

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wang v. Guo*,  
2025 BCSC 261

Date: 20250219  
Docket: S175130  
Registry: Vancouver

Between:

**Weihe Wang, Guilian Tian and Weihe Investments Ltd.**

Plaintiffs

And

**Ying Ping Guo, Yue Chun Xie, Yunal Kumar Nath, Jozsef Horvath, Katalin  
Maria Horvath, Zsolti Horvath, Developro Construction Ltd., and  
Vantone Development Group Ltd.**

Defendants

And

**Ying Ping Guo, Yue Chun Xie, Yunal Kumar Nath, Jozsef Horvath, Katalin  
Maria Horvath, Zsolti Horvath, Developro Construction Ltd., and  
Vantone Development Group Ltd.**

Third Parties

Before: The Honourable Justice Kirchner

## **Reasons for Judgment on Costs**

Counsel for the Plaintiffs:

R. LaPlante

Defendants and Third parties, appeared in  
person:

Y.P. Guo  
Y.C. Xie

No other appearances

Place and Date of Hearing:

Vancouver, B.C.  
November 12, 2024

Written Submissions of Plaintiffs:

November 18, 2024  
December 5, 2024

Written Submissions of Defendants and  
Third parties, Y.P. Guo and Y.C. Xie:

November 12, 2024  
December 5, 2024

Place and Date of Judgment:

Vancouver, B.C.  
February 19, 2025

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**Introduction**

[1] These reasons address issues of costs arising from a judgment given on March 4, 2024, indexed as *Wang v. Guo*, 2024 BCSC 380 (the “Trial Reasons”). In that judgment I found the defendants, Yunal Nath and Jozsef Horvath, along with their companies, Developro Construction Ltd. and Vantone Development Group Ltd., jointly and severally liable for the full amount of the plaintiffs’ claims for losses associated with the acquisition and planned development of two properties. The damages totaled \$5,164,950. I found the defendant Ying Ping Guo severally liable for a relatively small portion of the land acquisition costs and jointly and severally liable for most of the development costs. I found the defendants Nath, Horvath, Developro, and Vantone Developments were jointly and severally liable to Mr. Guo on a third party claim for the full extent of Mr. Guo’s liability to the plaintiffs. I found the defendant Katalin Horvath liable to the plaintiffs for a relatively small portion of the damages. I dismissed the plaintiffs’ claims against the defendants Yue Chun Xie (Mr. Guo’s spouse) and Zolt Horvath (Mr. Horvath’s son).

[2] The plaintiffs now seek their costs against Messrs. Nath, Horvath, and Guo and Developro and Vantone Developments. They seek a portion of their costs against Katalin Horvath in proportion to her overall liability.

[3] Mr. Guo seeks his costs against Mr. Nath, Mr. Horvath, Developro, and Vantone Developments for his third-party claim. He also seeks an order relieving him of liability for the plaintiffs’ costs because the plaintiffs were only partially successful against him and because the unsuccessful claims involved unproven allegations of fraud.

[4] Ms. Xie seeks her costs against the plaintiffs since the claims against her were dismissed. Zolt Horvath has settled the issue of costs with the plaintiffs.

[5] Mr. Nath and his company, Developro, did not appear at trial or at the costs hearing. Nor did Mr. Nath make written submissions on his own behalf or on behalf of Developro. Mr. Horvath participated fully in the trial, representing himself, but did not attend the costs hearing or make written submissions. To the extent Vantone

Developments participated in the trial, it was through Mr. Horvath. As the plaintiffs were wholly successful against those defendants, I will make an order for costs against them in favour of the plaintiffs. Further, since Mr. Guo was wholly successful against those defendants in his third party claim, I will make an order in his favour against those same defendants for his costs and for any liability I find he has for the plaintiffs' costs.

[6] With respect to the contentious matters, for the reasons that follow, I order that Mr. Guo is fully liable for the plaintiffs' costs, jointly and severally with Mr. Nath, Mr. Horvath, Developro and Vantone Developments. I order that Ms. Xie is entitled to an award of cost in a lump sum of \$7,500 to be set off against an order for costs previously made against her. I order that Ms. Horvath is liable for not more than 5% of the plaintiffs' overall costs which is proportional to her overall liability.

### **Background**

[7] The background to this matter is lengthy and complex. It is comprehensively set out in the Trial Reasons. I summarized the background in the introduction to the Trial Reasons.

#### **The Parties' Agreement**

[8] I summarized the background to the agreement reached by the main parties as follows:

[2] In May 2016, the plaintiffs Guilian Tian and Weihe Wang were persuaded to invest in two properties for residential development: one near Prince George (the "Prince George Property") and the other on Sumas Mountain in Abbotsford (the "Sumas Mountain Property"). The plaintiffs' once good friend, the defendant Ying Ping Guo, brought the opportunity to them after learning of it from the defendant Jozsef Horvath.

[3] It was agreed that Ms. Tian and Mr. Wang, through their company, the plaintiff Weihe Investments Ltd. ("Weihe"), would buy the properties and put up the investment capital needed to develop them into residential subdivisions. Mr. Horvath and another development partner, the defendant Yunal Nath, would be responsible for obtaining subdivision approval and developing the two properties into residential lots for resale. They would do so through their company, Vantone Development Group Ltd. ("Vantone Developments"). Mr. Guo was to oversee the projects as manager with the "ultimate right" of decision-making. Messrs. Guo, Horvath and Nath were to collectively receive 15% of any net profits of the development (5% each) with

the balance going to the plaintiffs through Weihe. However, by separate agreement, Mr. Guo was to receive an additional 10% if the project met certain profit goals and in exchange he personally guaranteed the plaintiffs' investment in the project.

**Land Acquisition Costs**

[9] Unbeknownst to the plaintiffs, problems with the project took hold from the outset with Mr. Horvath and Mr. Nath obtaining for themselves the right to purchase both properties and then taking a secret profit of \$1.45 million from their sale to the plaintiffs at massively inflated prices. I found Mr. Nath and Mr. Horvath liable to account for the profit they earned from flipping the properties because they were under a fiduciary obligation to disclose to the plaintiffs their interest in the properties and the profits they stood to make. That obligation arose from the project development partnership agreement.

[10] I also found Mr. Nath and Mr. Horvath were liable for a \$175,000 overpayment for the Prince George Property. In secretly securing the right to buy the two properties, Mr. Nath and Mr. Horvath paid \$550,000 for the Prince George Property but its value at the time was only \$375,000. The plaintiffs paid \$1.5 million for that property with Messrs. Nath and Horvath taking a secret profit of \$950,000. That profit aside, the plaintiffs would have suffered a further loss of \$175,000 on the value of the land based on the inflated price Messrs. Nath and Horvath paid for it. While that loss did not arise directly from Mr. Nath and Mr. Horvath's failure to disclose their interest in the property, I found they were still liable for this loss because the plaintiffs would not have bought the property at all had Messrs. Nath and Horvath complied with their fiduciary obligation to disclose their interest in it.

[11] I also found Mr. Nath and Mr. Horvath liable for both the secret profit and the \$175,000 overpayment for having made fraudulent misrepresentations through Mr. Guo that induced the plaintiffs to buy the properties.

[12] With respect to Mr. Guo, I found that he was not aware that Mr. Nath and Mr. Horvath had acquired a right to buy the properties and did not know of the secret profit they took. However, I found Mr. Guo negligently misrepresented Mr. Horvath's

skill and experience with residential land developments and, but for this representation, the plaintiffs would not have bought the properties. Even though this misrepresentation was not related to the loss on the purchase price for the lands, I followed *Rainbow Industrial Caterers Ltd. v. Canadian National Railway*, [1991] 3 S.C.R. 3. and found Mr. Guo liable for the foreseeable losses arising from Messrs. Nath and Horvath's overpayment for the Prince George property. I thus concluded that Mr. Guo was liable with Messrs. Nath and Horvath for the \$175,000 overpayment but I further found the plaintiffs were contributorily negligent for failing to inquire about an appraisal for the properties. I assessed their contribution at 50% of Mr. Guo's liability such that I ultimately found Mr. Guo severally liable for \$87,500 of the \$175,000 overpayment. I found the mechanism by which Mr. Nath and Mr. Horvath took their secret profit was so extraordinary that this type of loss was not foreseeable. I therefore did not find Mr. Guo liable for the secret profits Messrs. Nath and Horvath earned from the flips.

### **Project Development Funds**

[13] I summarized the background to the project development funds and the development itself as follows in the Trial Reasons:

[5] Still unaware of these secret profits, Ms. Tian and Mr. Wang, through Weihe, invested another \$2,862,500 in project development costs (the "Project Development Funds") but only a fraction of this money was spent on the project itself. Most of it was misappropriated by Mr. Nath and Mr. Horvath for their personal use or to support their other projects. Only about \$812,536 of the Project Development Funds was spent on the development itself, but even that went to waste because of the defendants' gross mismanagement of the project.

[6] The development itself was a disaster. Messrs. Nath, Horvath, and Guo failed to examine the feasibility of the development or seek necessary government approvals before breaking ground. They hired McElhanney Consulting Services Ltd., a construction engineering firm, as project engineers to design the road and subdivision plan and make the necessary applications for permits and other approvals, but they did not wait for McElhanney to complete its work before starting the project. They hired an on-site project manager and engaged a road contractor to begin clearing and road building but, because the final design had not been completed or approved (and had to be changed at least twice), money was wasted on unnecessary roadbuilding.

[7] Mr. Nath and Mr. Horvath insisted the project proceed as quickly as possible with road building throughout the fall of 2016 in the rain and cold. McElhanney warned that doing road construction in the fall when soils were wet would add considerably to the cost of the project and, through the on-site manager, urged Mr. Nath and Mr. Horvath to wait until the spring to build the roads. But his advice fell on deaf ears. In October 2016, McElhanney withdrew as engineers of record on the project and in November work came to a halt because contractors had not been paid and the site was too wet for more road work.

[8] Throughout this time, Mr. Guo, who was responsible for the overall management of the project, had not been informed and did not keep himself apprised of these events. He learned in January 2017 that contractors had not been paid and, by March, he learned that Mr. Nath and Mr. Horvath had misappropriated most of the Project Development Funds for themselves or other projects. He finally told the plaintiffs of these problems in April 2017 and they started this action.

[14] I found Messrs. Nath and Horvath and their development companies jointly and severally liable for full amount of the Project Development Funds advanced by the plaintiffs. I also found they were liable for an additional amount the plaintiffs paid to a road contractor for unpaid work on the project. The settlement with the road contractor was necessary to remove a lien on the property and I found the settlement was reasonably made by the plaintiffs.

[15] Although Mr. Guo did not receive any of the misappropriated project development funds, I found him liable for most of those funds with the exception of \$213,000 that the plaintiffs advanced in November and December 2016. Mr. Guo had cautioned the plaintiffs to hold those two payments until some of the planned residential lots on the Prince George Property had been completed but the plaintiffs made the payments anyway. Mr. Guo's joint and several liability for the rest of the project development funds, as well as the settlement with the road contractor, was based on his complete failure to manage and oversee the project in accordance with his contractual and fiduciary duties arising from the two project development partnership agreements. I also found he was liable for an indemnity he gave the plaintiffs by which he promised to reimburse them for project development funds they advanced "[i]f the development projects fail and cause losses to [the plaintiffs] due to the reasons of [Mr. Guo's] misconducts [*sic*]". I found Mr. Guo's complete

failure to supervise the project was “misconduct” within the meaning of the indemnity.

[16] The plaintiffs claimed that Ms. Xie was liable for the project development funds under a verbal indemnity they alleged she gave. However, I found she made no such promise and, even if she did, she received no consideration for the claimed verbal indemnity.

[17] The plaintiffs also claimed Ms. Xie took a personal benefit when her travel agency received \$8,406.31 from Mr. Horvath that was ultimately traced to money that Mr. Horvath misappropriated from the Project Development Funds. The plaintiffs claimed against Ms. Xie in knowing receipt but I found that while her explanation for receiving this money was convoluted and murky, I was ultimately unpersuaded she knew of its origins. I dismissed the plaintiffs’ claims against Ms. Xie.

**Analysis**

**Mr. Guo’s Liability for Costs**

[18] Mr. Guo argues that while the plaintiffs succeeded in obtaining a significant monetary judgment against him, there are special circumstances that justify a departure from the usual rule that costs follow the event. In particular, he points to allegations made in the notice of civil claim and throughout the trial that Mr. Guo conspired with Messrs. Nath and Horvath and participated with them in the property flips that earned the \$1.45 million secret profit, that he made various fraudulent misrepresentations to the plaintiffs about the properties and their development potential, and that he conspired with Messrs. Nath and Horvath to misappropriate the project development funds.

[19] As Mr. Guo points out, these specific allegations were not proved at trial but they were made in stark terms in the notice of civil claim, including by stating that Mr. Guo “maliciously conspired” with Mr. Nath and Mr. Horvath (as well as with Ms. Xie) to defraud and injure the plaintiffs by flipping the properties to obtain illegitimate profits that were disguised and concealed from the plaintiffs. The notice of civil claim

alleges that Mr. Guo made fraudulent misrepresentations with the intention of deceiving the plaintiffs. It alleges Mr. Guo participated in the misappropriation of the project development funds by requesting the funds on the “pretense” that they were required for development. It describes these efforts as being taken in “furtherance of the fraud”.

[20] While some of these allegations might fairly be said of Mr. Nath and Mr. Horvath, I found none of them had been proved against Mr. Guo. I found Mr. Guo did not know of the secret profits Mr. Nath and Mr. Horvath took from flipping the properties and that he did not earn anything from the misappropriation of the project development funds. I found he was genuinely surprised to learn of misappropriations in March 2017 and that he did not receive any of those proceeds. I found that he completely abdicated his duties under the project management agreement with a misguided hope or expectation that Mr. Nath and Mr. Horvath would competently manage the project unsupervised but he did not do so fraudulently or with mal intent.

[21] However, I did find that Mr. Guo passed on representations about the property and its development potential from Messrs. Nath and Horvath to the plaintiffs to persuade them to invest. He did so at least in part because of the profit he hoped to make for himself under the project management agreements. I found Mr. Guo’s conduct in relaying these representations came “very close to the recklessness standard [required] for fraudulent misrepresentation” but that his conduct ultimately fell short of that mark because he was not indifferent to whether the representations were true or not. I found he was grossly naïve in the faith he placed in Messrs. Nath and Horvath and for accepting at face value what they said about the development potential for the land without looking into the veracity of the representations but I was not persuaded this naivety rose to the level of fraud. I also found Mr. Guo’s negligent misrepresentation that Mr. Horvath was experienced in residential property development also fell “very close to recklessness” but ultimately Mr. Guo lacked the subjective suspicion as to the truth of that representation that would be required to elevate it to fraud.

[22] Mr. Guo argues there was never any evidence, objectively viewed, that justified the allegations of fraud and conspiracy against him. He argues it ought to have been clear to the plaintiffs, at least after they completed an examination for discovery of Mr. Guo, that the allegations were manifestly deficient and should not have been pursued after that point. He suggests the plaintiffs' continued pursuit of these claims was malicious and motivated by a wish to see Mr. Guo (and Ms. Xie) suffer financially and emotionally. He points to my finding that Mr. Wang focussed much of his evidence on assigning blame to Mr. Guo and was determined to lay every problem at Mr. Guo's feet. Mr. Guo argues that if he had not been found liable for other breaches, the unsuccessful pursuit of these claims would justify an award of special costs in his favour. However, since he was liable for other breaches, but ones that do not carry the sting of fraud or conspiracy, he argues I should order that no costs be awarded against him.

[23] The plaintiffs argue that while they did not succeed against Mr. Guo on land acquisition costs other than half of the market value overpayment, they obtained a judgment against him in excess of \$3 million which they argue is substantial success. They argue the mere fact that the claims based on fraud and conspiracy were dismissed would not by itself justify an award of special costs and does not in this case justify an order depriving them of costs against Mr. Guo. They argue the claims were not "obviously unfounded" or "manifestly deficient" and they were not pursued for an improper purpose.

[24] An award of special costs may be appropriate where a party has engaged reprehensible conduct in the litigation: *Garcia v. Crestbrook Forest Industries Ltd.* 1994 CanLII 2570 (B.C.C.A.) at para. 17; *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 134. The pursuit of claims for fraud or dishonesty, without foundation, is reprehensible conduct. However, the mere fact a party was not able to prove fraud or dishonesty on a balance of probabilities does not automatically result in an award of special costs: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9 at para. 26. Rather, the claims must have been obviously

unfounded, manifestly deficient, or pursued out of malice. Justice Watchuk summarized the standard as follows in *Roussy v. Savage*, 2020 BCSC 487:

[19] That an allegation of dishonest conduct ultimately proves unsuccessful, however, is not enough in itself to justify an award of special costs. Instead, the court must consider whether the allegations were “obviously unfounded”, “recklessly made”, or “made out of malice”: *Bradshaw v. Stenner*, 2012 BCSC 237 at para. 10; *Hung v. Gardiner*, 2003 BCSC 285 at para. 16. This assessment is made from the point of view of the plaintiff at the time the allegations were made or maintained. Ultimately, this is a question of “whether the party’s allegations were reasonable at the time they were made”: *Seagull Paving Ltd. v. Terasen Gas (Vancouver Island) Inc.*, 2006 BCSC 347 at para. 23. At the very least, “a *prima facie* case must exist and if it does not then special costs by way of ‘chastisement’ is a reminder to the defendant to exercise better care in the future”: *Ip v. Insurance Corp. of British Columbia*, [1994] B.C.J. No. 81 (S.C.) at para. 8.

[25] I agree with the plaintiffs that a judgment of over \$3 million against Mr. Guo constitutes substantial success that would justify an order for costs, absent special circumstances. I do not agree with Mr. Guo that special circumstances exist here. While the plaintiffs were unsuccessful against Mr. Guo in the claims based on fraud and conspiracy, I cannot say these claims were obviously unfounded or manifestly deficient at the time they were made or even during the trial.

[26] Mr. Guo was a central figure in the project that resulted in the plaintiffs being defrauded of over \$5 million. Mr. Guo was neither a perpetrator nor a participant in that fraud but his role in the project could reasonably have led the plaintiffs to believe that he may have been. Mr. Guo brought the investment opportunity to the plaintiffs. He introduced them to Messrs. Nath and Horvath, who ultimately perpetrated the fraud, and he vouched for their experience and qualifications. He did so in an effort to persuade the plaintiffs to invest in the project. He assumed absolute control over the management and supervision of the project and of the plaintiffs’ sizable investment. Given the magnitude of the plaintiffs’ losses and Mr. Guo’s central role in all aspects of the project, except for the fraudulent and dishonest activity, it was not unreasonable for the plaintiffs to believe that Mr. Guo may have been more directly involved in Messrs. Horvath and Nath’s wrongdoing than ultimately proved to be true after trial.

[27] The plaintiffs' theory of the case was also informed by the fact that their expert forensic accountant traced some of the profits or misappropriated funds taken by Mr. Horvath into improvements made to a property in Pitt Meadows over which Mr. Guo held a right to a 99-year lease. Mr. Guo only gave up that right after the present claims were made. The plaintiffs' theory that this might have been connected to Mr. Guo participating in the secret profits or the misappropriation of the project development funds was ultimately not correct but nor was it "obviously unfounded".

[28] Furthermore, Mr. Guo was impeached time and again during his cross-examination at trial. There were many points on which his testimony was different to the evidence he gave on discovery. That suggests Mr. Guo's discovery evidence was not necessarily reliable and the plaintiffs cannot reasonably be faulted for continuing with all their claims against Mr. Guo even after his examination for discovery.

[29] For these reasons, I find that the fraud and conspiracy claims, while serious and unproven, are not "manifestly deficient" or "obviously unfounded". Viewing matters from the plaintiffs' perspective, I cannot fault them for making the claims. I order that Mr. Guo is jointly and severally liable, along with Mr. Nath, Mr. Horvath, Developro, and Vantone Developments for the plaintiffs' costs.

#### **Ms. Xie's Costs**

[30] Ms. Xie seeks her costs against the plaintiffs. The plaintiffs failed to prove that Ms. Xie offered a verbal guarantee to indemnify the plaintiffs for any losses arising from the development project. I did not accept Ms. Tian's or Mr. Wang's evidence that Ms. Xie attended a breakfast and a dinner meeting with the plaintiffs or that she gave a verbal guarantee at any time. There is no question Ms. Xie was fully successful against the plaintiffs.

[31] The plaintiffs also made significant allegations of wrongdoing against Ms. Xie. They alleged she conspired with Mr. Guo, Mr. Nath, and Mr. Horvath in flipping the properties and that she, along with those defendants, intended to realize significant

profits from doing so. The plaintiffs also alleged that Ms. Xie conspired with Messrs. Guo, Nath, and Horvath to wrongfully and maliciously defraud and injure the plaintiffs. None of these allegations was proven against Ms. Xie (or Mr. Guo). Ms. Xie argues these unfounded allegations of fraud and conspiracy against her provide further justification for an award of costs.

[32] The plaintiffs argue they should not be liable for Ms. Xie's costs because she shared those costs with Mr. Guo. Both Mr. Guo and Ms. Xie were self-represented at trial. Mr. Guo conducted the defence on behalf of both of them. At time leading up to the trial, they had counsel who represented both of them jointly.

[33] In *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2020 BCCA 365, leave to appeal ref'd [2021] S.C.C.A. No. 58 the Court of Appeal discussed cost orders in cases of multiple defendants with differing outcomes. The Court observed that it has sometimes been ordered that even a successful defendant may not be entitled to a cost award where that defendant was jointly represented with another defendant who was not successful and the successful defendant's presence did not result in additional litigation costs.

[34] *Antrobus v. Antrobus*, 2012 BCSC 613 is one such case. There Justice L. Smith granted the plaintiff's claim against two defendants but dismissed it against three other defendants. All five defendants were jointly represented. Justice Smith denied the successful defendants' request for costs with the exception of one of the eight days of trial. She held that the successful defendants' presence in the litigation did not add to the cost of the litigation except for that one day of trial.

[35] In *Pang v. Zhang*, 2021 BCSC 1435, the plaintiff was granted judgment against a wire transfer company for its role in transferring the plaintiff's money to a third party in what turned out to be a fraudulent scheme. The plaintiff also sued the owner of the wire transfer company in her personal capacity but that claim was dismissed. Justice Watchuk held that the plaintiff was entitled to her costs as against the company but held the owner was not entitled to a cost award because she was

jointly represented along with the company and she incurred no additional cost in defending the claim. She wrote:

[68] However, I cannot agree that this is a proper case to find that although the plaintiff was successful only against C&Z, Ms. Zhang is entitled to costs. As in *St. George Transportation v. Sawicky and Sawicky*, 2004 BCSC 1488, Ms. Zhang was jointly represented with C&Z and she incurred no additional costs to advance her personal defence. No separate Response to Civil Claim was filed, and no separate examinations for discovery were done. Unlike in *Antrobus v. Antrobus*, 2012 BCSC 613, defence counsel did not spend an extra day of trial just on the personal liability of Ms. Zhang, and there the successful defendant was only awarded costs for a single day. The defendants have not cited a step in the proceedings which was not taken jointly. Indeed, even their offer to settle was made jointly.

[36] The same is largely true in this case with respect to Ms. Xie and Mr. Guo. They had counsel at times during pre-trial matters and it was evident they had some assistance of counsel outside of court during the trial. They were jointly represented in that respect. They filed joint pleadings and brought and responded to applications jointly. Mr. Guo made the opening and closing submissions on behalf of both of them. Ms. Xie attended an examination for discovery and her evidence at trial consumed less than one day of trial time.

[37] Ms. Xie's attendance at trial would not have been required if she not been named as a party but she did not regularly attend trial. She was often absent (with leave of the court) and left it to Mr. Guo to act as her agent. She stopped attending altogether after she gave her evidence due to a medical condition. According to the court record, she attended 10 of the 39 days of trial. When she did attend, she was not an active participant in any of the proceedings (except when she testified) and left it to Mr. Guo to examine witnesses and speak on her behalf. Thus, even when she was present she was jointly represented with Mr. Guo.

[38] As with Mr. Guo, Ms. Xie points to the fact that the plaintiffs wrongly included her among those alleged to have committed fraud and conspired to profit from the property transfers and to misappropriate the development funds. The evidence offered against Ms. Xie was that she tried to persuade them to invest in the project and that Mr. Horvath transferred \$15,600 into an account held by Phoenix Travel,

Ms. Xie's travel agency. Of that payment, \$8,406.31 was traced to the plaintiffs' funds wrongly received or appropriated by Mr. Horvath.

[39] I found that the plaintiffs did not prove that Ms. Xie tried to persuade them to invest and I accepted her evidence of an innocent explanation for the \$15,600 payment. I agree with Ms. Xie that including her in the allegations of fraud and conspiracy in the notice of civil claim was aggressive and had little support. The plaintiffs rely heavily on my observation in the Trial Reasons that Ms. Xie's explanation for the \$15,600 payment was "murky" even though I ultimately accepted it. They argue that indicates a justifiable reason for them having pursued that issue. However, the fact nearly half of this payment was not identified as the plaintiffs' money and that \$8,406.31 is a drop in the bucket compared to the over \$2 million in project development funds that were misappropriated by Mr. Horvath and Mr. Nath tends to undermine this suggestion.

[40] Despite these reservations, I am ultimately not persuaded the plaintiffs' inclusion of Ms. Xie in their pleadings alleging claims of fraud and conspiracy rises to the level of being reprehensible. As I believe the 153-pages of Trial Reasons reflect, this was a factually-challenging case, much of which turned on the parties' verbal communications. The plaintiffs lost over \$5 million due to a combination of actions and inactions by various defendants. Given the magnitude of the plaintiffs' losses, the nature of the wrongdoing by some defendants, and the lack of clarity around many of the factual issues, it is understandable that the plaintiff would broadly plead the case and I am not able to find they did so recklessly. Further, while the plaintiffs did not amend their notice of civil claim after the trial started, they did not pursue allegations of fraud or conspiracy against Ms. Xie in their closing arguments.

[41] For these reasons, I am not persuaded that Ms. Xie is entitled to a full award of costs against the plaintiffs. I agree with the plaintiffs that Ms. Xie should bear most of her own costs since they were co-extensive with Mr. Guo with whom she was jointly represented. I find that including her in the allegations of fraud and conspiracy

in the notice of civil claim did not rise to the level of being reprehensible and do not create special circumstance to make a different order for costs.

[42] I will, however, order that Ms. Xie is entitled to a small amount of her costs for one day of an examination for discovery and the days she attended trial. For an examination for discovery the tariff provides three units for preparation and five units for attending. For attendance at trial it provides 10 units per day of trial. However, as I have said, Ms. Xie was not an active participant even on the 10 days of trial she attended and her defence was jointly conducted with and by Mr. Guo. In my view, a global award of \$10,000 for Ms. Xie's costs is reasonable and I will make that order pursuant to my discretion under Rule 14-1(15).

[43] The plaintiffs seek an order that Ms. Xie must collect her costs from the unsuccessful defendants, referred to as a *Sanderson* order. A *Sanderson* order may be made where the unsuccessful defendant did something that reasonably caused the plaintiff to bring the successful defendant into the litigation: *Craigdarloch Holdings Ltd. v. Syscon Justice Systems Canada Ltd.*, 2010 BCSC 1712 at para. 58. The plaintiffs point to two things done by defendants that they say reasonably led them to name Ms. Xie as a defendant.

[44] First, they point to Mr. Horvath's payment to Phoenix Travel that included funds he had received from the plaintiffs. Related to this, they point to evidence of their expert forensic accountant who opined that Ms. Xie received this and certain other payments traced to the plaintiffs' funds. However, the plaintiffs named Ms. Xie as a defendant before they had this expert report and even before they instructed the expert. The expert also made some key errors in tracing funds to Ms. Xie which he corrected during this testimony. I do not accept that the payment to Phoenix Travel or the expert report was the plaintiffs' reason for naming Ms. Xie.

[45] Second, the plaintiffs rely on Mr. Guo's indemnity in which he guaranteed the plaintiffs' investment "using all [his] assets". They argue that since at least some of his assets are jointly owned with Ms. Xi it was reasonable to name Ms. Xie. I accept

it would be necessary to involve Ms. Xi in any enforcement proceedings but I am not persuaded this made it necessary to name her as a defendant in the action itself.

[46] Thus, I decline to make a *Sanderson* order.

[47] However, I agree with the plaintiffs that any cost award to Ms. Xie should be set off against a costs order Associate Judge Bilawich made against Mr. Guo and Ms. Xi on May 17, 2022. Thus, while I would exercise my discretion to award Ms. Xie \$10,000 in costs, I would stay that order pending the assessment of the plaintiffs' entitlement to costs under Associate Judge Bilawich's order.

### **Katarina Horvath's Liability for Costs**

[48] I found Katarina Horvath was liable to the plaintiffs in knowing receipt after Mr. Horvath, her husband, transferred \$35,500 into her bank account. That money was traced to the secret profit Mr. Horvath took from the flip of the properties. I found Ms. Horvath did not have actual knowledge of the source of the money (and thus was not liable in knowing assistance) but since the sum was substantially higher than any amount that Mr. Horvath had regularly transferred to her account before, she ought to have inquired about the source of these funds. This made her liable in knowing receipt.

[49] I also found Ms. Horvath liable for one half of \$450,000 that was traced to a down payment she and Mr. Horvath made on a property in Surrey. That money was traced to the plaintiffs' funds although the evidence did not show whether it was from the profit from the flip or from the misappropriated project development funds or both. Regardless, I found the Horvaths' relatively sudden rise in fortune that allowed them to buy the property with that down payment ought to have put Ms. Horvath to an inquiry as to the source of the funds and I found she was liable for \$225,000, being half amount of the down payment traced to the plaintiffs' funds. Before trial, the plaintiffs obtained an order freezing the proceeds of the sale of the Surrey property and in closing argument at trial, Ms. Horvath advised she would make no claim to that fund if I were to find that it derived from money illegally obtained by Mr.

Horvath. I ordered payment of that fund out to the plaintiffs and this reduced Ms. Horvath's liability for the \$225,000 to approximately \$41,500.

[50] The plaintiffs seek an order that Ms. Horvath is jointly and severally liable for 5% of their overall costs. This is proportionate to the extent of her liability (before giving credit for the funds held in trust) for the full amount of the plaintiffs' damages. Ms. Horvath did not attend the costs hearing or make submissions on this point. I agree the plaintiffs' proposal is a reasonable one to address Ms. Horvath's relatively minor role in the trial and the matters in dispute. However, since I declined in the Trial Reasons to order her liability was joint (see Trial Reasons at para. 501), I also decline to order that she is jointly liable for costs. Thus, there will be an order that Ms. Horvath is severally (but not jointly) liable for the plaintiffs' costs to a maximum of 5% of those costs.

**Summary and Conclusion**

[51] I therefore make the following orders as to costs:

- a) The defendants Mr. Horvath, Mr. Nath, Mr. Guo, Developpro, and Vantone Developments are jointly and severally liable for the plaintiffs' costs to be assessed at scale B.
- b) The defendant Ms. Horvath is severally liable for 5% of the plaintiffs' assessed costs at scale B.
- c) The defendants Mr. Horvath, Mr. Nath, Developpro, and Vantone Developments are jointly and severally liable to Mr. Guo for his own costs and to indemnify him for any of his contribution towards the plaintiffs' costs.
- d) Ms. Xie is entitled to a lump sum of \$10,000 in costs to be set off against the costs order made by Associate Judge Bilawich dated May 17, 2022.

“Kirchner J.”