IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pirooz v. Levi,*
2024 BCSC 2149

Date: 20241105
Docket: S195589
Registry: Vancouver

Between:

Sina Salehi Pirooz and 0919160 B.C. Ltd.

Plaintiffs

And:

David Yair Levi, also known as David Levi, and Olga Kouptsova, also known as Olga Yair Levi

Defendants/
Plaintiffs by Counterclaim

And:

Sina Salehi Pirooz and 0919160 B.C. Ltd.

Defendants by Counterclaim

Before: The Honourable Mr. Justice Brongers

Oral Reasons for Judgment

Counsel for the Plaintiffs:	S.A. Dawson G. Rincon
No other appearances:	
Place and Dates of Trial:	Vancouver, B.C. October 21 - 22, 2024
Place and Date of Judgment:	Vancouver, B.C. November 5, 2024

Introduction

[1] **THE COURT:** This is a judgment for damages further to an undefended trial.

[2] The plaintiffs are Sina Salehi Pirooz and his numbered company, 0919160 BC Ltd. They are collectively represented by the same counsel.

[3] The defendant is David Yair Levi. He is self-represented and did not appear at the trial.

[4] The underlying dispute relates to an investment agreement made by Mr. Pirooz and Mr. Levi. Under its terms, Mr. Pirooz was to provide certain funds (the “Pirooz Funds”) to Mr. Levi that the latter would invest on behalf of the plaintiffs. In consideration of Mr. Levi's services, the plaintiffs promised that Mr. Levi could keep 15% of the profits made on the Pirooz Funds investments. The parties' relationship soured, and Mr. Pirooz insisted that Mr. Levi transfer the investment portfolio established with the Pirooz Funds to a broker trusted by Mr. Pirooz. Mr. Levi did not comply with this demand, and the plaintiffs commenced the present litigation.

[5] Four months prior to trial, the plaintiffs obtained a partial summary judgment against Mr. Levi in the amount of $174,005.74. Approximately six weeks prior to trial, the plaintiffs obtained an order striking out Mr. Levi's response to civil claim and an order that judgment be granted against Mr. Levi with damages and other relief to be assessed and determined at a future hearing.

[6] The primary issue in this trial is therefore the quantification of the damages that Mr. Levi ought to be ordered to pay to the plaintiffs.

[7] In these reasons, I will first discuss the procedural background of this matter. Second, I will summarize the plaintiffs' position at trial. Third, I will set out my findings in respect of the background facts and discuss the legal basis for Mr. Levi's liability for damages. Fourth, I will quantify the plaintiffs’ compensatory damages as proven at trial. Fifth, I will assess the plaintiffs’ claim for punitive damages. Sixth, I

will consider the plaintiffs' plea for a costs award. Finally, I will pronounce the terms of the order that I am issuing today.

Procedural Background

[8] This action started on May 14, 2019 when the plaintiffs filed their notice of civil claim. It named Mr. Levi and his spouse, Olga Kouptsova, as defendants.

[9] The plaintiffs alleged in their original pleading that they had entered into an investment agreement with Mr. Levi. Its terms provided that Mr. Levi would invest the Pirooz Funds and that Mr. Levi would receive 15% of the profits from these investments. Over the period from March 2016 to February 2018, the plaintiffs provided Mr. Levi with $401,522 for investment purposes. In or around October 2018, Mr. Pirooz came to lose confidence in Mr. Levi, and Mr. Pirooz demanded that Mr. Levi transfer the plaintiffs' portfolio of securities that Mr. Levi was managing to the plaintiffs' "trusted broker". However, Mr. Levi did not follow these instructions. The plaintiffs then commenced the present action.

[10] The relief sought in the original notice of civil claim included the following:

1) a declaration that Mr. Levi, as trustee, holds $401,522 in trust for the plaintiffs;
2) judgment against Mr. Levi in the amount of $401,522 for breach of trust and breach of fiduciary duty;
3) a disgorgement order in respect of the trust funds;
4) in the alternative, a declaration that the securities acquired by Mr. Levi for the plaintiffs are held in trust for the plaintiffs;
5) in the alternative, an order that these securities be transferred to a securities broker to be named by the plaintiffs;
6) in the alternative, judgment for damages against Mr. Levi for breach of contract for having liquidated the securities portfolio acquired of the plaintiffs' funds; and

7) in the alternative, judgment for damages in debt in the amount of $401,522 for the reckless and fraudulent misrepresentations made by Mr. Levi and Ms. Kouptsova to the plaintiffs, as well as punitive damages.

[11] The defendants filed a response to civil claim denying liability on June 3, 2019. In their pleading, the defendants characterize the agreement between the parties as simply an arrangement by which Mr. Levi would purchase some stocks from Mr. Pirooz through Mr. Levi's own account. At the same time, the defendants counterclaimed against the plaintiffs for general, aggravated, punitive, and special damages totaling $700,000 for abuse of process in relation to the plaintiffs' claim. The plaintiffs filed their response to counterclaim denying liability on June 21, 2019.

[12] The plaintiffs' notice of civil claim was first amended pursuant to *Supreme Court Civil Rules* 6-1(1)(a) on September 21, 2020. These amendments did not change the fundamental basis of the plaintiffs' claim against Mr. Levi.

[13] On June 3, 2021, the plaintiffs' claim against Ms. Kouptsova was dismissed further to a summary judgment issued by Justice Mayer (*Pirooz v. Levi,* 2021 BCSC 1068). However, Ms. Kouptsova's counterclaim against the plaintiffs was maintained. On August 10, 2022, Mr. Levi was ordered by Associate Judge Bilawich to delete Ms. Kouptsova as a co-counterclaimant in the context of his order permitting Ms. Kouptsova to proceed with a solo counterclaim against the plaintiffs (*Pirooz v. Levi,* 2022 BCSC 1468).

[14] On May 27, 2024, the plaintiffs filed an application for partial summary judgment against Mr. Levi. The basis for the application was an apparent admission contained in a December 18, 2018 email from Mr. Levi's lawyer to Mr. Pirooz. It was to the effect that Mr. Levi had:

1) liquidated shares purchased with the Pirooz Funds and had realized proceeds of $US 197,384.62;

2) sold or arranged for the sale of cryptocurrencies purchased with the Pirooz Funds resulting in an additional $US 9,241.36 of realized proceeds, for a total of $US 206,625.98 of realized proceeds;

3) acknowledged that $US 127,039.31 of these proceeds were owing to Mr. Pirooz.

[15] The application for summary judgment and other relief was heard by Associate Judge Robinson on June 18 and 19, 2024. Mr. Levi did not file any material in response to the summary judgment application in particular. While Mr. Levi was still represented at the hearing, his counsel apparently walked out of it without making any representations in respect of the summary judgment application. On June 24, 2024, Mr. Levi filed a notice of intention to act in person. He has been self-represented ever since.

[16] Associate Judge Robinson took the plaintiffs' partial summary judgment application under reserve. He allowed it on July 3, 2024. In his unreported reasons for judgment, Associate Judge Robinson wrote:

> [47] At this stage, I am compelled to restatement and emphasize the relevant evidence. The defendant admits having received more than $400,000 from the plaintiffs. He admits that no portion of that amount has been repaid to the plaintiffs. He admits that he is holding USD $206,625.98, which he says is the proceeds derived from the liquidation of the plaintiffs' investments.
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> [48] Finally, both the defendant and counsel for the defendant have expressly acknowledged and admitted that, of the moneys being held, USD $127,039.31 is payable to the plaintiffs. In this context, there is clearly no triable issue in respect of the amount described. It is payable to the plaintiffs, and the defendant has no basis on which to resist liability insofar as that amount is concerned. Accordingly, the plaintiffs are granted judgment in the amount of USD $127,039.31 as sought in paragraph [*sic*] of their notice of application dated May 27, 2024.
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> [54] In summary:
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> > [h] Finally, the plaintiffs or either of them may execute against the moneys held in court pursuant to this order to realize the proceeds of the partial summary judgment as granted. In respect to the partial summary judgment, I confirm the plaintiffs are granted judgment in the

> amount sought in paragraph 1 of their notice of application dated May 27, 2024. The amount of the judgment shall be expressed in Canadian currency as to the posted exchange rate of the Bank of Canada at the close of business yesterday, being July 2, 2024.

[17] The formal order issued further to the partial summary judgment application provides that:

1) The plaintiffs are granted judgment against Mr. Levi in the amount of $174,005.74, being the equivalent of $US 127,039.31 on July 2, 2024 (the "Initial Judgment") with the balance of the plaintiffs' claims, including interest on the initial judgment, be adjudicated at a future hearing.

2) Mr. Levi shall pay into court $US 206,625.98 (or its Canadian dollar equivalent of $283,015.60) together with interest earned on those funds.

3) The fund shall be held in court to the credit of this action pending written agreement of the plaintiffs and Mr. Levi or further order of this court.

4) The plaintiffs may execute upon the fund in satisfaction of the initial judgment, without the need for any further order of this court.

[18] The partial summary judgment order was not appealed. In addition, Mr. Levi did not comply with the order to pay $283,015.60 into court.

[19] On July 5, 2024, a case planning conference was held before Associate Judge Harper. It was attended by counsel for the plaintiffs and counsel for Ms. Kouptsova. Mr. Levi did not attend. The case plan order issued on that date provides: "by consent, Ms. Kouptsova's counterclaim against the plaintiffs is severed from the plaintiffs' claim but only against Mr. Levi". I am advised by counsel for the plaintiffs that the last five words of the order appear to have been included by mistake, and that the intended effect of the order was to fully sever Ms. Kouptsova's counterclaim from the present matter. As such, that counterclaim is not a subject of the trial before me.

[20] On August 16, 2024, the plaintiffs filed two applications. They were presented separately, on two different dates, before two different deciders.

[21] The first was an application for leave to amend the plaintiffs' notice of civil claim pursuant to Rule 6-1 of the *Rules.* The proposed amendments purport to update and clarify the details of the specific payments made to Mr. Levi and to further particularize the quantum of damages being sought against him at trial. The amended claim states that the total amount of money provided by the plaintiffs to Mr. Levi (i.e., the Pirooz Funds) is $463,101, and not $401,522 as originally pleaded. The amendments particularize the terms of the investment agreement, noting that $387,571 were to be used to buy "US equities" and $75,529 of the plaintiffs' money was to be used to buy two types of cryptocurrencies, namely, Bitcoin and Ethereum. The amendments also advance a new claim for "loss of investment opportunity."

[22] The Rule 6-1 application for leave to file the amended notice of civil claim was heard by Associate Judge Harper on August 30, 2024. It was not opposed and was granted by Associate Judge Harper that day.

[23] The plaintiffs' second application dated August 16, 2024 was for an order striking out the response to civil claim of Mr. Levi, and for an order that judgment be granted against Mr. Levi with damages and other relief to be assessed and determined. This application was brought pursuant to Rule 22-7, which deals with the effect of non-compliance with the *Supreme Court Civil Rules.* Other relief was sought on that application as well, notably the dismissal of Mr. Levi's counterclaim against the plaintiffs and an order that Mr. Pirooz be permitted to give his evidence in chief at trial by affidavit.

[24] The Rule 22-7 application to strike the response to civil claim and for other relief was heard by Justice Francis on September 4, 2024. It, too, was unopposed and was granted by Justice Francis that same day. Justice Francis gave brief unreported oral reasons in which she explained that she understood that dismissing a defence on a first Rule 22-7 application is a draconian remedy, and that generally a second chance is given to the defendant to correct the default. However, she felt that this was an egregious case in which a striking of the defence is warranted. Justice Francis noted in particular the following:

> [3] It is important to note that Mr. Levi had notice of all of the orders in question. He appears to have simply checked out of this proceeding, and while documents are being served on him at his email address for service that was included on his notice of intention to act in person, he simply is not responding to anything, including court orders.
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> [9] In this case, we have a litigant who not only has failed to comply with numerous court orders, failed to show up for examinations for discovery, failed to participate in the litigation in any way, but even at this application to strike his response to civil claim and counterclaim, has not responded and has not shown up in court, which makes this case different from other cases where this court has offered a second chance.

[25] Justice Francis did not, however, give any express reasons for the balance of the relief that was granted. That said, her order also provides for judgment in favour of the plaintiffs with damages to be assessed, dismissal of Mr. Levi's counterclaim, and leave to Mr. Pirooz to provide his evidence at trial by affidavit, subject to the discretion of the trial judge.

[26] The matter came on for trial before me on October 21, 2024. Mr. Levi did not appear, in spite of having been given notice of the trial by counsel for the plaintiffs. This placed the court in a position where it had to decide whether to allow the trial to proceed regardless.

[27] Like Justice Francis, I am of the view that Mr. Levi has "simply checked out of this proceeding", does not intend to participate in it any further, and that no purpose would be served by adjourning it to see if Mr. Levi might change his mind. Accordingly, I exercised my discretionary authority under Rule 12-5(76) to proceed with the trial in the absence of Mr. Levi.

[28] The trial evidence before me consisted of:

1) an affidavit made by Mr. Pirooz;
2) admissions made by Mr. Levi following two notices to admit; and
3) two expert reports and expert testimony regarding the plaintiffs' damages.

[29] At the end of the hearing on October 22, 2024, I took this matter under reserve until today, November 5, 2024. During this period, the court has not received any communication from Mr. Levi.

The Plaintiffs' Position

[30] The plaintiffs submit that they are entitled to relief from Mr. Levi under three headings:

1) compensatory damages;
2) punitive damages; and
3) special costs.

[31] With respect to the first heading, the plaintiffs submit that liability has already been determined in their favour by virtue of two chambers decisions of this court. The first is the July 3, 2024 summary judgment of Associate Judge Robinson for $174,005.74. The second is the judgment that was granted by Justice Francis on September 4, 2024, with damages to be assessed and determined.

[32] Accordingly, the plaintiffs submit that the court's task is to simply perform an assessment of their aggregate damages, and to order that this amount be paid less the $174,005.74 that has already been awarded by the summary judgment. As for the quantum, the plaintiffs say that they have proven aggregate damages in the amount of $1,470,722.19. Therefore, after deducting the $174,005.74 that was awarded by Associate Judge Robinson, the plaintiffs say that the trial damages award should be $1,296,716.45.

[33] With respect to the second heading, the plaintiffs seek an award of between $50,000 and $100,000 by way of punitive damages.

[34] With respect to the third heading, the plaintiffs seek an award of special costs with the amount to be assessed.

Findings of Fact and Legal Basis in Relation to Mr. Levi's Liability

[35] I generally agree with counsel for the plaintiffs that the effect of Justice Francis' order striking out Mr. Levi's response to civil claim and granting judgment to the plaintiffs is similar to that of a default judgment. However, I do not accept that the court's role in this trial is to simply quantify damages. This is particularly the case when Justice Francis' order was purely procedural and did not involve any fact finding in relation to the merits of the plaintiffs' claim.

[36] Instead, I must perform an adjudication consistent with the principles that apply after a defence is struck out. They were set out by Justice Pearlman of this court in *McIsaac v. Healthy Body Services Inc.*, 2009 BCSC 1716, at paras. 41, 42, and 44, as follows:

> [41] The defendant submitted that before the court grants judgment for damages, it must be satisfied that the plaintiff has proved a legitimate claim based on credible evidence. In *Judge v. Smith*, [1961] B.C.J. No. 163 (S.C.), Collins J. at para. 3, stated that the court retains a discretion not to enter final judgment if he or she considers it improper to do so. Collins J. said:
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> > In my view, while the liability of the defendant may be said to have been technically established by the entry of interlocutory judgment, nevertheless the Judge before whom the assessment of damages takes place could decline to order entry of the final judgment if the evidence received on the assessment hearing disclosed that the plaintiff in fact did not have a good cause of action, or that some condition had still to be performed before the plaintiff would be entitled to enter a final judgment.
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> [42] The court performs a judicial function on assessment of damages after a defence is struck or judgment is taken in default of defence. The plaintiff must still prove his case. The court must be satisfied that the allegations in the statement of claim accord with reality: *Plouffe v. Roy*, [2007] O.J. No. 3453 (S.C.J.) at paras. 50-53; *Spiller v. Brown*, 1973 ALTASCAD 76 (CanLII), [1973] A.J. No. 42 (C.A.) at paras. 7-9.
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> ...
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> [44] I take the following principles from these cases:
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> > a) Generally, if a statement of defence is struck, the defendant is deemed to have admitted the allegations of fact contained in the statement of claim. Where the defence is struck with damages to be assessed, all that remains in issue is the assessment of damages.

> b) The rule that the defendant is deemed to have admitted all of the allegations of fact in the statement of claim is not immutable. The plaintiff must prove his or her claim for damages. The court retains the discretion, which it must exercise judicially, to permit the defendant to adduce evidence and cross-examine on issues essential to a fair and just determination of the loss actually sustained by the plaintiff.
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> c) In some cases, it may not be possible to draw a bright line between facts going to liability, and facts relating only to the assessment of quantum of damages.
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> d) The assessment of damages will be limited to the damages claimed in the pleadings.

[37] In my view, this means that before I can assess damages, I must first be satisfied that there is a proper factual and legal foundation upon which such an assessment can be conducted. I will do so by considering the evidence and the submissions on the law presented before me by counsel for the plaintiffs.

[38] Beginning with the evidence, I accept that the following facts have been proven through the admitted pleadings, the notices to admit, and the October 20, 2024 affidavit of Mr. Pirooz:

a) The individual plaintiff, Sina Salehi Pirooz, is a pharmacist.

b) The corporate plaintiff, 0919160 BC Ltd. is a holding company incorporated in British Columbia. Mr. Pirooz is its director and sole shareholder.

c) The defendant David Yair Levi is a businessman.

d) Mr. Levi was not registered under the British Columbia *Securities Act*, RSBC 1996 c 418, as an advisor or otherwise.

e) Mr. Levi verbally made representations to Mr. Pirooz regarding Mr. Levi's allegedly "very successful full-time securities brokerage activities".

f) In reliance on these representations, the plaintiffs gave Mr. Levi a total of $463,101 for investment purposes between March 2016 and February 2018.

g) Mr. Levi agreed to invest $387,572 of the plaintiffs' money in US equities.

h) Mr. Levi agreed to invest $75,529 of the plaintiffs' money in cryptocurrencies. $58,257.50 of this amount was to be invested in Bitcoin. $17,271.50 of this amount was to be invested in Ethereum.

i) Mr. Levi agreed to make these investments for the plaintiffs with the understanding that Mr. Levi would be compensated by receiving 15% of any profits earned on the investments, and would not charge any management fees.

j) Between March 2016 and June 2018, Mr. Levi sent emails to Mr. Pirooz purporting to provide updates on the plaintiffs' investment portfolio.

k) On four occasions - October 3, 8, and 12, and November 1, 2018 - Mr. Pirooz instructed Mr. Levi and Mr. Levi's legal counsel that any investments made by Mr. Levi were not to be "touched" by Mr. Levi and were to be transferred to a broker of Mr. Pirooz's choosing. This instruction was not followed.

l) On December 18, 2018, counsel for Mr. Levi advised Mr. Pirooz that Mr. Levi had "liquidated" the investments Mr. Levi was managing on behalf of Mr. Pirooz and that Mr. Levi was holding the proceeds of those investments in the amount of $US 206,625.98. Mr. Levi claimed that there was a net amount payable to Mr. Pirooz in the amount of $US 127,039.31 following certain deductions, including a 15% commission payable to Mr. Levi in the amount of $US 41,190.07.

m) The plaintiffs have not received payment of any moneys or delivery of any securities from Mr. Levi.

[39] Turning to the law, counsel for the plaintiffs submit that, on the facts proven, the plaintiffs have established their entitlement to damages under any of three possible causes of action: (1) breach of contract; (2) breach of trust; and (3) breach of fiduciary duty.

[40] In support of their assertion, counsel for the plaintiffs rely on four decisions in particular: (1) *Wu v. Ma*, 2022 BCSC 1737 (2) *Wei v. Chiu*, unreported, August 8, 2019, Vancouver S174491 (Donegan, J.); (3) *Hignell v. Leeb*, 2018 SKQB 330; and

(4) *Davidson v. Noram Capital Management Inc.*, 2005 CanLII 63766 (ON SC). They all involve plaintiffs who entrusted money to defendants for investment purposes and allegations that the defendants failed to invest the money properly.

[41] I have reviewed these four decisions and find that the one that is most helpful to my liability assessment in the case at bar is *Wu v. Ma*. The defendant, Mr. Ma, was not a registered investment advisor but still persuaded the plaintiff, Ms. Wu, to provide Mr. Ma with money to invest on her behalf, money that was ultimately lost. The trial judge, Justice Winteringham (then of this court), held that Mr. Ma had breached his fiduciary duty to Ms. Wu and committed the tort of negligence. In light of these conclusions, Justice Winteringham found that it was unnecessary for her to determine whether there was a breach of contract as well.

[42] I turn now to the present case. On my assessment of the facts as proven, I find that a fiduciary relationship existed between Mr. Pirooz and Mr. Levi, in accordance with the legal principles set out in *Hodgkinson v. Simms*, 1994 CanLII 70 (SCC), [1994] 3 SCR 377, which were helpfully summarized in *Wu v. Ma* at paras. 205 to 211. I highlight para. 210 of *Wu v. Ma*, which reads as follows:

> [210] Fiduciary relationships are often found in an investment advisor/client relationship where the advisor was extended authority to manage the investment account and exercise actual discretion, and the client placed their trust and relied on the advisor without any independent diligence to the advisor's recommendation.

[43] In particular, I accept that Mr. Levi represented to Mr. Pirooz that the former had engaged in successful full-time securities brokerage activities. An agreement was then reached whereby Mr. Levi would invest the Pirooz Funds in return for compensation equal to 15% of any profits earned on the investments. The Pirooz Funds were paid to Mr. Levi for the sole purpose of being invested on the plaintiffs' behalf. Mr. Pirooz relied on Mr. Levi to make decisions on specific investments to be made, how long to hold on to the investments, and when to sell the investments. However, when Mr. Pirooz asked Mr. Levi to return the investments made with the Pirooz Funds, Mr. Levi refused to do so.

[44] In other words, Mr. Pirooz extended to Mr. Levi the authority to manage investments made with the Pirooz Funds and to exercise actual discretion in doing so. Furthermore, Mr. Pirooz relied on Mr. Levi without any independent diligence as to Mr. Levi's recommendations. These are all clear indicia of a fiduciary relationship.

[45] I also find that Mr. Levi breached the fiduciary duty that he owed to the plaintiffs. Mr. Levi did so when he refused to comply with Mr. Pirooz's instruction that Mr. Levi transfer the investment portfolio established with the Pirooz Funds to a broker trusted by Mr. Pirooz.

[46] In sum, I conclude that the plaintiffs have established that Mr. Levi is liable to them for breaching his fiduciary obligations. I make no findings on whether Mr. Levi's conduct also amounts to a breach of trust or a breach of contract since, like Justice Winteringham concluded in *Wu v. Ma*, it is unnecessary to do so given my finding that there has been an actionable breach of fiduciary duty.

Quantification of Plaintiff's Compensatory Damages

[47] In assessing compensatory damages for breach of fiduciary duty, the court attempts to place the plaintiff in the same position as if the breach had not occurred: *Wu v. Ma* at para. 291, citing *Hignell v. Leeb* at paras. 222 and 223. In the latter decision of the Saskatchewan Court of Queen's Bench, it was noted that:

> In an investment loss case, the court will examine whether the lost opportunity to realize gains should be compensated for in addition to the capital loss.

[48] In the case at bar, I accept that the plaintiffs are entitled to damages at least equal to the plaintiffs' lost capital, as was ordered in *Wu v. Ma*. That is the total amount of the Pirooz Funds that were transferred to Mr. Levi, namely, $463,101.

[49] The more difficult question is whether the plaintiffs are also entitled to compensation for their loss of investment opportunity. In principle, such compensation can be awarded, as was done in *Wei v. Chiu*, *Hignell v. Leeb*, and *Davidson v. Noram Capital Management Inc*. However, it is not automatic. For example, Justice Winteringham did not award lost investment opportunity damages

in *Wu v. Ma* since she found, at para. 294, that this part of Ms. Wu's claim was speculative and not well-developed on the evidence.

[50] Turning back to the case at bar, the plaintiffs rely on the evidence tendered by David Borenstein, a consultant with extensive investment industry experience as a financial advisor with the Canadian Imperial Bank of Commerce (CIBC), as an investigator with the Ombudsman for Banking Services and Investments (OBSI), and as an advisor to the Regulatory Division of the Montreal Exchange. At trial, Mr. Borenstein was qualified as an expert in the area of quantification of lost opportunity to realize investment gains and with respect to financial harm.

[51] It is Mr. Borenstein's expert opinion that the quantum of the financial harm suffered by the plaintiffs is $1,470,722.19.

[52] His opinion is based on certain assumptions made in respect of the $463,101 worth of Pirooz Funds which, had they not been entrusted to Mr. Levi, could have been properly invested in accordance with Mr. Pirooz's instructions in the following amounts for the following purposes: (1) $387,572 in US equities; (2) $58,257.50 in Bitcoin cryptocurrency; and (3) $17,271.50 in Ethereum cryptocurrency.

[53] With respect to the US equities, Mr. Borenstein assumed that the return the plaintiffs could have received on these investments would likely have tracked the performance of the S&P 500 Total Return Index, a broadly diversified, well-recognized index for the US stock market that is commonly used as a performance benchmark for US equity mutual funds or the US equity component of managed portfolios. Accordingly, had $387,572 worth of the Pirooz Funds been invested in US equities, as agreed with Mr. Levi, from the time each payment was deposited until October 16, 2024, the value of this investment would likely have been $1,123,398.10. These amounts are expressed in Canadian dollars, as Mr. Borenstein's calculations took into account the relevant exchange rate conversion.

[54] With respect to Bitcoin, Mr. Borenstein assumed that the return the plaintiffs could have received on this investment would have tracked the actual price of Bitcoin. Accordingly, had $58,257.50 worth of the Pirooz Funds been invested in Bitcoin, as agreed with Mr. Levi, from the time each payment was deposited until October 16, 2024, the value of this investment would have been $298,182.80.

[55] With respect to Ethereum, Mr. Borenstein assumed that the return the plaintiffs could have received on this investment would have tracked the actual price of Ethereum. Accordingly, had $17,271.50 worth of the Pirooz Funds been invested in Ethereum, as agreed with Mr. Levi, from the time each payment was deposited until October 16, 2024, the value of this investment would have been $49,141.29.

[56] The sum total of these three amounts ($1,123,398.10 for US equities, $298,182.80 for Bitcoin, and $49,141.29 for Ethereum) is $1,470,722.19.

[57] In the unique circumstances of this case, I accept Mr. Borenstein's uncontradicted and uncontested expert opinion. In particular, I agree that the use of the S&P 500 Total Return Index as a performance benchmark provides a reasonable proxy for calculating the plaintiffs' losses stemming from Mr. Levi's breach of fiduciary duty in relation to the Pirooz Funds Mr. Levi was instructed to invest in "US equities." This includes both the loss of the capital investment and the opportunity to earn investment returns.

[58] This is because the use of this benchmark reflects the average expected results of investing in US equities over the period from March 2016 to February 2018 until the trial in October 2024, a time of significant growth in the US stock market. Furthermore, the use of this benchmark for average US stock market performance obviates the need for the court to make an estimate of the plaintiffs' percentage chance of realizing their lost opportunity to invest in that market.

[59] I also agree that the use of the actual price of Bitcoin and Ethereum is appropriate for calculating the plaintiffs’ losses stemming from Mr. Levi's breach of

fiduciary duty in relation to the Pirooz Funds Mr. Levi was instructed to invest in these two types of cryptocurrencies.

[60] Accordingly, I find that the plaintiffs are entitled to compensatory damages that total $1,470,722.19. However, since they have already been awarded $174,005.74 pursuant to the summary judgment issued by Associate Judge Robinson on July 3, 2024, the amount awarded further to this trial must be reduced by this amount to avoid overcompensation. This will result in a final trial compensatory damages award of $1,296,716.45 (i.e. $1,470,722.19 minus $174,005.74).

Punitive Damages

[61] The plaintiffs ask for an award of punitive damages against Mr. Levi "in the range of the amount of $50,000 to $100,000." They submit that punitive damages are appropriate in this case for four reasons.

[62] First, they say that Mr. Levi wrongly acted as an investment advisor to the plaintiffs even though he was not registered to provide investment advice in accordance with the British Columbia *Securities Act*. Second, they assert that Mr. Levi never provided the plaintiffs with a proper accounting of how the Pirooz Funds were being used. Third, they note that Mr. Levi failed to heed the plaintiffs' instructions to transfer the investment made with the Pirooz Funds to a trusted broker of Mr. Pirooz's choosing. Fourth, they say that Mr. Levi wrongly insisted that the plaintiffs provide a full and final release as a condition precedent for transferring their investments.

[63] The Supreme Court of Canada set out the factors to be considered when assessing whether to award punitive damages in *Whiten v. Pilot Insurance Co.*, [2002] 1 SCR 595. A summary thereof can be found in *Olive Hospitality Inc. v. Woo*, 2006 BCSC 1554, at paras. 220 and 221:

> [220] The leading case on punitive damages is *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595, 2002 SCC 18 [*Whiten*]. In that decision Mr. Justice Binnie, speaking for the majority, described the role of punitive damages and the circumstances in which they are appropriate as follows at para. 26:

> Punitive damages are awarded against a defendant in exceptional cases for "malicious, oppressive and high-handed" misconduct that "offends the court's sense of decency": *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, at para. 196. The test thus limits the award to misconduct that represents a marked departure from ordinary standards of decent behaviour. Because their objective is to punish the defendant rather than compensate a plaintiff (whose just compensation will already have been assessed), punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment).
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> [221] The court emphasized that punitive damages are the exception, and to be used with restraint. The governing rule with respect to quantum is proportionality. Specifically, Binnie J. outlined at paras. 111-25 that a proper award has to be proportionate to:
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> (i) the blameworthiness of the defendant's conduct;
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> (ii) the degree of vulnerability of the plaintiff;
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> (iii) the harm or potential harm directed specifically at the plaintiff;
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> (iv) the need for deterrence;
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> (v) other penalties, both civil and criminal, which have been or are likely to be inflicted on the defendant for the same misconduct; and
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> (vi) the advantage wrongfully gained by a defendant from the misconduct.

[64] After considering these factors, I find that the case at bar is not an exceptional one which warrants an award of punitive damages.

[65] It is true that Mr. Levi's conduct is blameworthy. However, the total compensatory damage award he had been ordered to pay in respect of that conduct is very substantial. Indeed, it amounts to over three times the capital that the plaintiffs entrusted him with.

[66] Furthermore, I am not satisfied on the evidence presented that Mr. Pirooz was particularly vulnerable or that his personal situation was such that Mr. Levi's actions caused him any particular harm beyond the financial losses, for which he is being awarded fair compensation. In my view, an additional award of punitive damages would be disproportional and is not necessary for denunciation or deterrence. The plaintiffs' request for such an award is therefore denied.

Costs

[67] The plaintiffs have asked that special costs be awarded because of Mr. Levi's litigation conduct. They say that it is scandalous, outrageous, and deserving of rebuke. They note in particular that Mr. Levi began a pattern of serially breaching court orders since he decided to represent himself, as follows:

a) Mr. Levi breached Associate Judge Robinson's orders made July 3, 2024 to:

    i. pay partial summary judgment to the plaintiffs in the amount of $174,005.74;

    ii. pay $283,015.60 into court; and

    iii. provide his availability for an examination for discovery before the end of August 2024 and to attend an examination for discovery in Vancouver;

b) Mr. Levi breached Associate Judge Vos' order made August 1, 2024 compelling Mr. Levi to produce copies of documents relating to his assets and liabilities;

c) Mr. Levi breached Associate Judge Bilawich's order made August 7, 2024 requiring Mr. Levi to forthwith pay the plaintiffs $2,000 in special costs; and

d) Mr. Levi breached Justice Francis' order made September 4, 2024 to:

    i. attend an examination in aid of execution on September 23, 2024; and

    ii. pay the plaintiffs $2,000 in special costs and $1,000 in costs thrown away for a failed examination for discovery scheduled for August 13, 2024.

[68] In addition, the plaintiffs note that Mr. Levi failed to attend several examinations for discovery and examinations in aid of execution without lawful excuse.

[69] The principles to be applied when considering whether to award special costs were summarized by our Court of Appeal in *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284, at paras. 53 to 56, as follows:

> [53] Special costs are usually awarded when one party has engaged in reprehensible conduct: *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3 at 134. While a special cost award provides a greater degree of indemnity against its actual legal expenses, in the ordinary course "[s]pecial costs are not compensatory; they are punitive": *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 56. They are typically awarded to address conduct in the course of the litigation that is deserving of censure and rebuke: *Grewal v. Sandhu*, 2012 BCCA 26 at para. 106, leave to appeal ref'd [2012] S.C.C.A. No. 120.
>
> [54] While special costs are usually awarded for the whole proceeding, it is open to a judge to make a partial award if it would be disproportionate to award special costs for the entire proceeding: *Gichuru v. Smith*, 2014 BCCA 414 at para. 91, leave to appeal ref'd [2014] S.C.C.A. No. 547.
>
> [55] The seminal test for special costs was set out in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 1994 CanLII 2570 (BC CA), 9 B.C.L.R. (3d) 242 (C.A.), where Lambert J.A., after an extensive review of the authorities, concluded:
>
> > [17] ... it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.
>
> [56] An award of special costs is discretionary and it does not follow as a matter of right from a conclusion that a party's conduct is deserving of rebuke: *Walker v. John Doe*, 2014 BCSC 294 at para. 57.

[70] Applying these principles, I agree with counsel for the plaintiffs that Mr. Levi's litigation conduct since he decided to represent himself is reprehensible and deserving of sanction by means of a special costs award for all litigation steps taken by the plaintiffs since June 24, 2024. That is the date on which Mr. Levi filed a notice of intention to act in person. For steps taken prior to that date, the plaintiffs are entitled to costs at scale B.

Disposition

[71] For all of these reasons, the order I issue further to the trial of this matter is as follows:

1) The defendant David Yair Levi, a.k.a. David Levi, shall pay to the plaintiffs compensatory damages in the amount of $1,296,716.45.

2) The defendant David Yair Levi, a.k.a. David Levi, shall pay to the plaintiffs their costs in respect of these proceedings in accordance with scale B for all steps taken up to June 24, 2024, except as was otherwise ordered by this court.

3) The defendant David Yair Levi, a.k.a. David Levi, shall pay to the plaintiffs special costs in respect of these proceedings for all steps taken after June 24, 2024, until today, except as was otherwise ordered by this court.

"Brongers J."