

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pirooz v. Levi*,  
2021 BCSC 1068

Date: 20210603  
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

Before: The Honourable Mr. Justice Mayer

## **Reasons for Judgment**

Counsel for the Plaintiffs:

G. Douvelos

Counsel for the Defendants:

B.B. Olthuis  
C. Ehman

Place and Date of Trial/Hearing:

Vancouver, B.C.  
April 23, 2021

Place and Date of Judgment:

Vancouver, B.C.  
June 3, 2021

**Introduction**

[1] The defendant Olga Kouptsova brings an application to dismiss the claim brought against her by the plaintiff Sina Pirooz and his company 0919160 B.C. Ltd. The plaintiffs' claims arise from the alleged breach of an investment agreement entered into between Mr. Pirooz and Ms. Kouptsova's husband, David Levi, under which it is alleged that Mr. Levi agreed to purchase stock for Mr. Pirooz using his trading account. It is alleged by Mr. Pirooz that he provided approximately \$400,000 to Mr. Levi to invest on his behalf and that despite his demand, Mr. Levi has failed to provide trading records, return his funds or transfer them to another broker.

[2] In an Amended Notice of Civil Claim filed September 21, 2020 (the "ANOCC") the plaintiffs' claim against Ms. Kouptsova alleging that she, acting as Mr. Levi's agent, confirmed certain representations made by Mr. Levi with respect to their luxurious lifestyle, thereby causing Mr. Pirooz to enter into the investment agreement with Mr. Levi (the "Representations").

[3] In this application Ms. Kouptsova seeks dismissal of the plaintiffs' claims against her on the basis that the pleadings fail to set out a genuine issue for trial. She seeks special costs against the plaintiffs.

**Legal Basis of Mr. Kouptsova's Summary Dismissal Application**

[4] Ms. Kouptsova's application is brought pursuant to the summary judgement rule, Rule 9-6(5) of the *Supreme Court Civil Rules*, B.C. Reg.168/2009, and specifically Rule 9-6(5)(a).

[5] Rule 9-6(4) sets out a defendants ability to apply for summary dismissal. It reads as follows:

In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or part of a claim in the claiming party's originating pleading.

[6] Rule 9-6(5)(a) sets out the court's power to dismiss a claim. It reads as follows:

- (5) On hearing an application under subrule (2) or (4), the court,
  - (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly.

[7] Claims that have no chance of success should be weeded out at an early stage: *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 10.

[8] A defendant seeking summary dismissal has the evidentiary burden of showing there is no genuine issue for trial but a plaintiff cannot rely solely on their pleadings, but must put their "best foot forward" with respect to the existence of material facts supporting their claim: *Lamenan*, at para. 11, *McLean v. Law Society of British Columbia*, 2016 BCCA 368 at paras. 36, 38; *Kokanee Mortgage M.I.C. Ltd. v. Burrell*, 2018 BCCA 151 at para. 21.

### **Dismissal of Claim for "Estoppel by Representation"**

[9] The plaintiffs include the doctrine of estoppel as one of the legal basis on which they found their claims. In particular, they plead that:

The Plaintiffs also rely on estoppel by representation in bringing this action. More particularly, the Representations were made by the Defendants, Levi and Olga in which the Plaintiffs relied upon those Representations made by the Defendants caused the Plaintiffs to suffer loss and damages.

[10] Ms. Kouptsova contends that the plaintiffs' claims based on estoppel by representation is bound to fail. I agree. As she submits, estoppel by representation is not a cause of action but operates as a rule of evidence to exclude a particular defence or line of argument: *John Borrows Ltd. v. Subsurface Surveys Limited et al.*, [1968] S.C.R. 607 at 614; *Paul v. Vanc. Int. Airport*, 2000 BCSC 341 at paras. 74 and 83.

**Dismissal of Claim Against Mr. Kouptsova Based on her Alleged Role as Mr. Levi's Agent**

[11] The only claim set out in the ANOCC against Ms. Kouptsova is that the plaintiffs relied upon representations made by her, in her capacity as Mr. Levi's agent, regarding their luxurious lifestyle. The relevant pleadings are as follows:

6. On several of those occasions when attending at the Pirooz pharmacy, Levi verbally made various and repeated representations to Pirooz as to Levi's very successful full-time securities brokerage activities, including *inter alia*, Levi's allegedly considerable investment skills, Levi's alleged valuable associations with his wealthy client-investors who resided in Europe and New York City, and Levi's lavish lifestyle paid for as a direct result of his full-time home-office securities brokerage activities. ("Levi's Representations")

7. When present with Pirooz during Levi's Representations, Olga as Levi's agent, attested to the truthfulness and substance of Levi's Representations, by Olga's confirmation of the Levi Representations by describing to Pirooz their luxurious living accommodations over the past five years, their frequent travel by chartered private jet and by their own ownership of private chauffeur-driven luxury automobiles, all paid for exclusively by Levi's impliedly lawful earnings from Levi's very successful and substantial securities brokerage activities ("Olga's Representations, and together with Levi's Representations, the "Representations")

...

9. In reliance upon the Representations, both by Levi and Olga, and the Initial Investment Agreement, Pirooz delivered two cheques ... each in the amount of \$50,000 ...

...

12. ... in further reliance on the Representations and upon Levi's continued further various representations, Pirooz caused the Company to issue a further eleven (11) cheques ... totalling a further \$301, 522 ...

[12] Rule 3-1(2)(a) requires that a notice of civil claim set out a concise statement of the material facts giving rise to the claim. Rule 3-7(9) requires that pleadings generally must not include conclusions of law unless the material facts supporting them are pleaded. The plaintiffs have failed to plead the material facts giving rise to the alleged agency relationship between Mr. Levi and Ms. Kouptsova. The concluding paragraph of the ANOCC simply refers to: "11. The Law of Agency".

[13] It is fatal in a claim alleging an agency relationship to fail to plead the facts giving rise to such a relationship: see *Greenough v. Maple Ridge Media Inc.*, 2018

ONSC 660 at para. 66. I find that the ANOCC fails to include the facts giving rise to an agency relationship.

[14] This deficiency in the pleadings is not the only reason why the plaintiffs' claims against Ms. Kouptsova as agent of Mr. Levi stand no chance of success. The evidence filed by the plaintiffs in response to Ms. Kouptsova's application to strike their claims against her do not support a finding that she was acting as Mr. Levi's agent.

[15] Mr. Pirooz deposed that "[m]y wife and I only had four or five personal engagements as a couple with Mr. Levi and Ms. Levi [Ms. Kouptsova]. Ms. Levi and Mr. Levi indeed, did make statements to me that they travelled by private chartered jet, and travelled in chauffeur driven luxury automobiles." In addition he relies upon an email exchange in September 2018, well after the alleged representations were made and after his relationship with Mr. Levi had begun to sour, in which he asked Ms. Kouptsova to meet privately to discuss his concerns regarding his financial dealings with Mr. Levi and she agreed to do so. Referring to Ms. Kouptsova's agreement to meet and later related email exchanges, Mr. Pirooz deposes to what is in essence a conclusion in law that "... she was clearly acting as the intermediary or agent for Mr. Levi." Even if I was to find that Ms. Kouptsova was acting as Mr. Levi's agent in September 2018, which I do not, this was well after Mr. Levi and Mr. Pirooz entered into the alleged investment agreement.

[16] The fact that Ms. Kouptsova was married to Mr. Levi at the time that her alleged representations regarding their luxurious lifestyle were made does not result in a conclusion that she made them as agent for Mr. Levi. As was stated by the British Columbia Court of Appeal in *Polak v. Polak*, 1962 CarswellBC 178, "[m]arriage does not, of itself, confer on either spouse the right to make statements or declarations for the other spouse nor to act for that other in matters affecting his or her or interests. We cannot infer that authority without something more than the mere husband-and-wife relationship": *Polak at para. 27*.

[17] There is simply no pleading, nor sufficient evidence put forward by the plaintiffs in response to Ms. Kouptsova's application, establishing a basis for the plaintiff's claim against Ms. Kouptsova arising from an alleged agency relationship between her and Mr. Levi. I decline to infer that such an agency relationship existed.

**Conclusion**

[18] I conclude that there is no genuine issue for trial with respect to the plaintiffs' claims against Ms. Kouptsova arising from an alleged role as Mr. Levi's agent. The plaintiffs' claims against Ms. Kouptsova are dismissed pursuant to Rule 9-6(5)(a).

[19] Ms. Kouptsova seeks special costs of this application against the plaintiffs on the basis that their attempt to involve her in their claim against Mr. Levi was brought maliciously or vexatiously.

[20] Both Mr. Levi and Ms. Kouptsova have filed a counterclaim against the plaintiffs, which Ms. Kouptsova wishes to maintain. In the counterclaim Ms. Kouptsova has alleged that Mr. Pirooz sought, in summary, to threaten both her livelihood and her family and that his actions in this litigation have resulted in loss of income as an investment advisor with CIBC. Both Mr. Levi and Ms. Kouptsova seek special costs in their counterclaim. In my view, the question of whether Ms. Kouptsova is entitled to special costs is more appropriately dealt with in that proceeding.

[21] I award Ms. Kouptsova regular costs of this application with leave to seek special costs when her counterclaim is heard.

"Mayer J."