

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Beigi v. Sabaghchian*,
2025 BCSC 1338

Date: 20250715
Docket: S212990
Registry: Vancouver

Between:

Abbas Beigi and International Design Group Limited

Plaintiffs

And

**Aliakbar Sabaghchian, Leile Kavishi, Niaz Sabaghchian and
Masoud Sab Holdings Ltd.**

Defendants

And

Joanna Beigi Wong

Defendant by way of Counterclaim

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for Plaintiffs:

D. Dalke
J. Faner

Counsel for Defendants:

A. Spence

Place and Date of Hearing:

Vancouver, B.C.
January 21, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 15, 2025

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Overview

[1] The defendant Niaz Sabaghchian brings a summary trial application seeking an order that a claim for unjust enrichment made against her be dismissed.

Ms. Sabaghchian also applies for an order for special costs in respect of a claim against her that has been discontinued by the plaintiffs.

[2] In response to the summary trial application, the plaintiffs apply for judgment against Ms. Sabaghchian and for an order that Ms. Sabaghchian owns a property in Iran (the “Salar Property”) in trust for the plaintiff International Design Group Limited (“IDG”) and the defendant Aliakbar Sabaghchian.

[3] For the reasons that follow, Ms. Sabaghchian’s applications are dismissed with special costs to the plaintiffs in any event of the cause. Essentially, it would be unfair to dismiss the claims against Ms. Sabaghchian when document disclosure is incomplete and where she seeks to split her case. On the other hand, it is not appropriate in my view to grant judgment to the plaintiffs in respect of this one business transaction in the context of many between the parties, especially where there is a risk the trial judge may reach different conclusions regarding the nature and purpose of certain transfers of funds.

[4] Given my finding that the claim against Ms. Sabaghchian should not be decided on this summary trial application, I will review the background and the evidence before the court only to the extent necessary to explain the outcome.

Overview of the pleadings

[5] The plaintiff Abbas Beigi is the principal, a shareholder and a director of the plaintiff IDG.

[6] On March 25, 2021, the plaintiffs filed this action against Aliakbar Sabaghchian, Leile Kavishi, Ms. Sabaghchian and Massoud Sab Holdings Ltd. Mr. Sabaghchian is the spouse of Leile Kavishi and the father of Ms. Sabaghchian. Mr. Sabaghchian and Ms. Kavishi are the directors and shareholders of Massoud Sab Holdings Ltd.

- [7] In the original and amended notices of civil claim, the plaintiffs allege:
- a) that Mr. Sabaghchian and the plaintiffs partnered to invest in properties in British Columbia (the “BC Partnership”);
 - b) IDG and Mr. Sabaghchian agreed to partner in the business of supplying polyurethane to use for manufacturing shoe soles in Iran (the “Polyurethane Partnership”); and
 - c) Mr. Sabaghchian breached trust and fiduciary duties owed to the plaintiffs and misappropriated partnership funds from both of these business enterprises.

[8] In the response to civil claim filed on behalf of all defendants, the defendants assert that the plaintiffs’ claims are false and that the action is an abuse of process. The defendants deny any partnership between the plaintiffs and defendants; however, the defendants acknowledge various business dealings between the plaintiffs and Mr. Sabaghchian involving a number of properties in British Columbia and that Mr. Sabaghchian was IDG’s commissioned agent for the importation into Iran of various materials. The defendants filed a counterclaim against the plaintiffs and Mr. Beigi’s wife and claim:

- a) unpaid commissions and consulting fees owing to Mr. Sabaghchian in connection with the polyurethane business;
- b) funds owing in respect of various real estate investments;
- c) for tax liabilities related to real estate investments; and
- d) funds owing from transfers of funds from Mr. Sabaghchian’s Iranian bank accounts to IDG’s or Mr. Beigi’s bank accounts in Hong Kong close in time to Mr. Sabaghchian’s immigration to British Columbia.

[9] The defendants by counterclaim deny they owe any money, deny receiving transfers of funds from Mr. Sabaghchian related to his immigration, and deny responsibility for his tax liabilities.

[10] In short, the plaintiffs and Mr. Sabaghchian agree that they engaged in various business dealings and various funds were transferred between them, but they have very different perspectives on the purpose for the transfers and the accounting for the funds exchanged. Other than the claim against Ms. Sabaghchian, the merits of these other claims and counterclaims are not before the court on this application.

Is Ms. Sabaghchian entitled to special costs in respect of the original claim against her that the plaintiffs have withdrawn?

[11] Ms. Sabaghchian says she is entitled to an order for special costs on the basis that the plaintiffs withdrew allegations against her that the plaintiffs knew were untrue from the outset of this litigation. Ms. Sabaghchian says the original claims against her were an abuse of process, and the plaintiffs' reprehensible conduct merits sanction.

[12] For the reasons that follow, I am not convinced an order for special costs against the plaintiffs is warranted. Whether Ms. Sabaghchian is entitled to her costs, including the cost of preparing an application to dismiss the original allegations against her, will have to await the outcome of this action.

Chronology of claims against Ms. Sabaghchian

[13] In the original notice of civil claim filed March 25, 2021, the only specific claim against Ms. Sabaghchian related to a refund of a realtor's commission fee for a sale of a property in British Columbia (the "Queen's Refund"). The plaintiffs alleged that Mr. Sabaghchian caused the BC Partnership to pay the Queen's Refund to Ms. Sabaghchian without the plaintiffs' knowledge and that Ms. Sabaghchian ought to have known the Queen's Refund belonged to the BC Partnership. The plaintiffs alleged Ms. Sabaghchian was liable to them for knowing assistance and knowing

receipt of the Queen’s Refund that she knew was transferred in breach of Mr. Sabaghchian’s fiduciary duty to the plaintiffs.

[14] In their response to civil claim, the defendants pleaded that Mr. Sabaghchian instructed the realtor to issue the cheque to Ms. Sabaghchian for the Queen’s Refund on June 26, 2017 and that Ms. Sabaghchian transferred funds equal to the amount of the Queen’s Refund to Mr. Sabaghchian on July 7, 2017.

[15] On August 22, 2022, Ms. Sabaghchian filed a summary trial application (“Summary Trial #1”) seeking to dismiss the claim against her. She claimed special costs.

[16] After several adjournments, Summary Trial #1 was set for hearing in late February 2023.

[17] On February 20, 2023, the day before the plaintiffs filed their response to Summary Trial #1, the plaintiffs filed an amended notice of civil claim deleting the claims against Ms. Sabaghchian in respect of the Queen’s Refund and adding a new claim that she seeks to have dismissed at the summary trial part of this application (“Summary Trial #2”).

[18] Although the claims in respect of the Queen’s Refund have been withdrawn and the only issue is whether Ms. Sabaghchian is entitled to special costs, the notice of application relies on Rule 9-5(1)(d), which provides as follows:

Scandalous, frivolous or vexatious matters

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any of part of a pleading, petition or other document on the ground that:

[...]

(d) it is otherwise an abuse of process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[19] Ms. Sabaghchian argues that an award of special costs is justified on the basis that the allegation against her in the original notice of civil claim was an abuse of process.

Legal framework

[20] Special costs are designed to sanction reprehensible conduct that is deserving of reproof or rebuke. Reprehensible conduct includes “scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke”: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.) at para. 17.

[21] At para. 73 of *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 [*Westsea*], Justice Gropper summarized relevant principles for awarding special costs, which include the following:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
- c) simply because the legal concept of “reprehensibility” captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term; and
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court’s process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant.

[22] As Justice Gropper noted at para. 75 of *Westsea*, “[c]osts are not the central focus of litigation. The disposition of costs should be conducted in a manner that recognizes their secondary importance.”

Order for special costs not warranted

[23] I am not satisfied Ms. Sabaghchian has met the burden of demonstrating exceptional circumstances that would justify an award of special costs in respect of claims that have been withdrawn at an early stage of these proceedings.

[24] I am not prepared to find that the plaintiffs initiated the claim against Ms. Sabaghchian for an improper purpose. I accept that there was some evidence that Ms. Sabaghchian had received funds to which the plaintiffs laid claim. Clear evidence that these funds had been transferred back to Mr. Sabaghchian was first provided to the plaintiffs by way of bank records attached to Mr. Sabaghchian's second affidavit, which was filed November 18, 2022. I appreciate that Mr. Sabaghchian accounted for the Queen's Refund in one of his summaries of expenditures in respect of that real estate transaction, but there were other alleged discrepancies in that summary that left it unclear whether Ms. Sabaghchian had retained BC Partnership funds.

[25] Ms. Sabaghchian says the withdrawn claims were essentially allegations of fraud, which I accept is accurate with respect to the claim of knowing assistance. At para. 41 of *Gold v. Rosenberg*, [1997] 3 S.C.R. 767, 1997 CanLII 333 (S.C.C.), the Supreme Court of Canada succinctly explained the nature of the two claims that were withdrawn:

Participation in a fraud underlies liability in cases of knowing assistance; unjust enrichment is the essence of a claim in knowing receipt.

[26] That said, an unproven fraud claim does not always result in an award of special costs: *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 18. In this case, the knowing assistance claim was not pursued through to adjudication but instead withdrawn before examinations for discovery and before document disclosure was complete.

[27] I am not satisfied that it is fair to describe as reprehensible the plaintiffs' decision to advance a claim for knowing receipt against a person who initially received the Queen's Refund, in circumstances in which the accounting for funds

between the plaintiffs and Mr. Sabaghchian is very much at issue. The plaintiffs' withdrawal of the claim at an early stage of proceedings is a factor militating against an award of special costs.

[28] In her written submission, Ms. Sabaghchian cites *Chernen v. Robertson*, 2014 BCSC 1358 for the proposition that "...an abuse of process calls for strong judicial disapprobation, and special costs are warranted in these instances to compensate the innocent party and penalize the misuse of judicial resources."

[29] However, it appears that Ms. Sabaghchian has misconstrued the court's finding in that case. In *Chernen*, the court struck a petition filed by a number of resident electors against then mayor of the City of Vancouver, Gregor Robertson. The petition sought relief arising from Mr. Robertson's alleged conflict of interest in respect of a company that entered into a real estate lease with the City. The court struck the petition as an abuse of process on the basis it was without foundation and could serve no useful purpose. The court declined to order special costs in *Chernen*. The court was not prepared to find "the petitioners acted maliciously or engaged in scandalous or outrageous conduct" and noted the process followed by the City in respect of the lease was "shrouded in secrecy until a point after which the petition was filed": *Chernen* at paras. 35–36. *Chernen* does not appear to support the proposition for which it was cited in Ms. Sabaghchian's written submission.

[30] Rather, as in *Chernen*, I decline to award special costs, in part because Ms. Sabaghchian has not proven that the plaintiffs acted maliciously or engaged in scandalous or outrageous conduct in filing the claim. In particular, Ms. Sabaghchian has not proven that Mr. Beigi knew she was a law student when the action was filed and that the claim against her might have professional repercussions.

[31] Aside from the cost of bringing the application to dismiss, I am not satisfied Ms. Sabaghchian has demonstrated that she incurred costs to defend this action aimed primarily at her father. I note all defendants are represented by the same counsel. Depending on the outcome of the action, Ms. Sabaghchian may be entitled to her costs, including her costs of preparing Summary Trial #1. However, I am not

prepared to consider any other order for costs in respect of the withdrawn claims at this interim stage of this proceeding.

Should the claim against Ms. Sabaghchian in respect of the Salar Property be decided on a summary trial application?

[32] The manner in which this summary trial was presented was unusual. In seeking to dismiss a claim of unjust enrichment, Ms. Sabaghchian led evidence attempting to show that land title documents purporting to show she owned the Salar Property were forgeries. Mr. Sabaghchian deposed that the “doctored forgery” appeared to relate to a property that had nothing to do with the matters in issue. Ms. Sabaghchian did not, at first instance, make an affidavit.

[33] After the plaintiffs obtained an expert opinion from a lawyer in Iran regarding ownership of the Salar Property, Ms. Sabaghchian filed an affidavit admitting that she is the legal owner of the Salar Property but not the beneficial owner. Ms. Sabaghchian says she gave her father a power of attorney for properties registered in her name. She says she did not receive any financial benefit as registered owner of the Salar Property.

[34] As ostensible reply, Mr. Sabaghchian filed an affidavit confirming Ms. Sabaghchian became the registered owner of the Salar Property on May 22, 2013. Mr. Sabaghchian deposes that “physical possession” of the Salar Property was handed over to Mr. Bahram Fateh Moghaddam to allow him “to manage and carry out development activities on the property”. Mr. Sabaghchian says legal title was transferred to Ms. Sabaghchian for “tax planning and security purposes”.

[35] I am cautious about accepting the bald assertions that Ms. Sabaghchian did not receive any financial benefit by Mr. Sabaghchian and Ms. Sabaghchian in reply, particularly where document disclosure by the defendants was incomplete and examinations for discovery had not been conducted. In these circumstances, it would be unjust to dismiss the claim for unjust enrichment against Ms. Sabaghchian. I would not, in any event, dismiss the claim that she owns the Salar Property.

[36] On the other hand, it would be unjust to find that Ms. Sabaghchian has been unjustly enriched or that she holds the Salar Property in trust for IDG or the Polyurethane Partnership. The financial issues between the plaintiffs and Mr. Sabaghchian extend far beyond this one property. There is a real risk of inconsistent findings if I make any determination in respect of use of funds for this one property. To reach a final conclusion regarding the Salar Property while claims related to the other business dealings remain outstanding would result in litigating in slices.

Background

Claims against Ms. Sabaghchian in amended notice of civil claim

[37] As mentioned, the plaintiffs filed an amended notice of civil claim on February 23, 2023. The following allegations of fact were added to Part 1 of the amended notice of civil claim:

84. The [proceeds of the Polyurethane Partnership’s sales] were used in part to acquire and develop real property in Iran, specifically three properties known as Lavasan, Salar and Shomal....Mr. Sabaghchian has not provided an accounting in relation to the Lavasan, Salar and Shomal properties.

85. Mr. Sabaghchian, without the plaintiffs’ knowledge or consent, caused the Salar property to be registered with Niaz Sabaghchian as owner.

[38] The following legal basis was added to Part 3 of the amended notice of civil claim under the heading “Unjust Enrichment”:

20. In particular, Niaz Sabaghchian was unjustly enriched by being registered as the owner of the Salar property.

[39] In Part 2 of the amended notice of civil claim, amongst other relief, the plaintiffs seek judgment against Ms. Sabaghchian for unjust enrichment, an equitable tracing, and a declaration that they have an equitable interest in her real and personal property “on the basis of a constructive, resulting, implied and/or express trust”.

[40] The defendants have not filed an amended response to civil claim in answer to the amended notice of civil claim. In the response to civil claim filed November 25, 2021, the defendants pleaded as follows in the legal basis in answer to allegations of unjust enrichment:

10. The Defendants deny they were unjustly enriched by the Plaintiffs, as alleged or at all and say that the Plaintiffs have been fully paid all amounts due and owing and the Plaintiffs are therefore not entitled to any damages or restitution whatsoever.

11. In the alternative, if the Defendants were enriched, which is specifically denied, any enrichment of the Defendants was agreed to verbally and therefore there exists a juristic reason for any alleged enrichment.

[41] At para. 12 and 14 of Part 3 of the response to civil claim, the defendants deny using any proceeds from the alleged partnerships to purchase real and personal property, and the defendants deny holding any property in trust for the plaintiffs.

Summary trial #2 – notice of application and supporting affidavits

[42] In the notice of application filed June 30, 2023, the second order sought by Ms. Sabaghchian is an order dismissing as against her the allegations in para. 84 and 85 of the amended notice of civil claim as set out above.

[43] In Part 2 of the notice of application, after reviewing the facts related to her claim for special costs for the Queen’s Refund claim, Ms. Sabaghchian says the following:

24. The Plaintiffs have replaced those scandalous and untrue allegations [related to the Queen’s Refund] with paragraphs 84 and 85. Paragraph 84 refers to certain property located in Iran and paragraph 85 indicates that one of the properties was registered in the name of Niaz Sabaghchian, as owner. Those new allegations now are the entirety of the present claims against Niaz.

25. These allegations are even more scandalous. They are founded on forged documents obtained on behalf of the Plaintiffs by a gentleman by the name of Mr. Taghiakbari as set forth in Mr. Taghiakbari’s Affidavit #2, and Affidavit #2 of the Plaintiffs made February 24, 2023....

...

27. Nor is it true that the property was an asset of the alleged partnership between the Plaintiffs and Sabaghchian. Sabaghchian had bought the property in the name of his daughter, Niaz, three years before the commencement date of the alleged partnership....

...

34. However, what is most noteworthy about the allegations now being made against Niaz are that the property in issue had been bought under her name in or about 2011 whereas the alleged polyurethane partnership was not formed until 2014, three years later.

35. Pleas that the Defendant Niaz Sabaghchian was a knowing recipient have been deleted, and the plea simply now is that the property was transferred to her. There is no allegation of knowing receipt; indeed, that allegation has been removed.

[44] In the notice of application, the remaining facts relevant to the summary trial relate to the alleged forgery of Iranian title documents.

[45] According to the notice of application, in terms of evidence, Ms. Sabaghchian relied upon the affidavits #1 and #3 of Mr. Sabaghchian, an affidavit from Aliakbar Nejatpour (Mr. Sabaghchian's lawyer in Iran), and an affidavit by a legal assistant to counsel for the defendants. Much of this evidence is either inadmissible or irrelevant to the summary trial application. Notably, Ms. Sabaghchian did not initially provide an affidavit as part of her evidence in support of her summary trial application.

[46] Affidavit #1 of Mr. Sabaghchian was made August 2, 2022 in support of Summary Trial #1 and responded to the claim against Ms. Sabaghchian in connection with the Queen's Refund.

[47] Affidavit #3 of Mr. Sabaghchian was made May 31, 2023, and said to respond to Affidavits #1 and #2 of Amir Taghiakbari and the first affidavit of a legal assistant at plaintiffs' counsel's office. Neither the legal assistant's first affidavit nor Mr. Taghiakbari's Affidavit #2 were ultimately filed by the plaintiffs in answer to Summary Trial #2.

[48] In any event, Mr. Sabaghchian's Affidavit #3 describes his relationship with Mr. Taghiakbari and responds to Mr. Taghiakbari's evidence. Mr. Sabaghchian then says the following of relevance to Summary Trial #2:

21. My daughter Niaz is indeed the registered owner of a number of properties in Iran.

22. In Iran, there is a huge tax on inheritance, and it is my practice, which I believe is a common practice in Iran, to register my properties either in the name of my wife or of my daughter.

23. They have both provided me with Powers of Attorney, over the years, to deal with those properties....

24. The title deed produced by Mr. Taghiakbari is a doctored forgery of a title deed which, despite the lack of any identifying information in the Registry system, appears to me to be for a property which was owned by Niaz in 2010 and 2011, but was sold over 12 years ago, prior to my immigration to Canada. It has nothing to do with the matters in this action.

[49] Most of the balance of Mr. Sabaghchian's Affidavit #3 addresses his allegation that title documents attached to the plaintiffs' counsel's legal assistant's first affidavit were forged.

[50] Mr. Nejatpour is a lawyer in Iran who acts for Mr. Sabaghchian. His affidavit is inadmissible on this summary trial application on the basis the evidence it presents is either inadmissible opinion evidence, inadmissible hearsay or not relevant to the issue I must decide.

[51] Any opinion Mr. Nejatpour offers regarding Iranian law or land title registration is inadmissible. Mr. Nejatpour did not certify that he is aware of his Rule 11-2(1) duty to the court as required by Rule 11-2(2) of the *Supreme Court Civil Rules*. Further, Mr. Nejatpour could not comply with an expert's duty not to be an advocate, as he is Mr. Sabaghchian's lawyer. Mr. Nejatpour's opinion as to whether or not documents were forgeries is inadmissible.

[52] Evidence in Mr. Nejatpour's affidavit of what others told him is inadmissible for the truth of its contents and the fact he was told certain things is irrelevant to the merits of the Summary Trial #2. Documents attached to Mr. Nejatpour's affidavit not translated from Farsi are not admissible, as they have no evidentiary value without translation.

[53] Mr. Nejatpour deposed that he commenced proceedings by way of legal complaint to the Judiciary of Iran on March 18, 2023, on behalf of Mr. Sabaghchian

and Ms. Sabaghchian and another person seeking an arrest warrant and an order preventing Mr. Taghiakbari, Mr. Beigi and his wife from leaving Iran until the matter of the forgery of the documents could be resolved by the courts. This evidence is not relevant to the merits of the claim against Ms. Sabaghchian.

[54] The defendants' counsel's legal assistant attached "a copy of an Arrest Warrant for Amir Taghiakbara (sic), forwarded to [her] by Mr. Sabaghchian, [their] client". I am not satisfied that the affiant could authenticate the document, and it is irrelevant to the merits in any event.

Summary Trial #2 – responsive materials

[55] The plaintiffs filed an application response on June 11, 2024 and identified they relied upon various affidavits, pleadings and expert evidence from a lawyer in Iran. The plaintiffs tendered evidence showing IDG contributed funds to the acquisition and development of the Salar Property and that it is owned by Ms. Sabaghchian.

Reply materials

[56] In answer to the plaintiffs' response materials, Ms. Sabaghchian swore an affidavit on October 15, 2024 (15 months after filing the notice of application; approximately two weeks before the original hearing date for Summary Trial #2), and Mr. Sabaghchian swore Affidavit #5 on January 13, 2025 (one week before the hearing of Summary Trial #2). In these affidavits, Ms. Sabaghchian and Mr. Sabaghchian admit that Ms. Sabaghchian is the legal owner of the Salar Property.

[57] Ms. Sabaghchian deposes that she understands and believes that inheritance taxes in Iran are "significantly high, and it is a common cultural and legal practice for parents to register properties in their children's names as part of tax planning strategies."

Legal framework

[58] Rule 9-7(15) of the *Supreme Court Civil Rules* authorizes the court to grant judgment in favour of a party on the hearing of a summary trial application 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.

[59] In *Davies v. Canada Shineray Suppliers Group Inc.*, 2016 BCSC 1853, Fleming J. (as she then was) summarized the law on assessing suitability for summary trial as follows:

[32] *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 1989 CanLII 229 (BC CA), 36 B.C.L.R. (2d) 202 (C.A.) remains the leading authority on the principles to be applied in deciding the issue of suitability for summary trial. Chief Justice McEachern, writing for the Court of Appeal, identified some of the factors the court may consider in determining whether it would be unjust to give judgment, including the amount involved, the complexity and urgency of the matter, any prejudice likely to arise by reason of delay, the cost of taking the case forward to conventional trial, and the course of the proceedings to date. Other factors include whether the summary trial would take considerable time, whether credibility is a critical factor and has cross examination occurred, and whether the summary trial may create unnecessary complexity in the resolution of the dispute or “result in litigating in slices ...”

[33] On the question of suitability more broadly, the jurisprudence makes it clear that even significant conflicts in the affidavit evidence do not inevitably lead to the conclusion that the necessary facts cannot be found. Other admissible evidence, including discovery evidence, may permit the court to conclude that the evidentiary conflict can be addressed and the matter resolved without simply preferring one version of events over the other: ...

[Citations omitted.]

[60] The determination of the suitability of an application for summary trial is a discretionary exercise that turns on the particular circumstances of the application: see e.g. *Hallat v. Couturier*, 2024 BCSC 901 at para. 8.

[61] As the Supreme Court of Canada explained at para. 37 of *Moore v. Sweet*, 2018 SCC 52, in order to succeed in a claim for unjust enrichment, a plaintiff must prove that:

- a) the defendant was enriched;
- b) the plaintiff suffered a corresponding deprivation; and
- c) there is no juristic reason for the defendant's enrichment and the plaintiff's corresponding deprivation.

[62] The defendant's enrichment and the plaintiff's corresponding deprivation must arise from a "tangible benefit" passing from the plaintiff to the defendant, though the disputed benefit need not be conferred directly: *Moore* at paras. 41, 45.

Discussion

[63] The summary trial application is dismissed without judgment for either Ms. Sabaghchian or the plaintiffs for the following reasons.

Unjust to determine whether or not Ms. Sabaghchian unjustly enriched by the Polyurethane Partnership

[64] Ms. Sabaghchian now admits she is the legal owner of the Salar Property but claims that she has not been unjustly enriched because Mr. Sabaghchian is the beneficial owner. In addition, Ms. Sabaghchian asserts in her reply affidavit that she received no benefit as legal owner of the Salar Property and in particular no income, rent or profits from the Salar Property.

[65] It would be unfair to find as a fact that Ms. Sabaghchian has not received any income, rent or profits from the Salar Property given the incomplete document disclosure by the defendants as of the hearing of Summary Trial #2. On December 31, 2024, three weeks prior to the hearing, the defendants delivered the defendants' third amended list of documents, which listed 1500 new documents, some of which appeared from their description to relate to the Salar Property and to the polyurethane project. Although the defendants delivered a third amended list of

documents, the defendants had not prior to the hearing of Summary Trial #2 provided to plaintiffs' counsel copies of the documents from the defendants' third amended list (despite requests). Ms. Sabaghchian failed to explain this non-disclosure. It would be unfair to the plaintiffs to make a finding that Ms. Sabaghchian has received no tangible benefit (perhaps aside from legal title) when the plaintiffs could only prove she received such a benefit through document disclosure or examinations for discovery, neither of which was completed by the hearing of Summary Trial #2.

[66] I recognize that Ms. Sabaghchian deposes she has received no income, rent or profits from the Salar Property. However, I am not inclined to accept this bald assertion when it was tendered in reply (after leading evidence from Mr. Sabaghchian and Mr. Nejatpour implying that she did not legally own the Salar Property, which is not true) and when the defendants' document disclosure was incomplete.

[67] Given my finding that it would be unfair to decide whether Ms. Sabaghchian received a tangible benefit in the form of income, rent or profits from the Salar Property, it is not necessary to decide the legal question of whether legal title without beneficial ownership amounts to a tangible benefit for the purposes of the first stage of a claim for unjust enrichment. It is also unnecessary to determine whether this court needs to consider whether Iranian law recognizes the distinction between legal and beneficial ownership and how that might affect whether legal title alone amounts to a tangible benefit. It is also unnecessary to decide whether the stated purpose for placing title in Ms. Sabaghchian's name (for tax planning purposes in light of high inheritance taxes) gives rise to a tangible benefit to Ms. Sabaghchian, even if only a contingent benefit.

[68] As a result, I decline to dismiss the claim against Ms. Sabaghchian set out in paras. 84 and 85 of the amended notice of civil claim.

Unjust to decide whether Ms. Sabaghchian owns the Salar Property in trust for the Polyurethane Partnership

[69] Even if I was able to resolve the conflicts in the affidavit evidence, it would be unjust to decide the merits of the plaintiffs' claim with respect to the Salar Property because the plaintiffs' claims and Mr. Sabaghchian's counterclaims are complex, deciding this one claim would amount to litigating in slices, and there is a risk of inconsistent findings with respect to the remaining claims.

[70] The claim and counterclaim are complex. It would be unjust to decide one transaction in isolation from the remaining claims. It is clear from the pleadings filed that the business dealings between the parties and Mr. Sabaghchian are multi-faceted. These parties agree that funds were exchanged, but they disagree on the reason for the exchange of funds. The plaintiffs and Mr. Sabaghchian claim the other owes them money. Deciding the claim with respect to the Salar Property in isolation from the remaining claims would be an example of litigating in slices, with little likelihood that deciding this claim would result in any efficiencies at trial. Further, there is a risk that the trial judge may determine on the whole of the evidence, with the advantage of cross-examination, that the IDG transfers to companies said to be Mr. Sabaghchian's may be something other than payments in respect of the Salar Property. Without the evidence that would be available at trial and before examinations for discovery and document discovery are complete, it would not be fair to decide the claim that the Salar Property is held in trust for IDG.

[71] As a result, I decline to grant judgment in favour of the plaintiffs because it would be unfair to do so.

Costs of this application

[72] Ms. Sabaghchian was unsuccessful on her applications. I accept that the plaintiffs should be awarded special costs in respect of defending Summary Trial #2.

[73] As outlined above, special costs may be awarded for reprehensible conduct that is deserving of reproof or rebuke. Ms. Sabaghchian engaged in the following "less serious" forms of reprehensible conduct worthy of the court's rebuke, as

outlined by Justice Basran at para. 10 of *SHH Holdings Limited v. Philips*, 2021 BCSC 1232:

- a) withholding admissions and denying facts;
- b) engaging in obfuscation;
- c) wasting court time by mischaracterizing the evidence and raising trivial issues; and
- d) making the resolution of an issue far more difficult than it should have been.

[74] I accept the plaintiffs' submission that the main thrust of the summary trial part of the notice of application was that Ms. Sabaghchian did not own the Salar Property. The affidavits initially filed in support of the application focused on attacking the authenticity of documents that suggested she owned the Salar Property. However, after the plaintiffs obtained an expert opinion from a lawyer in Iran, Ms. Sabaghchian filed her own affidavit acknowledging she held legal title to the Salar Property. On the eve of the hearing, Mr. Sabaghchian admitted the same.

[75] Ms. Sabaghchian tendered Mr. Sabaghchian's Affidavit #3 and Mr. Nejatpour's affidavit in support of her summary trial application. By tendering such evidence, I am satisfied that Ms. Sabaghchian, at best, tried to obfuscate the issue of her ownership of the Salar Property and, at worst, tried to mislead the court. The question of forged documents was immaterial to the question of whether or not Ms. Sabaghchian actually owned the Salar Property.

"Lamb J."