclusion, I wish to first address Mr. Jia's submissions that the onus of proof is on Skycope to establish that Mr. Jia agreed to replace his Skycope shares with shares in Shengkong. In my view, this argument has no merit. The Court of Appeal makes it clear that the factual errors made by the trial judge, including that the parties reached a contractual agreement that Mr. Jia was to receive shares, prevented her from properly considering whether Mr. Jia had an equitable, rather a contractual, claim for shares to compensate him for his work and whether this claim was fulfilled when he acquired Shengkong shares. In the absence of a contract, whether Mr. Jia affirmatively accepted shares in Shengkong in lieu of shares in Skycope is of less relevance to a claim in equity. The question is rather whether Mr. Jia suffered a deprivation that corresponded to a benefit enjoyed by Skycope for which he was not compensated. This is the very question that the Court of Appeal remitted to the trial court for consideration. Further, the Share Transfer Agreement, being a contract, falls into an established category of juristic reason justifying an enrichment. As a result, Mr. Jia bears the onus of establishing that the Share Transfer Agreement did not constitute a juristic reason to justify Skycope's retention of Mr. Jia's contributions.

[69] For the six reasons that follow, I find that the second question remitted by the Court of Appeal should be answered in the affirmative.

[70] First, there is no documentary evidence suggesting that Mr. Jia received any shares in Skycope before the Share Transfer Agreement was executed on April 18, 2017, granting him shares in Shengkong. Nor is there any evidence that Mr. Jia requested that he be issued shares in Skycope after April 18, 2017, and before his termination.

[71] Second, the evidence of both parties was that Mr. Liu was to remain focused on the business side of the enterprise and, in particular, was tasked with securing investment capital. The purpose of the Shengkong Investment Agreement was to increase the capital of Shengkong to allow for the continued development and marketing of the anti-drone technology. Mr. Jia acknowledged at trial that the capital investment received through Shengkong was essential for the survival of the company. However, when Mr. Jia was first discussing working with Mr. Liu on the enterprise, it was not yet known that Chinese investors would insist on Skycope becoming wholly owned by Shengkong.

[72] Third, it is of particular significance that Mr. Jia acquired his shares in Shengkong through the Share Transfer Agreement for nominal consideration. As noted by the Court of Appeal, it was a term of this agreement that Mr. Jia “shall fulfill his obligation to contribute funds according to the articles of association of the company”: at para. 23. However, there is no evidence that Mr. Jia was called upon to contribute funds. Further, as held by the Court of Appeal, there is no evidence that Mr. Jia made the 2,081,250 Yuan (\$400,000) capital contribution contemplated in the July 18, 2017 Shengkong Investment Agreement: at para. 70. Mr. Jia’s position in the Beijing Arbitration was that he received his shares in Shengkong for nominal consideration before the Shengkong Investment Agreement was finalized to increase the capital of Shengkong. Accordingly, I do not accept Mr. Jia’s submission that his willingness to pay separate consideration for the Shengkong Shares, in and of itself, supports an inference that he was to receive a separate equitable interest in Skycope. The evidence supports a conclusion that he received his Shengkong shares for nominal consideration.

[73] Fourth, there is no dispute in the evidence that the consistent expectations of the parties throughout were that Mr. Jia was to receive a lesser stake in the enterprise than Mr. Liu. Although there is no evidence to support a conclusion that Mr. Jia and Mr. Liu arrived at a set ratio of share entitlement as between them, Mr. Jia acknowledged that the various scenarios discussed always had Mr. Liu, as CEO, with a greater share of the company in recognition of the difficulties associated

with handling the business end of the enterprise, including securing the necessary financing to allow the company to succeed. Mr. Liu divested himself of all shares in Skyclope on January 16, 2017, when they were acquired by Shengkong to satisfy the demand of investors that Skyclope be wholly owned. Consistent with this understanding, when Mr. Jia received Shengkong shares through the Share Transfer Agreement, the ratio as between him and Mr. Liu was approximately 2:1. A finding that Mr. Jia was to receive 20.8125% of the shares in Shengkong through the Share Transfer Agreement as well as retain an equity stake in Skyclope, at either 18.73% or 26%, while Mr. Liu was left with just over 41% of the Shengkong shares is not consistent with the understanding between the parties that Mr. Liu was to retain a substantially greater stake in the enterprise. This, together with Mr. Jia's evidence that the shares in Shengkong were to "map" or "mirror" his holding in Skyclope, more reasonably supports the inference that he was to receive shares in Shengkong in a similar amount to the ratio discussed when he joined Skyclope, rather than in addition to shares in Skyclope.

[74] Fifth, both Mr. Jia and Mr. Liu, as founder shareholders, warranted in the Shengkong Investment Agreement that they were not shareholders in Skyclope. While I agree, and Skyclope accepts, that this warranty cannot be read as establishing that Mr. Jia was never a shareholder in Skyclope, it is a warranty that at the time the Shengkong Investment Agreement was signed, Mr. Liu and Mr. Jia no longer had any equity interest in Skyclope. Mr. Jia's warranty in this regard supports the conclusion that his equitable entitlement to shares in the enterprise was satisfied through his receipt of shares in Shengkong. The lack of evidence that the parties came to an agreement that Mr. Jia's contemplated equity stake would immediately vest also supports an inference that Mr. Jia's contemplated equity stake was to be satisfied by shares in Shengkong. The weight of evidence suggests that the parties discussed scenarios in which Mr. Jia's shares would not vest immediately. The Initial Equity Distribution Memo sent in July 2016 proposed that Mr. Jia's shares would vest in four years. The December 1, 2016 draft of Skyclope shareholder's agreement is silent on this point, and, in any event, nothing became of this agreement. The Shengkong Investment Agreement provided that the founding shareholders' equity

would fully vest in four years with the first 25% vesting one year after March 24, 2017.

[75] Finally, I do not accept that the August 31, 2017 email Mr. Liu sent to Skycope’s accountant providing a capitalization table for Skycope is sufficient evidence to establish that Mr. Jia was to be given shares in both Skycope and Shengkong. This email with the re-line “Skycope Captable” contains a table also titled “Skycope Captable” that identified seven different shareholders including Mr. Liu (noted to have 47.7% of the shares) and Mr. Jia (with 18.73%) of the shares. Mr. Liu testified at trial when he typed Skycope in this email it was a typographical mistake and admitted that he did not have any document where this error was corrected. Mr. Liu also testified that the other names in the table were shareholders of Shengkong and that none of those names have ever been registered in Skycope.

[76] Mr. Liu’s evidence that this was a mistake is to be regarded with caution given the trial judge’s findings that he was not a credible witness. However, it is not disputed that when this email was written, Shengkong was the sole shareholder of Skycope, a fact which is reflected in the Investment Agreement. The inference that Mr. Jia would like me to draw from this email is not reasonable in light of this uncontested fact.

[77] In my view, reviewing the evidence holistically supports the conclusion that in exchange for Mr. Jia’s contribution to the enterprise, he received shares in Shengkong, and, therefore, he has not established a claim in unjust enrichment.

[78] In making this finding, I have also considered Mr. Jia’s submission that it would be inequitable for Mr. Jia to lose all equity in Skycope and Shengkong despite his contributions to the creation and value of both entities. Mr. Jia further submits that the equitable doctrine of clean hands cannot operate to bar his claim in equity. Under this doctrine, he who seeks equity must do equity. However, there are limits to the ambit of this doctrine in that it is only misconduct that has an immediate and necessary relationship to the equitable relief claimed that will operate as a bar to recovery: *DeJesus v. Sharif*, 2010 BCCA 121 at paras. 83–87. Mr. Jia submits that

this immediate and necessary relationship is missing in this case because the misconduct that was found to constitute a breach of fiduciary duty occurred after he was terminated by Skycope and that misconduct is not a necessary part of his equitable claim to shares in Skycope, which is grounded in contributions he made as a co-founder.

[79] Skycope submits that Mr. Jia was deprived of his equity interest in Shengkong pursuant to the terms of the Shengkong Investment Agreement by his own misconduct and that his breach of his fiduciary duties by stealing Skycope's confidential information and using it to found his own competing company is conduct that bars him from equitable relief. Skycope relies on two equitable principles to support its position. The first principle is that a faithless fiduciary should not be permitted to profit from their breach of the fiduciary duties they owe to a company. The second is the doctrine of clean hands which Skycope submits operates in this case to bar Mr. Jia from any relief.

[80] Dealing with the first principle, in *Indutech Canada Limited v. Gibbs Pipe Distributors Ltd.*, 2013 ABCA 111 [*Indutech*], the Alberta Court of Appeal held that a fiduciary who breaches his or her duties to the company is not entitled to remuneration, particularly where the fiduciary has earned secret profits or acted in a conflict of interest. The only exceptional circumstance that may entitle a faithless fiduciary to remuneration is where, notwithstanding the breach, the company benefitted from the fiduciary's skill and effort: *Indutech* at para. 98. Skycope argues that this exceptional circumstance is not engaged in this case because the trial judge found that it suffered significant harm as a result of Mr. Jia's misconduct.

[81] With respect to the clean hands doctrine, in response to Mr. Jia's submissions that this doctrine cannot bar him from equitable relief, Skycope argues that there is an immediate and necessary connection between his misconduct (misuse of confidential information contrary to his fiduciary duties) and his claim that as a fiduciary to Skycope, he is entitled to be compensated for his contributions to the company.

[82] In my view, had I concluded that Mr. Jia's claim to equitable relief was made out because he did not receive the contemplated equity, both of the equitable principles relied upon by Skycope would bar him from relief. Mr. Jia's conduct that was found to be a breach of fiduciary duty to Skycope is inextricably linked to his claim that as a co-founder and fiduciary to the enterprise, he is entitled to a share in its equity. He misused his position as a fiduciary as well as the information he had access to as a result of that position to compete directly with Skycope for customers and thereby, harmed Skycope's interests. At the risk of stating the obvious, his fiduciary duties did not come to an end when Mr. Jia left Skycope. The trial judge found Mr. Jia to be in breach of these duties for conduct that took place after he left Skycope. It is no answer to say that the connection is lost because the misconduct took place after his termination. Further, as a faithless fiduciary who was found to have inflicted significant harm on Skycope, his misconduct would disentitle him from claiming remuneration to which he might otherwise be entitled.

[83] Having found that Mr. Jia had an equitable claim for shares in Skycope which was fulfilled when he received shares in Shengkong and that no remediable inequity arises as a result, it is not necessary to address in detail Mr. Jia's newly advanced argument that he is entitled to equitable recovery on the basis of promissory estoppel. This doctrine recognizes that equity can arise when a representation is made that a claimant will enjoy some right or benefit over property which the claimant relies upon to their detriment: *Cowper-Smith v. Morgan*, 2017 SCC 61 at para. 15. While the Supreme Court of Canada affirmed the existence of proprietary estoppel in *Cowper-Smith* as an independent basis for relief, the cause of action has only been applied in Canada to protect interests in land. There is no Canadian case authority that the doctrine can be applied to protect interests in a chose in action, such as an entitlement to shares in a corporation.

[84] Both our Court of Appeal and the Supreme Court of Canada have left open the question of whether the doctrine should be expanded to protect proprietary interests beyond land. Leaving aside the legal uncertainty as to whether this remedy is available to a claim for shares in a corporation, it does not arise on the facts of this

case as the representation made for an equitable stake in Skycope was fulfilled when Mr. Jia received shares in Shengkong.

Disposition

[85] In conclusion, Mr. Jia’s equitable claim for shares in Skycope is dismissed.

[86] With respect to costs, Skycope has been substantially successful in this proceeding with Mr. Jia recovering only the small claim for reimbursement of his loan to Skycope. Accordingly, Skycope is entitled to recover both its costs at trial and for the re-hearing of the remitted trial issues.

“Hoffman J.”