IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vansky International Education Ltd. v. Guo,* 2023 BCSC 2124

Date: 20231129
Docket: S218850
Registry: Vancouver

2023 BCSC 2124 (CanLII)

Between:

Vansky International Education Ltd. and Xiaoping Ye

Plaintiffs

And

Yixin Guo also known as Sissi Guo

Defendant

Before: The Honourable Madam Justice J. Hughes

Oral Reasons for Judgment

Counsel for the Plaintiffs:	F. Lin
Representative for the Defendant, appearing in person:	S. Wang
Place and Dates of Trial:	Vancouver, B.C. November 27-29, 2023
Place and Date of Judgment:	Vancouver, B.C. November 29, 2023

2023 BCSC 2124 (CanLII)

Introduction

[1] This summary trial application is brought in respect of a claim by the plaintiffs, Vansky International Education Ltd. ("Vansky") and Xiaoping Ye, against the defendant, Yixin (Sissi) Guo, alleging breach of a partnership agreement and breach of fiduciary duty, among other claims.

[2] The plaintiffs do not seek summary trial of their claim for breach of fiduciary duty. They intend to proceed with a conventional trial on that issue, as in their submission, it will require extensive *viva voce* evidence.

[3] The plaintiffs are represented by counsel. Ms. Guo has had counsel from time to time, but is presently self-represented. She elected to have her husband Shaojie Wang speak on her behalf, which he did through an interpreter.

[4] On this summary trial application, the plaintiffs seek judgment against Ms. Guo in the amount of $111,866 or alternatively, $58,615 on account of undeposited revenues, advance draws and adult class fees that they allege were wrongfully retained by Ms. Guo but ought to have been paid to either the partnership or Vansky.

[5] Ms. Guo disputes that she owes any funds to the plaintiffs; rather, she says additional funds of approximately $20,000 are owed to her. She also takes the position that the partnership agreement was unfair and seeks to have it set aside.

Background

[6] The partnership agreement is between Ms. Ye and Ms. Guo and appears to have been entered into on January 25, 2019. The partnership was for the purpose of operating a dance school, identified in the agreement as Vancouver Little Dancing Flower Dance Academy. The plaintiffs say the name of the dance school in the partnership agreement is incorrect and should have been Flower Academy of Dance Inc.

[7] Approximately four days prior to signing the partnership agreement, Ms. Ye changed the name of a corporate entity, previously named Flower Academy of Dance Inc., to Vansky. Ms. Ye says this was done at Ms. Guo's request or suggestion. Ms. Guo strenuously disputes this and alleges that the name change was done by Ms. Ye to disadvantage her in the partnership, noting that it was done four days prior to the partnership agreement being entered into.

[8] Despite the timing of the name change, Vansky is not a party to the partnership agreement, nor it is otherwise referenced in any way therein. Nonetheless, it appears that throughout the partnership, the dance academy's revenues were deposited into Vansky's bank accounts, and Vansky paid the dance academy's expenses.

[9] The partnership ended at some point in 2021; the end date is in dispute. Ms. Ye says it ended in January 2021; Ms. Guo says it ended at some point later that year. Regardless, the plaintiffs say that upon winding up of the partnership, they discovered that Ms. Guo obtained funds from the partnership that they allege she was not entitled to.

[10] The underlying claim was filed in October 2021. A response to civil claim was filed in December 2021 and initial lists of documents were exchanged in March 2022.

[11] Ms. Guo was initially represented by counsel but filed a notice of intention to act in person in July 2022. Shortly thereafter, in August 2022, the plaintiffs delivered an extensive notice to admit ("NTA"). The defendant, then self-represented, did not respond to the NTA within the time permitted in the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*].

[12] The plaintiffs brought an initial summary trial application in January 2023, relying on the deemed admissions in the NTA. Ms. Guo obtained counsel and the application was adjourned. At some point in early 2023, Ms. Guo also delivered a reply to the NTA, in which she admitted some of the facts, and denied others.

2023 BCSC 2124 (CanLII)

[13] In February 2023, Ms. Guo filed an application to withdraw the deemed admissions. That application was adjourned in favour of settlement negotiations. Those negotiations failed, and the plaintiffs indicated their intention to proceed with the litigation in April 2023.

2023 BCSC 2124 (CanLII)

[14] In June 2023, Ms. Guo again became self-represented. The application to withdraw the deemed admissions was not reset for hearing.

[15] On October 13, 2023, the plaintiffs filed a second summary trial application, again relying on the deemed admissions. That application was adjourned due to insufficient time being available for the hearing. The plaintiffs again relied on the deemed admissions, along with an expert accounting report dated September 15, 2023 from Ms. Suzanna Crescenzo (the “Crescenzo Report”).

[16] The action was scheduled for a five-day trial commencing November 27, 2023. A trial management conference (“TMC”) was held on October 27, 2023. The trial dates were not confirmed. Rather, the Master ordered, among other terms, that (“TMC Order”):

a) the matter be scheduled for a two-day summary trial on the prior trial dates;

b) the defendant file and serve her materials for the summary trial by November 14, 2023;

c) the plaintiffs file and serve any reply materials by November 20, 2023; and

d) at the summary trial, the parties will first seek a determination on suitability.

[17] As noted above, the plaintiffs’ summary trial application is predicated on their claim for breach of the partnership agreement by Ms. Guo having obtained or retained funds that she was not entitled to. These funds comprise three types of payments:

a) Undeposited revenue received by Ms. Guo on behalf of the partnership in the amount of $36,585;

b) Advance draws paid to Ms. Guo by the partnership in amount of $34,544; and

c) Adult class fees allegedly received by Ms. Guo but not paid to the partnership in amount of $58,538 (the “Adult Class Revenues”).

2023 BCSC 2124 (CanLII)

[18] The plaintiffs rely on the NTA and deemed admissions arsing therefrom, and the Crescenzo Report in support of this application. There is a significant discrepancy between the NTA and the Crescenzo Report as to the amounts allegedly owing to the partnership by Ms. Guo. Relying on the deemed admissions in the NTA, the plaintiffs claim Ms. Guo owes $111,866. Alternatively, relying on the Crescenzo Report, the plaintiffs claim Ms. Guo owes $58,615. The discrepancy apparently arises from the Crescenzo Report not including funds related to the Adult Class Revenues.

[19] Pursuant to the TMC Order, the plaintiffs’ summary trial application came on for hearing before me on November 27, 2023, with suitability to be addressed as a preliminary matter.

Legal Principles

[20] On a summary trial application, the court must address the issue of suitability. In this regard, Rule 9-7(15)(a) states:

> **Judgment**
>
> (15) On the hearing of a summary trial application, the court may
>
> (a) grant judgment in favour of any party, either on an issue or generally, unless
>
> (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or

> (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
>
> …

[21] To render a decision on the merits on a summary trial application, the court must be satisfied that it can find the facts necessary to decide the disputed issues. Even where the court can find the necessary facts, it must still consider whether it would be just to decide the matter summarily, by reference to the following factors:

a) the amount involved;

b) the complexity of the matter;

c) the urgency of the matter;

d) any prejudice likely to arise by reason of delay;

e) the cost of taking the case forward to a conventional trial in relation to the amount involved;

f) the course of the proceedings;

g) the cost of litigation and the time of the summary trial management conference;

h) whether credibility is a critical factor in the determination of the dispute;

i) whether the summary trial may create unnecessary complexity in the resolution of the dispute;

j) whether the application would result in litigating in slices; and

k) any other matters which may be relevant in the particular case.

See *Dakeryn Industries Ltd. v. 2284768 Ontario Limited (Royal Trade Links Inc.)*, 2020 BCSC 1596 at para. 29; *Saran v. Cartonio, Inc.*, 2020 BCSC 556 at para. 37, aff'd 2020 BCCA 252.

2023 BCSC 2124 (CanLII)

[22] A critical issue facing the court on a summary trial application is whether it can find the facts necessary to decide the disputed issues: *0878754 B.C. Ltd. v. Nishin Kanko Investments Ltd.*, 2016 BCSC 2094 at para. 45 [*Nishin*]. Consent of the parties to try a case by summary trial is an important consideration, but is not determinative. This is the case as it is for the court—not the parties—to decide whether the case is suitable for summary trial. In this regard, as Justice Goepel noted in *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249 [*Main Acquisitions*], the court acts as a gatekeeper and should not grant judgment if it cannot find the necessary facts or it would be unjust to do so:

> [89] …Rule [9-7] makes the judge a gatekeeper. It is a crucial role. Notwithstanding the wishes or indeed often the vociferous submissions of counsel, judgment should not be given if the court is unable, on the evidence, to find the necessary facts or if it would be unjust to do so. As noted by Justice Southin in her typically forthright language in *Bacchus Agents (1981) Ltd. v. Philippe Dandurand Wines Limited,* 2002 BCCA 138 [*Bacchus*]:
>
>> [28] . . . the judge before whom a proceeding of this kind comes must not think of himself or herself as a puppet in the hands of the litigants.

See also *McShane v. Eusanio*, 2011 BCSC 553 at para. 64.

[23] A summary trial, though conducted on affidavit evidence, is still a trial and the parties are expected to "put their best foot forward" in terms of proving their claim or defence: *Nishin* at para. 46.

[24] An application for summary trial seeks a final order and as such, pursuant to Rules 22-2(12) and (13), an affiant may only state what they would be permitted to state in evidence at a trial:

> **Limitation on contents of affidavit**
>
> (12) Subject to subrule (13), an affidavit must state only what a person swearing or affirming the affidavit would be permitted to state in evidence at a trial.
>
> **Exception**
>
> (13) An affidavit may contain statements as to the information and belief of the person swearing or affirming the affidavit, if
>
>> (a) the source of the information and belief is given, and

2023 BCSC 2124 (CanLII)

(b) the affidavit is made

(i) in respect of an application that does not seek a final order, or

(ii) by leave of the court under Rule 12-5 (71) (a) or 22-1 (4) (e).

[25] Moreover, the fact that exhibits are attached to an affidavit does not make them admissible evidence on a summary trial: *Main Acquisitions* at paras. 94-97. This is particularly the case with respect to documents that are relied on for the truth of their contents, or that purport to provide evidence in nature of expert opinion. With respect to expert opinion evidence, it can be tendered by way of an expert report in support of a summary trial under Rule 9-7(5)(e) provided that, unless the court otherwise orders, the report complies with the requirements of Rule 11-6(1). Pursuant to Rule 11-7(6), the court retains a residual discretion to dispense with the requirements of Rule 11 where the interests of justice so require.

2023 BCSC 2124 (CanLII)

Analysis

[26] I have reviewed the evidence filed by the parties in support of this summary trial and concluded that this matter is not suitable for determination under Rule 9-7. More specifically, I am unable to find the facts necessary to grant judgment on the basis of the evidentiary record before me. There are conflicts in the affidavit materials which cannot, in my view, be fairly resolved with reference to documentary or other evidence before me. Moreover, even if I were able to find the facts necessary to grant judgment, it would not be just, in my view, to do so in the present circumstances in light of, among other factors, the interrelatedness of the issues and the plaintiffs' intention to proceed with the breach of fiduciary duty claim by way of conventional trial.

Can the Court Find the Facts Necessary to Grant Judgment Despite Conflicts in the Evidence?

[27] It is well-settled that issues of fact or law should not be decided on a summary trial solely on the basis of conflicting affidavits, even if one version is preferred to another: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 215–216, 1989 CanLII 229 (C.A.). Rather, there needs to be some admissible evidence that makes it possible to find the necessary

facts. I am not permitted to "simply choose between one affidavit and another": *Cory v. Cory*, 2016 BCCA 409 at para. 10.

2023 BCSC 2124 (CanLII)

[28] There are a multitude of conflicts in the evidence before me on issues that render this matter unsuitable for determination by way of summary trial. These include:

a) conflicts in evidence relevant to validity and enforceability of the partnership agreement; and

b) conflicts in evidence regarding accounting of amounts alleged to be due by Ms. Guo under the partnership agreement.

Conflicts re validity and enforceability of partnership agreement

[29] Ms. Guo's defence appears to comprise, at least in part, of the assertion that she did not enter into an agreement with the plaintiff, Vansky, and that the plaintiff, Ms. Ye, improperly changed the name of the corporate entity prior to execution of the partnership agreement. Ms. Ye asserts that the corporate name change was done at Ms. Guo's "suggestion". Ms. Guo disputes this and says that she did not ask for the name to be changed. Ms. Ye relies on WeChat messages to corroborate her evidence and says the Court can thus resolve this conflict in her favour. However, Ms. Ye did not provide translated versions of those WeChat messages, thereby rendering them of little use to the Court.

[30] Many of the documents appended to Ms. Ye's affidavits were in Chinese without accompanying translations. The plaintiffs submit that the cost of translating the WeChat messages (among the multitude of other documents alleged to corroborate her evidence and substantiate her position on this application) would not be proportional to the amount in issue. That may well be the case, but the fact remains that this is a trial, and documents for use at trial must be translated: Rule 22-3(2); *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2013 SCC 42 at para. 13; *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2012 BCCA 282 at paras. 56-57. The lack

of translation renders the documents of little use to the Court and for present purposes, results in the Court being incapable of resolving conflicts in the evidence by recourse to the documentary evidence in the record on this application.

Conflicts re accounting of amounts allegedly owing by Ms. Guo

[31] There are a multitude of other instances in which there are conflicts in the accounting evidence underlying the summary trial application which are too numerous to list. Many of the conflicts in the evidence are in respect of smaller amounts, but when taken as a whole, they create a significant conflict in the plaintiffs' and the defendant's respective accounting of funds paid to and from the partnership.

[32] The plaintiffs' primary position is that these conflicts can all be resolved by the deemed admissions resulting from the NTA. I am concerned that relying on the deemed admissions would be unjust in present circumstances. The defendant was self-represented when the NTA was delivered, and failed to respond. Once the defendant has obtained counsel, she brought an application to withdraw the deemed admissions, and that application was set for hearing but adjourned to permit settlement discussions. That application was not reset thereafter, and the defendant became self-represented again.

[33] Ms. Guo maintains that she intends to apply to withdraw the deemed admissions, and she sought to do so in the course of this application, though there is no application for such relief presently before the Court. Ms. Guo has also identified instances in which the deemed admissions appear to be contradicted by documentary or other evidence subsequently produced by the parties. Ms. Guo also subsequently provided a response to the NTA in which some of the admissions sought were admitted, but others were denied or admitted with qualifications or explanations.

[34] I recognize that the provisions of the *Rules* regarding admissions and consequences of failure to respond to a NTA within the time permitted are not to be lightly disregarded simply because a litigant is self-represented. However, in

2023 BCSC 2124 (CanLII)

circumstances of this case, I am not prepared to rely on the NTA to resolve conflicts in the evidence for the purpose of finding that this matter is suitable for summary trial.

[35] Alternatively, the plaintiffs submit that if conflicts in evidence remain despite the NTA, then they can be resolved by recourse to the Crescenzo Report. I note again that there is a significant difference between the plaintiffs' accounting predicated on the NTA of an amount due and owing from Ms. Guo of $111,866 and in the expert report at $58,615. This discrepancy is apparently accounted for by the fact that the Crescenzo Report does not reference include reconciliation of the amount alleged to be owing for the Adult Class Revenues.

[36] That being said, the plaintiffs must prove facts underlying the expert report, and in many instances, those facts are in dispute and cannot be resolved on the record before me. Ms. Guo identified multiples respects in which there are conflicts in the evidence as to the assumed facts underpinning the Crescenzo Report. By way of but one example, the report assumes that Ms. Ye is entitled to $50 per hour for dance classes she taught and that Mr. Ren, Ms. Ye's husband, is entitled to $2,600 per year for bookkeeping services. Neither of these payments are contemplated in the partnership agreement, and Ms. Guo disputes them. In response, the plaintiffs ask the Court to infer that $50 is a "reasonable rate" by reference to rates charged by other instructors as set out in Vansky's accounting documents. This evidence constitutes hearsay when adduced for this purpose, and there is no evidence as to the other instructor's experience or qualifications that would enable the Court to assess the reasonableness of the proposed rate. There is similarly no evidence proving Mr. Ren's entitlement to $2,600 pursuant to the partnership agreement.

[37] As such, based on the current state of the evidence, this would amount to the Court granting judgment by making assumptions that the facts underlying the Crescenzo Report are true. A summary trial cannot be decided on the basis of assumed facts: *Concord Pacific Acquisitions Inc. v. Oei*, 2017 BCSC 236 at para. 31 [*Concord Pacific*]. In *Concord Pacific*, Justice Voith (then of this Court) rejected the

2023 BCSC 2124 (CanLII)

contention that conflicts in the evidence can be ignored or addressed by relying on only a portion of the evidence or assuming certain facts to be true: at para. 50. In my view, the same reasoning applies in the present case.

[38] I also note that the Crescenzo Report is not undisputed. The defendants have tendered some evidence, though not in the form of an expert report as contemplated under the *Rules*, suggesting that Ms. Guo is in fact owed funds from the partnership. The defendant's application response filed November 14, 2023 includes in the material relied on an Affidavit #1 of Anthony Lyons filed November 10, 2023. This affidavit in turn includes a report from Mr. Lyons in which he purports to have examined Vansky's accounting information and concluded that Ms. Guo is entitled to $21,187 upon winding up of the partnership, rather than her owing either $58,615 per the Crescenzo Report or $111,866 based on the deemed admissions in the NTA.

[39] The plaintiffs' counsel advised that despite Mr. Lyons' affidavit being identified in Ms. Guo's application response, it was not included in the application record because it was delivered late, in breach of the TMC Order, having been delivered on November 20 instead of November 14. The plaintiffs also take the position that Mr. Lyons' affidavit is inadmissible because it does not comply with Rule 11-6 and relies on Ms. Guo's own accounting. With respect to the latter issue, the same criticism can be made in respect of the Crescenzo Report as it relies, at least in part, on Mr. Ren's own accounting for Vansky. I also note the discretion afforded to a trial judge to admit non-compliant reports where the interests of justice so require. Regardless, the issues as to admissibility of and the weight to be afforded to the Crescenzo Report and Mr. Lyons' affidavit are matters best left to trial.

[40] The Court is also faced with a multitude of competing accounting calculations, many of which appear to have been prepared by the parties themselves in the case of Ms. Guo, or in Ms. Ye's case, by her husband Mr. Ren. Some of these calculations have changed over the time as new evidence has been disclosed. In at least one instance, the plaintiffs admit that the accounting calculations underpinning

2023 BCSC 2124 (CanLII)

the NTA are now incorrect in a material respect, namely that the NTA did not properly account for the $25,817 in cash allegedly surrendered by Ms. Guo to Ms. Ye and the $15,828 in cash allegedly paid by Ms. Guo to other dance teachers.

[41] By way of one additional example and with reference to the Adult Class Revenues, the plaintiffs assert that Ms. Guo owes the partnership approximately $58,538 in respect of fees she collected from adult dance classes but did not remit to Vansky. The plaintiffs concede that there are no records to fill in the gap for the amount of adult class revenues not deposited. The plaintiffs proposed reverse engineering: a calculation from the number of students, the number of classes and the cost, and then did calculations and put those numbers in the NTA. However, there is no evidence to prove the assumptions underpinning the calculations—e.g. that all adult students attended all classes. For her part, Ms. Guo disputes the amount owing and tendered a document purportedly signed by the students in issue indicating that no fees were paid.

[42] No examinations for discovery have been conducted in this action, nor any cross-examinations on affidavits, which could have shed light on this issue among the multitude of other conflicts in the evidence. Rather, I am simply being asked to disregard Ms. Guo's evidence and assume the most favourable circumstance to the plaintiffs' position in the absence of any evidentiary basis for doing so. That is not an assumption that I am prepared to make on the evidence before me.

[43] At base, the Court is faced with competing allegations that the opposing party has falsified documents and fabricated evidence. These allegations give rise to serious issues of credibility that are not suitable to being resolved by way of summary trial. This is particularly the case where, as here, no examinations for discovery or cross-examination on affidavits have been conducted. While that is not a bar to proceeding by way of summary trial, given the nature of the conflicts in the evidence and allegations made in this case, the lack of testing of the evidence on discovery or by cross-examination on affidavits is a further factor that contributes to my inability to resolve conflicts in the evidence on the record before me.

2023 BCSC 2124 (CanLII)

[44] It also became apparent over the course of the hearing that document production issues remain outstanding. Ms. Guo appears to have additional documentation that has yet to be produced which she asserts contradicts some of the evidence contained in Ms. Ye's November 20, 2023 reply affidavit. Ms. Guo also appears to have been seeking additional document production from the plaintiffs since the spring of 2023, which the plaintiffs have refused to produce. I was provided with correspondence between the plaintiffs' counsel and Ms. Guo regarding these outstanding requests and the plaintiffs' responses.

[45] While Ms. Guo sought to have me order production of documents in the course of her application response, no application for document production is properly before me and I decline to do so. That being said, a cursory review of Ms. Guo's requests and the plaintiffs' response suggests that at least some of the requested documents may well be relevant and/or material to the matters raised in the pleadings. I make no findings in this respect, but simply note this outstanding issue as a further indication as to why I am of the view that I am unable to resolve the conflicts in the evidence based on the record before me.

[46] Finally, I note that there are multiple instances in which the affidavit material put before the Court on this application did not comply with Rule 22-2(12) and (13) which prohibits hearsay evidence on an application seeking a final order. In particular, both parties appended documents to their respective affidavits without any apparent consideration of the admissibility or use to which those documents could properly be put on a summary trial, i.e. whether they were admissible for the truth of their contents in the form tendered. This significantly limits the Court's ability to find the facts necessary to determine the issues raised by way of summary trial.

[47] In short, it is not open to the Court to simply ignore conflicts in the evidence or decide credibility issues, make findings of fact based on assumptions that are disputed or unsupported in the evidentiary record, to grant judgment on this application in the interest of expediency.

2023 BCSC 2124 (CanLII)

[48] In the result, I conclude that I am not able to find the facts necessary to grant judgment on the plaintiffs' summary trial application.

Would it be unjust to decide the issue by summary trial?

[49] Even if I were able to find the facts necessary to determine the issues raised, I would have declined to proceed by way of summary trial as it would be unjust to do so in the circumstances before me, primarily as the plaintiffs seek determination of only part of their claim.

[50] Counsel advised in oral submissions that the plaintiffs intend to proceed with their claim for breach of fiduciary duty by way of conventional trial. The plaintiffs acknowledge that this will amount to litigating in slices, but submit that such an approach is sensible here because the two claims involve "completely different issues" and proceeding accordingly will allow the conventional trial to focus on the breach of fiduciary duty claim.

[51] Rule 9-7(2) permits the court to grant judgment "either on an issue or generally". However, absent good reason, courts should not isolate individual issues in a proceeding and decide them separately from the rest of the litigation: *Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83 at para. 33; *Main Acquisitions* at para. 92. Where judgment is sought on a single issue, the court must proceed with caution: *Bosa Properties (Claremont) Inc. v. Mossabeh*, 2010 BCSC 1326 at para. 10 [*Bosa Properties*].

[52] The factors that are typically considered when the court is asked to determine a single issue by summary trial were set out in *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485 at para. 110:

> a) whether the court can find the facts necessary to decide the issues of fact or law;
>
> b) whether it would be unjust to decide the issues by way of summary trial, considering amongst other things:
>
> > i. the implications of determining only some of the issues in the litigation, which requires consideration of such things as:

2023 BCSC 2124 (CanLII)

(1) the potential for duplication or inconsistent findings, which relates to whether the issues are intertwined with issues remaining for trial;

(2) the potential for multiple appeals; and

(3) the novelty of the issues to be determined;

ii. the amount involved;

iii. the complexity of the matter;

iv. its urgency;

v. any prejudice likely to arise by reason of delay; and

vi. the cost of a conventional trial in relation to the amount involved.

2023 BCSC 2124 (CanLII)

[53] Not all of these factors will be relevant in every case, and a checklist approach is to be discouraged: *Ferrer* at para. 28.

[54] Considering the factors enumerated in *Greater Vancouver Water District*, I find it would be unjust to determine the accounting issues raised in this action in isolation from the balance of the plaintiffs' claim. The implications of determining only one issue in the litigation is a key factor, which in turn requires consideration of the interrelatedness of the issues and the resulting potential for duplicative or inconsistent findings, the potential for multiple appeals, and the novelty of the issues to be determined: *Greater Vancouver Water District* at para. 110.

[55] I do not accept the plaintiffs' contention that the accounting issues are completely separate from the breach of fiduciary duty claim. This is belied by their pleadings. Para. 46(a) of the notice of civil claim pleads that in breach of her fiduciary duty to Ms. Ye, Ms. Guo wrongfully retained revenues from adult classes without accounting for same to the partnership. The plaintiffs concede that these are the same funds characterized as part of the accounting or debt claim on this application, namely the Adult Class Revenues.

[56] Thus, at least part of the debt allegedly owing as part of the accounting claim also potentially forms part of the damages alleged to result from the breach of fiduciary duty claim. The findings made regarding these funds thus may impact the assessment of damages for the breach of fiduciary duty claim, thereby giving rise to

potential duplication or inconsistent findings. It is no answer for the plaintiffs to say that if judgment is granted in debt on this application, then those funds will no longer form part of their fiduciary duty claim.

[57] Accordingly, I conclude that the issues to be determined on the summary trial are inextricably intertwined with the remaining breach of fiduciary duty claim such that it would be unjust to try the accounting issues separately from the breach of fiduciary duty claim. The interrelatedness of the plaintiffs' claims and resulting difficulty in terms of proceeding by way of summary trial are compounded by the state of the plaintiffs' pleadings, which lack sufficient precision to permit the Court to determine which claims as pleaded are sought to be tried by summary trial and which ones would remain to be tried by a conventional trial, including which causes of action are being advanced by which of the plaintiffs.

[58] Additionally, I am not satisfied that there is any urgency to determination of accounting aspects of their claim, nor is there any evidence of prejudice on account of delay that would be occasioned if the plaintiffs are not permitted to effectively sever their claim. The costs incurred by the plaintiffs in proceeding to summary trial in the present circumstances do not constitute sufficient prejudice, given the multitude of issues outlined above, which render this matter unsuitable for summary trial on other grounds.

[59] Finally, deciding this issue while leaving the balance of the contractual claims and breach of fiduciary duty claim, among others, to be determined by conventional trial would not improve trial efficiency. The plaintiffs' written submissions assert that a summary trial will significantly shorten the amount of time needed for the full trial. Yet in oral submissions, I was advised that the breach of fiduciary duty claim is expected to require a significant amount of the nine-day trial, and that the time estimate for the summary trial on the merits is two days. This preliminary determination as to suitability has also now occupied two days. In the circumstances, it may well have been more efficient for the parties to simply proceed to a conventional trial at the outset. In addition, pursuit of this application and the

2023 BCSC 2124 (CanLII)

preliminary determination of suitability has also injected additional complexity into the resolution of the dispute between the parties.

[60] While the cost of taking the case forward to a conventional trial may be disproportionate in relation to the amount involved in respect of the accounting claims, that factor is not persuasive here, given the plaintiffs' stated intention to proceed to trial on the breach of fiduciary duty claim and acknowledgement that that claim will occupy the majority of the trial time.

[61] In my view, the interests of justice favour determining the entirety of the plaintiffs' claim by way of conventional trial on a fulsome evidentiary record. This will avoid litigating the claim in a piece meal fashion and is particularly appropriate given that the credibility of the two individual parties is likely to be a critical factor in determining the dispute. The trial judge will be better positioned to determine the entirety of the plaintiffs' claim and resolve conflicts in the evidence within the more fulsome evidentiary record that accompanies a conventional trial. This is particularly the case given that the amount of trial time necessary to deal with the accounting issues is presently expected to be relatively modest in comparison to that required for the breach of fiduciary duty claim.

Conclusion

[62] As a whole, the nature of the evidence on this summary trial application left the Court in the position where it could not find the facts necessary to determine the issues in this case. There are simply too many conflicts in the evidence and significant issues of credibility relating to allegations of fabrication and falsification of evidence that would benefit from *viva voce* testimony and cross-examination by way of a conventional trial.

[63] While I am sympathetic to the plaintiffs' interest in securing judgment in a manner as expeditious and inexpensive as possible, I am not satisfied that I can find the facts to make the final orders they seek or that it would be just to do so. As this Court has made clear, a summary trial is nonetheless a trial; the parties need to treat it as such and must put their best foot forward: *Arbutus Investment Management Ltd.*

2023 BCSC 2124 (CanLII)

at para. 48. I do not accept the assumption underlying the plaintiffs' position that because of what they assert is a relatively modest amount in issue on the accounting claim, some lesser evidentiary standard ought to apply—i.e. reliance on hearsay ought to be permitted and key documents need not be translated.

2023 BCSC 2124 (CanLII)

[64] In the result, I conclude that the deficiencies and conflicts in the evidentiary record before me, and the plaintiffs attempt to litigate only a portion of their claim while proceeding to trial on the remaining issues, including breach of fiduciary duty, render this matter unsuitable for determination by summary trial.

[65] The plaintiffs' summary trial application is dismissed with costs in the cause.

[66] Finally, to address issues that arose over the course of this application and assist in the orderly progression of this matter towards trial, I make the following additional orders:

a) The parties are to deliver updated lists of documents by December 31, 2023;

b) If the defendant seeks further production of documents, either as contemplated in correspondence between the plaintiffs' counsel and Ms. Guo in May and June 2023, or in response to the plaintiffs' updated list of documents to be delivered December 31, 2023, she is to file and serve an application seeking such production no later than January 31, 2024; and

c) If the defendant intends to proceed with her application filed February 13, 2023 to withdraw the deemed admissions, that application is to be reset for hearing no later than January 31, 2024.

[67] My conclusion that this matter is not suitable for determination by way of summary trial also renders operative para. 6 of the TMC Order, which provides that

a) The parties will schedule a 9-day trial for this action;

b) The plaintiffs will file a new notice of trial for the new trial date; and

c) The parties will schedule and attend a new trial management conference in advance of the new trial date.

[68] For clarity, I am not seized of any future applications in, or the trial of, this action.

"Hughes J."

2023 BCSC 2124 (CanLII)