IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Han v. Cho,***
2009 BCSC 458

Date: 20090403
Docket: L050150
Registry: Vancouver

Between:

Chul-Soo Han and Suk Hee Park and Jae Bok Yun

Plaintiffs

And:

**Soonam Cho, also known as Jeong Eun Cho, also known as Jung Eun Cho, also known as Soon Yi Jung, also known as Cho Chong-Un,
also known as Su-Nam Cho, also known as Bora Kang,
Subi Park, also known as Subi Yu, Jioh Park also known as Jioh Yu,
also known as Yang Hyun Park and Young Chan Shim**

Defendants

Before: The Honourable Madam Justice Griffin

Reasons for Judgment

Counsel for Plaintiffs:	F.G. Potts T. Goepel
Counsel for the Defendants, Subi Park and Jioh Park:	W. Holder
Counsel for the Defendant, Young Chan Shim:	H. Wood
The Defendant, Soonam Cho:	Appearing on her own behalf
Date and Place of Hearing:	December 1, 3, 5, 8, 2008 December 10-12, 2008 December 15-18, 2008 Vancouver, B.C.

Introduction

[1] This case involves claims of real estate fraud and cross-claims of gang threats and violence. All the key events took place in South Korea between Korean residents.

[2] The plaintiffs Chul-Soo Han (“Mr. Han), an airline pilot and captain, his wife Suk Hee Park (“Mrs. Park”), a homemaker, and Jae Bok Yun (“Mr. Yun”), a retired businessman, are all residents of Seoul, South Korea. They have brought this proceeding against the defendant Soonam Cho (“Ms. Cho”), also known by various aliases, including Jeong Eun Cho and Bora Kang. The plaintiffs say that Ms. Cho defrauded them of substantial monies in South Korea by purporting to sell condominium properties she did not own. This action was brought in Vancouver, British Columbia against Ms. Cho, who had come to Canada from South Korea on a false passport.

[3] The action was also brought against Ms. Cho’s daughters, Jioh Park (“Jioh”) and Subi Park (“Subi”), who were living in Vancouver to attend university, and a third defendant, Mr. Young Shim, who is the father of Jioh’s boyfriend. The plaintiffs’ claims against these defendants were settled at the start of trial.

[4] Ms. Cho advances a counterclaim against Mr. Han and Mrs. Park, alleging that, after the events of the alleged real estate fraud, the plaintiffs found her and her daughter Jioh in an apartment in South Korea and threatened them, beat them and held them against their will. Ms. Cho also advanced the same counterclaim against Mr. Yun, but she agreed mid-trial that she did not assert any of these allegations against him and so the counterclaim against Mr. Yun was dismissed.

Overview

[5] The plaintiffs say that Ms. Cho held herself out to them as a wealthy Korean real estate investor who owned or controlled condominium properties in Seoul or its suburbs. The plaintiffs say that Ms. Cho told them she could sell these properties to the plaintiffs and their associates and friends at a discount before the properties were released in the general marketplace. The plaintiffs paid over money to her relying on this story. The money was paid in instalments and into bank accounts that Ms. Cho controlled, either in her name or in the name of her alias, or in one of her daughter’s names. The money was then withdrawn or transferred by Ms. Cho.

[6] It turned out that Ms. Cho did not have any interest whatsoever in the properties and the plaintiffs were left empty-handed.

[7] Ms. Cho pleaded in her amended statement of defence that none of the plaintiffs were known to her and she denied any participation in a fraud. The amended statement of defence was filed by her legal counsel. At the trial of this action, Ms. Cho represented herself. In her evidence and submissions at trial, she abandoned the position in her amended statement of defence. She admitted that she had received all of the money from the plaintiffs, but she advanced the position that she was essentially just a mother acting under threats of others against her daughters, apparently a minor participant in the fraud because of these threats. Who these “others” were, changed in her evidence from time to time, and the alleged threats were very unspecific: it appeared to be her theory that a Mr. Jung was in charge (the person the plaintiffs saw as Ms. Cho’s assistant); then Mrs. Park and her friend; and then Mr. Han. The general theme in Ms. Cho’s evidence was that these other people were gangsters and that it was while under their threats that she received money from the plaintiffs and did anything involving the plaintiffs.

[8] It is undisputed that the amount of money paid by the plaintiffs to Ms. Cho was 2.040 billion Korean won. This converts to an amount within a range of approximately $1.7 million to $2.3 million Canadian dollars, depending on the exchange rate on the date of conversion.

[9] After this action was commenced, Mr. Han and Mrs. Park tried to locate Ms. Cho. They found her living in South Korea under an alias in an apartment with her boyfriend. They confronted her and her daughter Jioh, who was visiting. Ms. Cho says they beat her and Jioh and held them against their will until she escaped. Mr. Han admits slapping Ms. Cho once on this occasion when he was overcome by frustration, but denies that there was any other violence or threats.

Issues

[10] The case on liability largely turns on credibility. The first issue the court must decide is whether to believe the plaintiffs or Ms. Cho as to what happened between them in South Korea, both in respect of the plaintiffs’ claim and the defendant’s counterclaim.

[11] If the court accepts the plaintiffs' version of events and finds Ms. Cho liable on the main claim, damages must then be assessed. There are several issues involved in assessing damages. One issue the court must decide involves when damages should be assessed and, in this connection, whether the ***Foreign Money Claims Act***, R.S.B.C. 1996, c.155 [or "the ***Act***"], applies. This issue arises because exchange rates have fluctuated a great deal since the events at issue. If the damages were assessed in Korean won and converted into Canadian dollars as of the approximate date of the alleged fraud (August 2004), the damages would be approximately CAD$600,000 greater than if the same damages were assessed and converted as of the date of the commencement of trial (December 1, 2008).

[12] If Ms. Cho is found liable to the plaintiffs, other damages issues are whether or not aggravated damages and,/or punitive damages should be ordered. The plaintiffs are seeking total aggravated and punitive damages of CAD$250,000.

[13] If the court finds in favour of Ms. Cho on the counterclaim, the court will need to assess damages.

[14] Lastly, the court will need to consider the appropriate award of costs.

Liability

[15] The burden of proof on the plaintiffs to establish the liability of Ms. Cho is the civil standard, proof on a balance of probabilities: ***F.H. v. McDougall***, 2008 SCC 53, 83 B.C.L.R. (4th) 1, at paras. 40-49.

[16] Key to determining the question of liability in this case is my assessment of the credibility of the witnesses.

[17] As a general observation, it should be noted that all of the key witnesses were Korean and required the assistance of an interpreter. In my view, the use of an interpreter did not affect my ability to test the reasonableness of the witnesses' versions of events against all of the surrounding circumstances, other witnesses' evidence, and documents. I found in this case that the use of an interpreter also did not hamper my observations of the witnesses' demeanour.

[18] However, the use of an interpreter meant that it was difficult to interrupt a witness mid-answer and to redirect his or her answers when the witness gave inadmissible hearsay evidence. It was my sense that there may have been some cultural reasons that caused witnesses to frequently try to explain or buttress their own first-hand evidence by referring to what they felt was corroborative evidence, even though it was inadmissible hearsay evidence or argument. I have not considered this inadmissible evidence in reaching my conclusions.

[19] For the reasons that follow, I have accepted the evidence of the plaintiffs, each of whom I found to be credible, and I have preferred their evidence where Ms. Cho advanced contrary evidence.

Findings on Credibility

The Evidence of Mr. Yun

[20] Mr. Yun testified that he was introduced to Ms. Cho by Mr. Yun's banker, Ms. Kyung Yi Oh. Mr. Yun was interested in buying a condominium in Seoul and Ms. Oh told him that Ms. Cho was one of the largest real estate investors in South Korea, that she invested money in construction companies and in return she owned many condominiums, and could get him a good unit at a very reasonable and good price.

[21] Mr. Yun met with Ms. Cho at a coffee shop in a department store on March 9, 2004. Ms. Cho confirmed what Mr. Yun had been told by Ms. Oh, and so Mr. Yun gave her a deposit of 500 million Korean won for a condominium in the Samsung Raemian Building at Munjeong-dong, Songpa-gu (the "Raemian Building"). Because Mr. Yun obtained his money from different sources, it comprised four cashiers' cheques in the amounts of 100 million won, 250 million won, 20 million won, and 130 million won respectively.

[22] At his meeting with Ms. Cho in March 2004, Mr. Yun was told by Ms. Cho that the total purchase price of the condominium was 900 million won. He was told that he would get the title to the unit under his name by at least the end of July 2004, but that she would not tell him the unit number because she did not want him reselling it in

advance. She said she would give him the key later when he was to move in.

[23] Later, Mr. Yun received a telephone call from his banker, Ms. Oh, in the spring of 2004. She told him that Ms. Cho had a shortage of cash funds, and wanted another 200 million won from Mr. Yun. Mr. Yun agreed to make this additional payment, and met with Ms. Oh and Ms. Cho at a hospital in Seoul on May 31, 2004. There Mr. Yun paid Ms. Cho another 200 million won, made up of two cashiers' cheques, one for 50 million won and the other for 150 million won. Ms. Cho then took the group to lunch.

[24] At lunch, Mr. Yun again asked Ms. Cho for the unit number of the apartment, as he and his wife wanted to know the layout and whether they would want to do renovations. Ms. Cho explained that it was still being constructed and it was too dangerous to view the apartment. However, she assured him that her own construction crew could do any renovations, if necessary.

[25] In August 2004, Mr. Yun was told by Ms. Oh that Ms. Cho needed another advance of 100 million won, as she was on the verge of bankruptcy. He was concerned that he would be paying almost the full amount for the apartment without having any title, but Ms. Oh told him not to worry, that she had purchased an apartment too and had received a key. Mr. Yun went to Ms. Oh's new apartment, and saw that it was brand new and so he was reassured. He therefore went to the bank where Ms. Oh worked, and withdrew another 100 million won by way of cashiers' cheque. Ms. Cho was waiting at the bank and he handed the money to her. This was on August 12, 2004.

[26] A few hours later Mr. Yun was told again by Ms. Oh that Ms. Cho desperately needed the last 100 million won owing on the condominium, and that if he paid it he would receive title on August 16, 2004. Because he had seen that Ms. Oh had already moved into an apartment apparently purchased from Ms Cho, Mr. Yun agreed to make the last payment. To raise the funds quickly, he sold a golf membership that he owned, at a discount. He met with Ms. Cho at a hotel coffee shop on August 13, 2004 and gave her the money, the last 100 million won.

[27] In total, Mr. Yun had paid 900 million won to Ms. Cho and expected he would obtain title to a new condominium on August 16, 2004. Ms. Oh telephoned him that day to report that she could not get hold of Ms. Cho. He went to Ms. Cho's own apartment, and met with Ms. Oh. He said there were several people there in a similar position to him, and that he discovered that Ms. Cho had moved out and fled. He then found out that he did not own any apartment in the Raemian Building.

[28] Mr. Yun was straightforward in his evidence and I found him to be a credible witness. Mr. Yun's evidence was corroborated by a receipt that Ms. Cho signed and gave him for the initial deposit of 500 million won, which identified that it was a deposit for the apartment at the Raemian Building. As well, Mr. Yun produced and identified in his evidence copies of the first four cashiers' cheques that he gave Ms Cho totalling 500 million won. He did not keep copies of the other cashiers' cheques.

[29] Ms. Oh, the banker, also testified. Her evidence corroborated Mr. Yun's evidence on all the key points. She had been introduced to Ms. Cho by a friend that she trusted, and believed what she was told, namely, that Ms. Cho was the wealthy real estate investor she purported to be. Not only did Ms. Cho confirm this story, she appeared to be wealthy because she was driven around by a driver in a very expensive car, and she appeared to have an assistant, Mr. Jung, whom she ordered around. Ms. Oh's belief in Ms. Cho's story was evidenced by the fact that she also paid her own money over to Ms. Cho to purchase an apartment, and encouraged other clients and friends to do so. Ms. Oh was given a key to an apartment which she thought was hers, only to learn on August 16, 2008 that Ms. Cho had only rented the unit from the true owner.

[30] To explain her state of mind in handing over money without any immediate proof of purchase, Ms. Oh explained that it is cheaper to buy a new condominium from someone connected to the developer, and a better unit can be secured this way, before the condominium is made available to the public to purchase. From her perspective, this kind of informal transaction is not unusual in South Korea where it is very competitive to purchase a condominium in a popular area.

[31] Ms. Oh was present on each of the occasions that Mr. Yun made payments to Ms. Cho.

[32] Ms. Cho cross-examined Mr. Yun. Her cross-examination questions suggested that Mr. Yun had paid Mr. Yeon Ho Jung directly, not Ms. Cho, perhaps at a different time or location. However, Mr. Yun understood that Mr. Jung was Ms. Cho's assistant, as he accompanied her everywhere and appeared to take orders from her. He was

firm in his evidence that he always gave his money to Ms. Cho, and as to when and where this occurred.

[33] There was no suggestion by Ms. Cho in her cross-examination of Mr. Yun that the events he described did not happen. Nor did Ms. Cho suggest that Mr. Yun had any dealings with the other plaintiff, Mr. Han, in advance of Mr. Yun paying over his money. The evidence was clear that Mr. Yun did not know Mr. Han and Mrs. Park. The importance of this point is that it is inconsistent with Ms. Cho's evidence that all of the frauds were really perpetrated by Mr. Han or Mrs. Park.

[34] Ms. Cho's cross-examination of Ms. Oh was similar to her cross-examination of Mr. Yun. Although there was some attempt to challenge the location and timing of some of the meetings, and to focus on Mr. Jung's role, there was nothing that came out in cross-examination that undermined the evidence of these witnesses.

[35] When Ms. Cho gave evidence, she did not dispute Mr. Yun's evidence. She conceded that she had received the money. Furthermore, records of Korean bank accounts that Ms. Cho was operating, in the names of each of her daughters, Jioh and Subi, and in the name of her alias Jung Eun Cho, show deposits of sums of money equal or near equal to what was paid by Mr. Yun to Ms. Cho on the dates he claims to have made the payments.

The Evidence of Mr. Han and Mrs. Park

[36] Both Mr. Han and Mrs. Park testified at trial, and were cross-examined by Ms. Cho.

[37] Mrs. Park and Mr. Han have been married for approximately 29 years, and have three daughters, ages 28, 25 and 14. Mr. Han is an airline pilot and captain, having served as an officer of the South Korean Navy for about 13 years before becoming a commercial pilot in 1989. Mrs. Park is a homemaker. They were long-time friends with another couple, a classmate from Mr. Han's naval academy and the classmate's wife, Ms. Hong.

[38] Ms. Hong introduced Ms. Cho, as Jung Eun Cho, to Mrs. Park, describing her as a major investor in development and construction companies who could facilitate the purchase of condominium units at a very good price. They talked about purchasing units in an apartment complex called the Tower Palace in Kangnam (the "Tower Palace").

[39] Mr. Han and Mrs. Park met Ms. Cho at the airport in Seoul on February 28, 2004. They were there in relation to their youngest daughter who was either on her way to or returning from studying English in Vancouver. Ms. Hong was there too, and introduced them all.

[40] Later, in approximately mid-March 2004, Mr. Han was contacted by Ms. Hong and met with her. Ms. Hong asked him to help arrange a lawyer for Ms. Cho, who had been arrested. Since Mr. Han was then president of the South Korean Pilots' Association, he knew the lawyer of the association. He ultimately agreed to ask his lawyer to help Ms. Cho.

[41] When Ms. Cho was released from prison, she called Mr. Han to thank him. She invited Mr. Han and Mrs. Park to dinner, together with Ms. Hong and the lawyer. After dinner, Ms. Cho was sharing a car with Mr. Han and Mrs. Park since they lived in the same direction, and they decided to go out for coffee. There, Ms. Cho explained again how grateful she was. She insisted that she wanted to pay them back for the assistance. She said she owned a lot of condominiums and could offer units to them, and their friends and relatives, on very good terms.

[42] Ms. Cho at some point told Mr. Han her story as to why she had been imprisoned. She said it was because she had forged a passport. Her explanation was that she was hiding from her ex-husband, the father of her daughters. She told Mr. Han that she wanted to visit her daughters who were studying in foreign countries, but if she used a real passport the daughters' father might be able to trace her.

[43] Mr. Han and Mrs. Park saw Ms. Cho socially several times.

[44] Ms. Cho held herself out to them as a successful businesswoman. She explained that she first made money from court auctions, and then started to invest in major construction and development companies, and in return, received a lot of condominiums. She said she wanted to help out Mr. Han and Mrs. Park, and their friends and family, by giving them a great opportunity to buy condominiums on great terms. This purported generosity on the part of Ms Cho was said to be because Mr. Han had helped her when she was in prison.

[45] Ms. Cho befriended Mrs. Park in particular. They visited often at each other's residence. Mrs. Park was

finding she had more time on her hands because her second daughter was entering university, and her husband travelled extensively. She was impressed with Ms. Cho's story, as Ms. Cho described herself as having come from a background of hardship and prevailed because of her strength, without any family support, to become a proud mother of two successful daughters.

[46] Ms. Cho also took Mr. Han to the construction site of one building, the Daerim building. She told him that there were going to be about 300 units in the building but that he had to keep confidential that she could transfer some units to him early, at a much discounted price. She took him to the Tower Palace construction site as well. She was driven by a driver in an expensive car, and she appeared to have a personal assistant, Mr. Jung.

[47] Ultimately, Mr. Han and Mrs. Park believed what Ms. Cho told them. They repeated the same offer to close friends and family, and arranged the transfer of money to Ms. Cho for the purchase of apartments. In total, Mr. Han and Mrs. Park, relying on what Ms. Cho told them, caused the transfer of a total of 1.14 billion Korean won to Ms. Cho.

[48] The monies paid by Mr. Han and Mrs. Park to Ms. Cho were supposed to be in relation to purchases by themselves, their friends, and family, of apartments in the Raemian Building, the Tower Palace, and two other buildings. The monies were paid over a period of time in the spring of 2004. Each time, the monies were paid in reliance on Ms. Cho's representations to Mr. Han and Mrs. Park that the monies were in relation to the purchase of a particular apartment unit, at a particular price. Ms. Cho gave Mr. Han directions as to which accounts to send the money to when it was wired directly from bank to bank. As well, Mr. Han and Mrs. Park received money from their friends and family into their own account, and then obtained cashiers' cheques for global amounts that they paid to Ms. Cho.

[49] At one time, Mrs. Park had five standard form real estate contracts in relation to some of the purchases: one in relation to the Tower Palace condominium she and Mr. Han were purchasing, and four others. She said these contracts were filled out by Ms. Cho and her assistant Mr. Jung. However, later Ms. Cho asked for them back, and Mrs. Park gave them to her without keeping any copies, thinking they were needed to complete the purchases. These documents have not been produced by Ms. Cho.

[50] Ms. Cho said that one of the apartment buildings was to be completed by the beginning of August 2004. In early August, Ms. Cho gave three sets of keys to Mr. Han for three apartments in that building, and couples who had arranged for the purchase through Mr. Han moved in. Mr. Han later found out that Ms. Cho had simply rented these apartments, and did not own or transfer them.

[51] Ms. Cho told Mr. Han that the other apartments would be ready by August 16, 2004. On that day, Mr. Han was travelling. Mrs. Park found out that Ms. Cho had moved out of her residence. When Mr. Han came back two days later, he confirmed that Ms. Cho had left. He managed to obtain the surveillance videotape from the apartment building which showed Ms. Cho and her husband removing boxes from her residence. He reported the matter to the South Korean police. He also made flyers with photographs of Ms. Cho and her dog, with reference to the fraud, and distributed them widely in South Korea, in an attempt to locate her.

[52] Mr. Han and Mrs. Park did not receive any ownership interest in property, for themselves or for anyone else from whom they had obtained money and given the money to Ms. Cho. Mr. Han has taken on responsibility for paying back those people who provided him with funds to purchase properties.

[53] Ms. Cho made a number of suggestions to Mr. Han in cross-examination that relate to her counterclaim and allegations that he threatened her daughter, but she did not challenge the underlying evidence of the fraud, other than to suggest that it was Mrs. Park and her friend Chu Ki Hong who were actually selling the apartments. Mr. Han denied this, as did Mrs. Park when she gave her evidence.

[54] In her cross-examination of Mrs. Park, Ms. Cho suggested that some of the money was given to Mr. Jung. Mrs. Park denied this. Otherwise, Mrs. Park was generally not challenged on her evidence of the factual events underlying the alleged fraud.

[55] There is evidence corroborating the evidence of Mr. Han and Mrs. Park. Ms Cho admitted receiving the money, and using her account and her daughters' accounts to deposit the money. The records of Korean bank accounts in her daughters' names, and in the name of Ms. Cho's alias, Jun Eung Cho, show considerable transfers and deposits of monies consistent with the evidence of Mr. Han and Mrs. Park. Subsequent withdrawals of large

sums of money from these accounts have not been explained by Ms. Cho.

[56] Ms. Cho also admitted renting apartments in the Daerim Building in the name of her alias. She also admitted that she had never owned any apartments in the buildings that were the subject of the monies transferred to her.

[57] Mr. Han and Mrs. Park presented as sincere and credible witnesses. Mr. Han was straightforward and described the events in detail. Mrs. Park has a very quiet demeanour, and frankly came across as emotionally flattened by the events. Mr. Han and Mrs. Park were visibly upset at various points in their evidence, in an understated as opposed to exaggerated way, consistent with their story being true, especially when they spoke of learning of the fraud and the impact of the fraud on their family.

The Evidence of Ms. Cho

[58] Ms. Cho conducted her own defence and gave evidence. While generally she denied that she defrauded the plaintiffs, she was unable to give credible explanations for the abundance of evidence that implicated her in the fraud, and indeed, did not challenge much of the evidence against her.

[59] Ms. Cho's evidence was lacking in specifics or details, and was internally inconsistent and illogical. It was unclear whether her story was that Mr. Jung, Mr. Han or Mrs. Park was the one ordering her to take part in the fraud, as the story kept changing, although it was always vague.

[60] Her story in her evidence in chief appeared to suggest that Mr. Yeon Ho Jung, the person that the plaintiffs thought was her assistant, had "ordered" her to do certain things: to go on the internet and make a list of condominiums for sale; and to make deposits with the money that she says he received directly from the plaintiffs. She said that she then heard that Mrs. Park and her friend Ms. Hong were selling the condominiums based on her list. She said that Ms. Hong had the final say and decided things. She said that Mr. Yeon Ho Jung was the go-between between her, Mrs. Park, and Mr. Han. She said it was Mr. Jung who ordered the use of her daughters' accounts, and she argued that because she loves her daughters, she would never have used their accounts if she was involved in fraud.

[61] The plaintiffs were granted leave to file the affidavit evidence of Mr. Jung, as he was prevented from leaving South Korea to testify. His evidence was consistent with the plaintiffs, all of whom saw Ms. Cho as the one instructing Mr. Jung on what to do as her assistant and not the other way around, as she tried to suggest in her evidence. However, it is not necessary to rely on his evidence, as there is so much other evidence supporting the plaintiffs' version of events.

[62] Ms. Cho's story that Mrs. Park was the one selling the condominiums was not credible. For one thing, Mrs. Park had no contact with the plaintiff Mr. Yun until after the fraud was discovered. But also, why would Mrs. Park defraud herself of 500 million won, which is what she and Mr. Han paid of their own money to Ms. Cho? Why would Mrs. Park be part of a fraud when she did not profit at all from it, as all the money ended up in Ms. Cho's bank accounts? Under cross-examination, Mrs. Park said that Ms. Cho's suggestion that Mrs. Park was the one selling the properties was nonsense. I agree. This allegation is not credible, as it is inconsistent with the surrounding facts and contrary to logic.

[63] In cross-examination, Ms. Cho's Korean criminal record was put to her. She admitted to some of the offences although quarrelled with the description of the offences on the record. However, it is clear that she was convicted of two separate charges of theft; violence (assault); a charge in relation to the hiring of minors (she denied it was in relation to attempted abduction in order to use them as prostitutes); and forging a passport.

[64] Ms. Cho also admitted using a fraudulent passport to get into Canada in 2006.

[65] Under cross-examination, Ms. Cho's story got wilder and wilder and was shades different than what she said in her direct evidence. Ms. Cho suggested, while under cross-examination, that Mr. Han was the one instructing her to carry out the real estate fraud, using Mr. Jung as the middleman. But then she said she was always instructed by Mr. Jung, and that all the money was paid to Mr. Jung first, and then on his instructions it went into her bank accounts.

[66] As a witness, Ms. Cho came across as willing to say anything without regard to truth or even the

appearance of truth. Ms. Cho was evasive and obstructive in giving her answers when counsel for the plaintiffs tried to pin her down on any specifics of when she said Mr. Han told her to do things. At one point she replied to a question about Mr. Han instructing her at a bank as follows: “See, so many people so many times instructed me and ordered me around. I was like a robot, so I don’t remember.” This was typical of the vagueness of her evidence.

[67] At other times in cross-examination, she referred to Mr. Han as part of a gang, testifying that he and his gang made her do everything, including fraud, if she wanted to live and to save her children. Again, this was unaccompanied by any detailed evidence of specific facts or events.

[68] She admitted that some of the money she received from Mrs. Park was used to buy the expensive automobile in which Ms. Cho was driven around, but she still insisted that the others made her do it.

[69] Ms. Cho admitted that the bank records of the accounts she controlled show that she withdrew funds to purchase CAD$700,000 worth of travellers’ cheques plus USD$700,000 worth of travellers’ cheques on August 5, 2004. Ms. Cho admitted that she came to Canada with those funds. She admitted that it is illegal to take that amount of money out of South Korea. Her bank records show transfers of money to a Korean police officer who worked at the airport but she claims she did not send him more than 1 million Korean won. She says she paid an airline employee to help her bring the travellers’ cheques on the plane.

[70] Ms. Cho admitted that the travellers’ cheques were used to purchase a condominium in Vancouver in her daughter Jioh’s name. She said she had given all the travellers’ cheques to Jioh, and that Jioh was not surprised about this because it was normal for Ms. Cho to give her large sums of money, such as CAD$100,000 or $200,000.

[71] She admitted that prior to this she had regularly transferred large sums of money to her daughters in Canada, often sending them CAD$10,000 per month each. As of the time of trial, her daughters had lived in Canada for approximately eight years, on student visas, and neither had any source of income other than their mother. One daughter had purchased an Audi car and the other had purchased a Mercedes Benz car, neither with any loan financing, in the time they had lived in Canada.

[72] Ms. Cho tried to advance a story that the source of the funds for the travellers’ cheques was something other than the monies transferred to her by the plaintiffs but her story was not believable. She suggested a friend gave her money from a property that was bought and sold in China. She suggested that she had approximately CAD$1.4 million to $1.5 million in cash from this friend, which she kept at home for a couple of months, before she “exchanged” it with the money in her bank account and bought the travellers’ cheques. She did not explain why she would need to “exchange” the money or how she did this.

[73] Ms. Cho did not call a single witness to support her version of events.

Conclusions on Liability

[74] The plaintiffs’ evidence was coherent, consistent with their conduct and ordinary human behaviour and motives, and was consistent with each other’s evidence, even though Mr. Yun did not know Mr. Han and Mrs. Park prior to the fraud. Ms. Oh was an independent witness who gave evidence which supported Mr. Yun’s version of events, and her evidence was also consistent with the experience of Mr. Han and Mrs. Park in dealing with Ms. Cho. The plaintiffs’ evidence was also corroborated by banking records.

[75] “Follow the money” is a popular phrase that is appropriate in this case. The most compelling evidence in addition to and consistent with the testimony of the plaintiffs is that all of the money ended up in Ms. Cho’s possession and control: she transferred and converted large sums of it at the same time as the alleged fraud; and she then disappeared. She admits receiving the money from the plaintiffs into her bank accounts and her daughters’ bank accounts in South Korea. She admits that in August 2004, when the plaintiffs say the events of the fraud came to a head and Ms. Cho disappeared, she smuggled CAD$700,000 and USD$700,000, in the form of travellers’ cheques, out of Korea, to her daughter Jioh in Canada.

[76] Other than her admissions based on the banking records, the evidence of Ms. Cho was illogical, inconsistent with ordinary human behaviour and conduct, and lacking of any detail that would lend it some ring of truth. Ms. Cho’s story leaves many important facts unexplained and is internally inconsistent: why did she receive

unspecified threats against herself and her daughters in 2004 from the plaintiffs or others affiliated with the plaintiffs; why was she unable to resist these threats or report the makers of the threats to the police; why, if under these threats, did she rent properties in her name (or under an alias) and then deceive the plaintiffs about owning properties she did not own; why did she take money from the plaintiffs, that she knew was the plaintiffs' own money and money of their friends and family, and put it in bank accounts she controlled; why was some of that money used to purchase a luxury automobile for her to be driven about; why would she receive approximately CAD$1.4 million or $1.5 million in cash from someone who did not testify, hold it for a couple of months in her residence, and then in some unspecified way exchange it with money in her bank account in August 2004 to buy over CAD$1.4 million worth of travellers' cheques that she smuggled out of South Korea and gave to her daughter Jioh in Canada; and why did she never give the plaintiffs back the money they gave her if they were part of the elaborate fraud scheme and she was so scared by their threats?

[77] Ms. Cho's story is creative in the way it tries to explain away the abundant evidence against her, but I have easily concluded that it is a product of imagination and not the truth.

[78] In summary, I accept the plaintiffs' evidence that were told by Ms. Cho that she had properties she could sell them at a substantial discount; that this was false, as Ms. Cho did not own the properties; that believing her, the plaintiffs gave Ms. Cho large sums of money, including their own savings, to purchase properties; that Ms. Cho received these large sums of money from the plaintiffs and subsequently moved it out of bank accounts she controlled and she fled from the plaintiffs; and that the plaintiffs did not receive any properties.

[79] The elements of the tort of deceit, or fraudulent misrepresentation, are: a false representation of fact by the defendant; made with knowledge of its falsity (or without caring whether it is true or false); and made with the intention that the plaintiff would act upon it; with the result that the plaintiff did act upon the representation; and the plaintiff suffered damage as a result: ***iTrade Finance Holdings Inc. v. Webworx Inc***., [2006] O.J. No. 3939 at para. 39 citing ***Harland v. Fancsali*** (1994), 21 O.R. (3d) 798 (Div. Ct.), 121 D.L.R. (4th) 182. See also ***Kruska v. Manufacturers Life Insurance,*** 54 B.C.L.R. 343, 6 C.C.L.I. 299, and ***Insurance Corporation of BC v. Blue Mountain Collision***, 2002 BCSC 670, at para. 67, which cite ***Derry v. Peek*** (1889), 14 A.C. 337 (H.L.), [1889] All E.R. 1.

[80] All of the elements of fraudulent misrepresentation have been proven by the plaintiffs. In the result, I find Ms. Cho liable to the plaintiffs for damages for fraudulent misrepresentation.

Plaintiffs' Damages

[81] I find that Mr. Yun was defrauded of 900 million Korean won by Ms. Cho. He is entitled to damages in relation to this fraud.

[82] I find that Mr. Han and Mrs. Park, were defrauded of 1.14 billion Korean won by Ms. Cho. They are entitled to damages in relation to this fraud.

Date of Assessment of Damages for Civil Fraud

[83] Ms. Cho purchased the CAD$700,000 and the USD$700,000 travellers' cheques on August 5, 2004, with the intention of moving the funds to Canada, which she then did. I find that the likely source of funds for the purchase of these travellers' cheques was the money that Ms. Cho defrauded from the plaintiffs.

[84] The exchange rate on August 5, 2005, to convert Korean won to Canadian dollars, according to the Bank of Canada, was 0.001133. Converting the plaintiffs' total losses of 2.04 billion Korean won at that rate would amount to CAD$2,311,320.03.

[85] Ms. Cho represented to the plaintiffs that the majority of the titles to the condominiums she was purporting to sell would transfer on August 16, 2004. The exchange rate on that date, according to the Bank of Canada, was 0.001128. Conversion of the total amount of the plaintiffs' claim from Korean won to Canadian dollars as of that date would amount to CAD$2,301,119.95.

[86] The Korean won has depreciated significantly since the fraud occurred. This trial commenced on December

1, 2008. The currency exchange rate was 0.000859 as of that date, according to the Bank of Canada. If the plaintiffs' total claim was converted from Korean won to Canadian dollars as of the start of trial, it would amount to CAD$1,752,360.04.

[87] The currency exchange rate has continued on this trend, in which the Korean won has depreciated in relation to the Canadian dollar (with the Korean won purchasing fewer Canadian dollars), with some fluctuations leading up to the release of these Reasons for Judgment.

[88] I have considered whether or not the ***Foreign Money Claims Act*** applies. It provides in s. 1 as follows:

> **1**(1) If, before making an order for the payment of money arising out of a claim or loss, the court considers that the person in whose favour the order will be made will be most truly and exactly compensated if all or part of the money payable under the order is measured in a currency other than the currency of Canada, the court must order that the money payable under the order will be that amount of Canadian currency that is necessary to purchase the equivalent amount of the other currency at a chartered bank located in British Columbia at the close of business on the conversion date.
>
> (2) The conversion date is the last day, before the day on which a payment under the order is made by the judgment debtor to the judgment creditor, that the bank referred to in subsection (1) quotes a Canadian dollar equivalent to the other currency.

[89] The ***Act*** was enacted as effective in August 1, 1996 (B.C. Reg. 156/96). The passage of the ***Act*** had been recommended many years earlier by the Law Reform Commission of British Columbia, in its ***Report on Foreign Money Liabilities*** (Victoria: Queens Printer for British Columbia, 1983) ["***Law Reform Report***"]. The purpose of the ***Act*** was to bring the law of British Columbia in line with a change in the common law in England dealing with claims measured in foreign currency, to allow for more flexibility in the choice of dates from which to convert damages from foreign currency to Canadian currency.

[90] In summary, the traditional rule prior to the passage of the ***Act***, was that a Canadian court's order had to be expressed in Canadian currency, and if the plaintiff's damages were incurred in foreign currency, the appropriate date for converting to Canadian currency was the date of the defendant's breach giving rise to the claim: ***The Custodian v. Blucher***, [1927] S.C.R. 420, [1927] 3 D.L.R. 40; ***Gatineau Power Co. v. Crown Life Insurance Co***., [1945] S.C.R. 655, [1945] 4 D.L.R. 1. This was referred to as the "breach date" rule. This was the traditional approach in England, based in part on historical notions that the pound was a stable, fixed, and perhaps also a superior, currency.

[91] In Canada, it was thought that the ***Currency Act***, R.S.C. 1985, c. C-52, s. 12, required judgments to be stated in Canadian currency (S. M. Waddams, ***The Law of Damages,*** looseleaf (Aurora, ON: Canada Law Book, updated to Oct. 2007), paras. 7.80-7.150), although this view was not universal (***Law Reform Report*** at 44-46).

[92] However, the English approach changed with a series of cases culminating in ***Miliangos v. George Frank (Textile) Ltd.*** [1975] 1 Q.B. 487 (Q.B. and C.A.), [1976] A.C. 443 (H.L.). The House of Lords in ***Miliangos*** recognized that because of fluctuating currencies, the "breach date" rule could result in an injustice on the facts of that case, involving a contract claim on a debt that was in foreign currency. Subsequent English cases on different causes of action reached the same conclusion, namely, that a rigid "breach date" rule was inappropriate where part of the damages incurred might be measurable in foreign currency: ***Owners of M.V. Eleftherotria v. Owners of M.V. Despina R [The Despina R]*** and ***Services Europe Atlantique Sude (SEAS) of Paris v. Stockholms Rederiaktiebolag Svea of Stockhom [The Folias]*** [1979] A.C. 685, [1979] 1 All E.R. 421 (HL). (See discussion of these cases in the ***Law Reform Report*** at 17-19).

[93] As noted in the ***Law Reform Report*** at 26, a rigid application of the "breach date" rule can lead to an injustice to a plaintiff where Canadian currency has declined in relation to the foreign currency. If the Canadian dollar has declined over the time period since the date of the defendant's breach, but the measurement of damages in Canadian currency payable at the judgment date is at a conversion rate as of the earlier "breach date", the plaintiff may not be fully restored to the position he would have been had the breach not occurred. Conversely, if the Canadian dollar has increased in value over the time period between the defendant's breach, a judgment measuring the damages at a breach date conversion rate may place the plaintiff in a position better than he would

have been had the breach not occurred.

[94] The ***Law Reform Report*** recommended the abandonment of the rigid "breach date" rule for currency conversion when measuring damages. This overall recommendation was ultimately adopted by the legislature when the ***Act*** was brought into force in August 1996. Similar legislation was adopted in Ontario: ***Courts of Justice Act***, R.S.O. 1990, c. C. 43, s. 121.

[95] Courts in other provinces, prior to the introduction of, or without similar legislation, have held that a rigid breach date rule is inapplicable in a tort case where the equities favour giving the plaintiff, rather than the defendant, the benefit of any conversion fluctuation: ***Stevenson Estate v. Siewert***, 2001 ABCA 180, 202 D.L.R. (4^{th}) 295 and ***Kellogg Brown & Root Inc. v. Aerotech Herman Nelson Inc.***, 2004 MBCA 63, 238 D.L.R. (4^{th}) 594. Or, to state the proposition in reverse, these authorities support the conclusion that in certain tort cases the equities may favour imposing the burden of fluctuating conversion rates on the wrongdoer, the defendant, and not on the innocent plaintiff.

[96] In order to find that the ***Foreign Money Claims Act*** is applicable, I must conclude that: the plaintiffs would be "most truly and exactly compensated if all or part of the money payable under the order is measured" in Korean won and converted to Canadian currency on the day before payment of the judgment. I do not reach this conclusion. Rather, I conclude that the ***Foreign Money Claims Act*** does not apply for the reason that it would allow a windfall profit to the fraudulent defendant, Ms. Cho.

[97] If an order was made under the ***Act***, and the trend shown by the difference between conversion rates in August 2004 and at the start of trial was to continue, the likelihood is that the defendant Ms. Cho would profit from a windfall of at least approximately CAD$600,000, which is the difference between the date when she converted the plaintiffs' Korean won to Canadian dollars (August 2004), and the date of trial.

[98] The law is clear that damages for civil fraud should be assessed in such a way as to deprive the defendant of the profits from the fraud, as set out in ***Dhillon v. Dhillon***, 2005 BCSC 1903, at para. 42:

> **42** In a case such as this which is a case of civil fraud, damages must be assessed in a manner that deprives the defendants of the profits of the fraud. I refer in that regard to the case of *Lennox Industries Canada Limited v. Canada*, [1987] F.C.J. No. 2, reported also at 34 D.L.R. (4th) 297. There Madam Justice Reed said that stolen property was recoverable as were the fruits derived therefrom. The text provides as follows:
>
> > Not only is the stolen property recovered, but any fruits derived therefrom are recoverable as well: D.W.M Waters, Law of Trusts in Canada (Toronto, 1974), pages 339 and 340; Bank Belge case, [1921] 1 K.B. 321.
> >
> > This is clearly so with respect to profits derived from misappropriated trust funds and it is equally so with respect to profits derived from the use of stolen monies. To hold otherwise would be to require a thief to return the principal amount of the funds stolen but allow him or her to keep profits derived from the use of those funds….

[99] The principle that a fraudulent wrongdoer will be deprived of the profits of the fraud also applies to a growth in asset value through appreciation: ***Ruwenzori Enterprises Ltd. v. Walji***, 2006 BCCA 448, 274 D.L.R. (4^{th}) 696, at para. 41.

[100] In ***Huff v. Price***, 51 B.C.L.R. (2d) 282 at 296, 76 D.L.R. (4th) 138, the British Columbia Court of Appeal noted, in a case of breach of trust and breach of fiduciary duty, that the remedy may include "return of the property or restitution measured by its highest value in the period after the breach and before the breach is discovered". Conceptually this notion applies in this case, in that the Korean money given by the plaintiffs to Ms. Cho was money upon which a trust was imposed, as it was supposed to be used by Ms. Cho to purchase condominiums for the plaintiffs in South Korea. The value of that money, in Canadian dollars, is higher as of the date the fraud crystallized, as opposed to the date of this court's judgment. Indeed, the highest value would be as of date this action was commenced, based on the conversion rates noted above.

[101] The Manitoba Court of Appeal concluded that civil fraud damages principles ought to equally apply to

deprive the wrongdoer of any benefit resulting from a change in currency exchange rates in ***Kellogg Brown & Root Inc.*** In that case, the currency exchange rate was moving in the opposite direction from date of breach to date of judgment, to that in the case at bar. Nevertheless, the underlying principle for choice of conversion date was that the wrongdoer should bear the burden of adverse currency fluctuations, not the plaintiff, as stated at para. 109:

> The real issue in these cases is deciding where the risk of currency fluctuations should be placed. Commentators talk about which date best ensures full compensation of the plaintiff in an appreciating climate and which date to adopt in a depreciating climate. ... In our case, the Canadian dollar depreciated as against American currency between the date of breach and the date of judgment. It then appreciated between the date of judgment and the hearing of the appeal. Its path at present is a matter of speculation into which we have no intention of entering. Our primary concern is that the innocent plaintiff should not bear the risk of the fluctuating exchange rate.
>
> [emphasis added]

[102] In ***Stevenson Estate***, the Alberta Court of Appeal held at para. 15:

> The Court's task is to select the most fair and equitable of the two possible conversion dates. It cannot be expected that either of these will allow perfect justice to be rendered. Given this, if any equities must fall unequally on the parties, they should fall more heavily on the wrongdoer than on the victim.

[103] Clearly, in making a choice as to conversion date, the equities in the present case favour the plaintiffs, as the defendant Ms. Cho has been found liable for intentionally deceiving them.

[104] There is an additional but lesser factor in this case weighing against application of the ***Foreign Money Claims Act***. The form of order under the ***Act*** leaves the determination of the total amount payable under the judgment to a future date, namely, one day before the date of payment, as this is the conversion date: s. 1(2) of the ***Act***. This form of order may work well when the judgment debtor is based in Canada and there is no evidence to suggest that the judgment debtor has assets elsewhere in the world that will need to be the subject of execution to satisfy the judgment. However, this form of order may cause too much uncertainty for a judgment creditor where the facts are similar to the facts in this case, where the evidence indicates that: Ms. Cho's home is in South Korea; she has carried on business in South Korea and possibly also in China; she may have no assets in Canada and the location of her assets is unknown; and it is unlikely that she will voluntarily pay the judgment of this court to the plaintiffs.

[105] This is a case where the plaintiffs may need to take steps to enforce this court's judgment on a piecemeal basis in other jurisdictions, where they ultimately find Ms. Cho to have assets. It is my view that in all the circumstances of this case, a form of order made under the ***Foreign Money Claims Act*** may create undue ongoing uncertainty as to the total amount payable to discharge the judgment. It would also motivate the wrongdoer, Ms. Cho, to choose to delay paying the judgment until the currency rates are most favourable to her.

[106] I have concluded that it would not be appropriate to apply the ***Foreign Money Claims Act*** in this case, as to do so would not "most truly and exactly" compensate the plaintiffs. I find that in this case, in order to compensate the plaintiffs fully for the fraud, including depriving Ms. Cho of any potential of profiting from the fraud, that damages should be assessed in Canadian dollars as of the date the fraudulent events occurred. It is fair to conclude that the fraud crystallized by August 16, 2004, which is when Ms. Cho failed to deliver the promised properties, and fled with the proceeds of the fraud. Accordingly, I assess the plaintiffs' damages as of August 16, 2004, in Canadian dollars equivalent to the Korean won the plaintiffs had paid Ms. Cho.

[107] I therefore assess Mr. Yun's damages as CAD$1,015,200, determined as 900 million Korean won converted at the August 16, 2004 Bank of Canada exchange rate of 0.001128.

[108] I assess Mr. Han and Mrs. Park's damages as CAD$1,285,920.00, determined as 1.14 billion Korean won converted at the same exchange rate.

Aggravated and Punitive Damages

[109] The plaintiffs are also claiming both aggravated and punitive damages. Both types of damages arise when wrongful conduct is particularly egregious, but the two categories of damages serve separate purposes.

[110] The authorities make it clear that aggravated damages are "intended to compensate a plaintiff whose injuries have been exacerbated by particularly outrageous conduct by the defendant": Allen M. Linden and Bruce Feldthusen, ***Canadian Tort Law***, 8th ed. (Markham, ON: LexisNexis Butterworths, 2006) [Linden], at 65-66. For example, aggravated damages have been awarded where the outrageous conduct of the defendant has increased the mental distress and humiliation of the plaintiff: ***Hill v. Church of Scientology of Toronto***, [1995] 2 S.C.R. 1130, 126 D.L.R. (4th) 129, at para. 188.

[111] Punitive damages, on the other hand, are not compensatory and are meant to "punish" and denounce a defendant and to deter others from similar conduct, where the defendant's misconduct is malicious, oppressive and high-handed: Linden at 66-67; ***Hill v. Church of Scientology*** at para. 196; ***Whiten v. Pilot Insurance Co***., [2002] 1 S.C.R. 595, 209 D.L.R. (4th) 257.

[112] Here, each of the plaintiffs testified as to how devastated and humiliated they were by the fraud. The fact that they were victimized by Ms. Cho's fraud caused each of them deep shame and personal turmoil. Mr. Yun testified that the 900 million won he paid Ms. Cho amounted to approximately more than 80% of his and his wife's retirement fund. He was socially humiliated, unable to tell people what happened due to shame. He was no longer able to afford the same activities he used to enjoy, such as golf. He and his wife now have to live very frugally.

[113] Mr. Han was ashamed that he convinced friends and family to give him money so that he could purchase condominiums from Ms. Cho. Discovery of the fraud so upset him that he had to take time off work, he resigned as president of the South Korean pilots' association, and he was unable to afford to send his daughter to higher education.

[114] The assessment of the compensatory damages in Canadian dollars as of August 16, 2004, will serve to disgorge any profit made by Ms. Cho on conversion of the plaintiff's money from Korean won to Canadian dollars. These currency exchange profits may be significant, as noted above. I conclude in this case that by providing the plaintiffs with this amount of compensation, they will be sufficiently compensated for their damages, and I decline to order an award of additional aggravated damages.

[115] However, it is my view that punitive damages are warranted so as to punish Ms. Cho for her outrageous conduct and to deter others. As held by the Supreme Court of Canada in ***Hill*** at paras. 196-197:

> Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.
>
> Unlike compensatory damages, punitive damages are not at large. Consequently, courts have a much greater scope and discretion on appeal. The appellate review should be based upon the court's estimation as to whether the punitive damages serve a rational purpose. In other words, was the misconduct of the defendant so outrageous that punitive damages were rationally required to act as deterrence?

[116] The Supreme Court of Canada in ***Whiten*** emphasized that proportionality is the key to an award of punitive damages, at para. 111:

> Retribution, denunciation and deterrence are the recognized justification for punitive damages, and the means must be rationally proportionate to the end sought to be achieved. A disproportionate

> award overshoots its purpose and becomes irrational. A less than proportionate award fails to achieve its purpose. …

[117] The Court went on to explain that the award of punitive damages must be proportionate: to the blameworthiness of the defendant's conduct; to the degree of vulnerability of the plaintiff; to the harm or potential harm directed specifically at the plaintiff; to the need for deterrence, after taking into account other penalties, civil and criminal, which have been or are likely to be inflicted on the defendant for the same misconduct; and to the advantage wrongfully gained by the defendant from the misconduct.

[118] Here, Ms. Cho's conduct was planned and deliberate, and she continued to deny any wrongdoing throughout the proceedings. Ms Cho has not revealed the whereabouts of the proceeds of the fraud or returned any of the money.

[119] The plaintiffs have cited a number of cases where punitive damages have been awarded so as to illustrate the range imposed under a whole variety of circumstances: $20,000 to each plaintiff relating to a stockbroker found liable to clients for breach of fiduciary duty and fraud, in ***Huff v. Price***; $25,000 in relation to fraud in ***iTrade Finance Holdings Inc. v. Webworx Inc.***; $25,000 against each fraudulent defendant in ***ICBC v. Le***, 40 M.V.R. (3d) 235, 11 C.C.L.I. (3d) 40; a total of $60,000 in relation to two fraud claims in ***Kursar v. BCAA Insurance Corp.***, 2007 BCSC 1583; $100,000 in relation to dishonestly cutting a neighbour's trees, in ***Horseshoe Bay Retirement Society v. S.I.F. Development Corp.***, (1990), 66 D.L.R. (4th) 42 (BCSC), 3 C.C.L.T. (2d) 75; $100,000 to each plaintiff in relation to a union's threats and intimidation in ***Matusiak v. British Columbia and Yukon Building and Construction Trade Council***, [1999] B.C.J. No. 2416 (S.C.); $100,000 relating to false reports of custom fraud in ***Procor Ltd. v. U.S.W.A.*** (1990), 65 D.L.R. (4th) 287, 71 O.R. (2d) 410 (H.C.); $800,000 in the defamation case of ***Hill***; and $1 million in ***Whiten***.

[120] Since fraudulent conduct by its nature involves behaviour that departs from ordinary standards of decency, something more is needed in order to impose punitive damages, especially where the defendants have been subjected to other punishments such as quasi-criminal proceedings and fines which serve the purposes of deterrence and denunciation: ***Insurance Corp. of British Columbia v. Eurosport Auto Co.***, 2007 BCCA 279, 69 B.C.L.R. (4th) 257.

[121] At the time of this trial Ms. Cho was in custody in British Columbia, apparently pending possible extradition to South Korea to face criminal charges in relation to the events that formed the subject matter of this lawsuit. However, Ms. Cho led no evidence and advanced no submissions to the effect that she has already faced criminal sanctions for her conduct, and, understandably, she also did not argue that she is likely to face such sanctions. This Court can conclude that to date Ms. Cho has not faced any criminal sanction that would serve the goals of deterrence and denunciation, but that there is a possibility that she might face such sanctions in South Korea in the future.

[122] Taking all of the above-mentioned circumstances into account, I conclude it is appropriate to make an award of punitive damages to ensure that the goals of deterrence and denunciation of Ms. Cho's conduct are met. I find that in addition to compensatory damages, an award of punitive damages is warranted to take into account Ms. Cho's moral blameworthiness and to deter others from similar fraudulent conduct. Simply put, in the circumstances of this case a message of general deterrence is required so that persons understand that if they act like Ms. Cho, they face the possibility that not only will they lose the proceeds and profits of their fraud, but they will be required to pay additional damages as well.

[123] Based on all of the above circumstances, I award punitive damages of CAD$50,000 to Mr. Yun, and CAD$50,000 to Mr. Han and Mrs. Park, for a total of CAD$100,000.

Outstanding Issue: Taking Settlement into Account

[124] The plaintiffs settled with the co-defendants at the start of this trial. As well, there was some suggestion that the plaintiffs may have sued Ms. Cho's husband in South Korea. It was agreed that any issue of double-recovery of damages in this regard would await the outcome of this trial. Ms. Cho is now at liberty to apply to this court to take into account in the assessment of damages any prior settlement or recovery of losses obtained by the

plaintiffs. Any such application or related application should be brought within 30 days of this judgment, failing which the assessment of damages set out in this judgment shall stand.

Counterclaim by Ms. Cho

[125] The bulk of Ms. Cho's evidence in direct, and her questions on cross-examination, were directed towards establishing her counterclaim.

[126] In her counterclaim, Ms. Cho alleges that on September 17, 2005, Mr. Han and Mrs. Park broke into her apartment in Seoul, South Korea, and threatened, assaulted and battered her and Jioh. She alleges that Mr. Han wrongfully demanded that Ms. Cho and Jioh satisfy his claims by paying monies to the plaintiffs, and by transferring Jioh's ownership of the Vancouver condominium to the plaintiffs. She alleges that Mr. Han and Mrs. Park then, by force and threat of force, removed Ms. Cho and Jioh from the apartment and transported them against their will to various locations in Seoul. During this time, Mr. Han and Ms. Park allegedly committed further assault and battery and made further threats of violence, and also wrongfully took personal property and records from Ms. Cho and Jioh. Ms. Cho says she escaped on September 18, 2005, and Jioh was rescued by the police on September 20, 2005.

[127] Ms. Cho claims punitive and aggravated damages as well as general and special damages.

[128] Ms. Cho also advances these allegations as a defence to any equitable relief sought by the plaintiffs in the claim.

[129] Mr. Han and Mrs. Park both agree that when they found out where Ms. Cho was living, they went to her apartment on September 18, 2005 and confronted her. But their story as to what happened is very different than Ms. Cho's story. They say they went to the apartment with military police officers, who were there to arrest Ms. Cho's boyfriend for desertion from the South Korean army. Also accompanying them was the wife of Ms. Cho's boyfriend. At the apartment, Mr. Han did confront Ms. Cho and Jioh, but no violence took place other than one incident where Mr. Han slapped Ms. Cho when she said she did not have his money. He instantly regretted losing control. No other violence or threats took place.

[130] Mr. Han and Mrs. Park say that Ms. Cho and Jioh left the apartment voluntarily with them. There were some negotiations between them. Ms. Cho later ran away, at which time Jioh did complain to the police and so they all went to a police station. There, the police officers interviewed each of them, including Jioh alone. Jioh abandoned any complaint and left the police station voluntarily with Mr. Han and Mrs. Park.

[131] Mr. Han and Mrs. Park had evidence corroborating parts of their story from a military police officer who accompanied them to Ms. Cho's apartment. As well, they had evidence corroborating other parts of their story from the police officers who interviewed Jioh after the alleged incident. They sought and were given leave to introduce this evidence by affidavit, pursuant to Rule 40(44) of the ***Rules of Court***. Proper notice of this evidence was given at least 30 days prior to trial (Rule 40(45)) and none of the parties (Ms. Cho or the other defendants) gave 14 days or any notice requesting the opportunity to cross-examine the deponents at trial (Rule 40(45.1)) or otherwise objected to the evidence in advance of trial. The Canadian lawyer who met with the witnesses and obtained their affidavit evidence was made available for cross-examination by Ms. Cho, and she did cross-examine him at trial.

[132] The military police officer confirmed that military police officers went to the apartment with Mr. Han and others, and there arrested Mr. Kim (Ms. Cho's boyfriend). He stayed outside the apartment for about one and a half hours, in the hallway and did not see anything untoward happen. The police officers gave evidence that they interviewed Jioh alone, and that it was clear that she was free to leave on her own or with Mr. Han and Mrs. Park, and that she voluntarily left with Mr. Han and Mrs. Park. Jioh made no suggestion to them that she was being kidnapped or held against her will by Mr. Han or Mrs. Park.

[133] The affidavit evidence of these other people is of note, when put in the context that Ms. Cho did not call any of these individuals to corroborate her story, or any other witness. Ms. Cho denied that the military police came to the apartment at all. While I am reluctant to give affidavit evidence the same weight as the testimony of witnesses at trial, the affidavit evidence lends force to the plaintiffs' argument that an adverse inference should be drawn,

namely, that the reason Ms. Cho failed to call other witnesses to support her version of events, including that she was beaten and threatened and that she and Jioh were kidnapped and held against their will, is because there were no others who could corroborate her story.

[134] Ms. Cho did not call any witness to these events, although her daughter Jioh lives in Vancouver and there was evidence that she was available.

[135] After the plaintiffs responded to Ms. Cho's evidence in respect of the counterclaim, Ms. Cho was asked by the court if she wished to call any evidence in reply. The only evidence she wished to call in reply was her own testimony, on two points: the physical layout of the apartment in South Korea where the counterclaim events took place; and the layout of the hallway to that apartment, and her evidence that if someone was outside the door they could not see inside the apartment. She did not seek to call any other evidence.

[136] In closing argument, Ms. Cho sought to re-open her case and to call Jioh as a witness. Ms. Cho also said she had an audiotape to prove through Jioh. She had not previously produced this tape. This evidence was in support of her counterclaim allegations only, and not in defence of the fraud claim against her.

[137] While I have discretion to reopen an issue in order to prevent a miscarriage of justice, this discretion must be exercised "sparingly and with the greatest care" so that "fraud and abuse of the Court's process" do not result: see ***Clayton v. British American Securities Ltd.***, [1934] 3 W.W.R. 257 at 295, 1 D.L.R. 432 (B.C.C.A.), cited with approval in ***671122 Ontario Ltd. v. Sagaz Industries Canada Inc.***, 2001 SCC 59, [2001] 2 S.C.R. 983 at paras. 60-61; ***Noble v. Hewson Pharmaceutical Corp***., 2004 BCSC 482, 47 C.P.C. (5th) 107, at para. 14; and ***Waters v. Bains***, 2009 BCSC 298, paras. 19-24.

[138] I did not allow Ms. Cho's request, mid-submissions, to call new evidence in support of her counterclaim, as this would have split her case, and Ms. Cho did not persuade me that a miscarriage of justice would occur if she was not allowed to call the evidence. Ms. Cho was in a position to know the nature of the evidence that the plaintiffs would call in response to her counterclaim allegations (their oral evidence and the affidavits of the officers), before she closed her case. Based on Ms. Cho's counterclaim allegations, she knew that Jioh was a witness available to her to support her allegations if they were true. After the plaintiffs responded to her counterclaim evidence, the court gave Ms. Cho a chance to call her own evidence in reply on new points. She did not request the opportunity to call Jioh then.

[139] No evidence was put forward by Ms. Cho justifying the late attempt to introduce this evidence, other than that her suggestion that she had earlier understood Jioh could not testify because this was a term of Jioh's settlement with the plaintiffs. I did not accept this submission. Counsel for the plaintiffs explained that there was no such term of settlement. Jioh had a lawyer when the settlement was negotiated and he would have been able to explain there was nothing in the settlement preventing Jioh from testifying.

[140] In making this ruling, I was also mindful of the fact that several times in the proceeding, both before the start of trial, and during trial, the plaintiffs raised as a concern the fact that Ms. Cho had threatened to produce documents at trial that she had not given to them in advance, contrary to the ***Rules of Court***. On several occasions, Ms. Cho was directed by the court to produce all relevant documents if she had any. At previous pre-trial hearings, over which I had presided as the case management judge, it was also brought home to Jioh and Subi that they had an obligation to produce all relevant documents in advance of trial. Ms. Cho's attempt to reopen her case on the counterclaim, to call Jioh to introduce a previously unproduced document, an audiotape, purportedly in support of the counterclaim, would have been highly prejudicial to the plaintiffs who had already testified in response to the counterclaim and who had incurred the expense of coming to Vancouver for the trial. There could have been potential delay in the trial to allow the plaintiffs an opportunity to perform testing on the tape to determine authenticity. Ms. Cho did not suggest that she was unable to produce the tape earlier, had she wished to do so.

[141] It had been made clear to Ms. Cho from the start of trial that she was at liberty to call witnesses but she insisted that she was not going to do so. She stuck by this decision during the calling of her case, other than changing her mind by testifying on her own behalf. I was satisfied that she made a tactical decision not to call Jioh as part of her case, and so it would have been unjust to allow her to re-open her case to call Jioh as a witness. Furthermore, any evidence Jioh might give was unlikely to rescue Ms. Cho's credibility, as this was already so significantly undermined by the abundant evidence against her and by Ms. Cho's own testimony in the case. Jioh's evidence would likely be of very little weight given that she would not be an independent witness.

[142] The onus of proof with respect to the counterclaim (and any related defence) is on Ms. Cho. In my view she has not met that onus.

[143] One of the problems with Ms. Cho's evidence in support of the counterclaim is that it appears to be part of the fabric of the story she wove regarding the plaintiffs' involvement in the fraud. Ms. Cho's allegation about the threats and beating and kidnapping is consistent with her story that Mr. Han and Mrs. Park were part of a gang, but if they were so intimidating that they forced her into a fraud, and if all her actions in respect of the fraud were because she was trying to protect her daughters from the plaintiffs' threats, why would she be so bold as to take all the plaintiffs' money and run? Why would she run away again, once they had found her, and leave her daughter Jioh behind with them, if they were such dangerous people? I have rejected Ms. Cho's story regarding the fraud as an invention. I find the counterclaim allegations are part of the same invention.

[144] It is within the realm of human behaviour that victims of fraud on this scale might be so angry as to threaten or to hit the person who defrauded them, even though such behaviour is unacceptable. But even though the counterclaim story is possible, I find that it is not probable.

[145] Even without the additional affidavit evidence of the military police officer and the police officers, I would prefer the evidence of Mr. Han and Mrs. Park over the evidence of Ms. Cho in respect of the counterclaim allegations. I found them to be far more credible witnesses than Ms. Cho on all matters.

[146] Mr. Han and Mrs. Park's evidence is consistent with the rest of their conduct: they had already commenced this lawsuit by the time they went to her apartment, choosing a legal means to settle their dispute with her.

[147] I also observed the demeanour of Mr. Han and Mrs. Park in the witness stand. Mr. Han appeared quite ashamed when he claimed that he had lost his temper and slapped Ms. Cho once. This occurred when he entered the apartment and asked for his money back, and she said she did not have it and offered him only 200,000 won, a pittance compared to the over 1.14 billion won he had paid her. I believe his evidence that he immediately regretted slapping her and he then calmed down.

[148] Mrs. Park also testified that she had just returned from hospital and could barely stand up at the time, and so she would not have been in any shape to physically threaten Ms. Cho. I believe this evidence as well: Mrs. Park appeared meek at trial, especially when contrasted to what I observed to be the forceful personality of Ms. Cho.

[149] The difference between the torts of assault and battery is explained in Linden at 46 and 43. Assault involves "the intentional creation of the apprehension of imminent harmful or offensive contact" and battery involves the intentional "harmful or offensive contact with another person".

[150] I find on the balance of probabilities that by slapping Mrs. Cho, Mr. Han did commit the tort of battery. However, there were no other actions by Mr. Han or Mrs Park that constitute the torts of assault or battery. Mr. Han did not threaten or hit or kidnap Mrs. Cho or her daughter Jioh, nor did Mrs. Park do any of these things.

Damages on Counterclaim

[151] Ms. Cho testified under cross-examination that if she had just had one slap she would not call that an assault. She was scornful of the notion that a single slap would be anything to complain about. There is no evidence from Ms. Cho of any medical injuries from the slap, or of any psychological or emotional upset from it.

[152] Nevertheless, it is clear that the tort of intentional battery did occur when Mr. Han slapped Ms. Cho. I find therefore, that the slap by Mr. Han entitles Ms. Cho to damages on the counterclaim. Parties involved in disputes must not succumb to hitting each other, no matter what the level of frustration. The law provides a peaceful process to obtain a remedy for a civil wrong, and parties must not circumvent the law by seeking out revenge or retribution through physical confrontation. Ms Cho's civil fraud on Mr. Han did not give him license to slap her.

[153] But I am satisfied that Mr. Han was not seeking out revenge or retribution through physical confrontation, nor was he pursuing vigilante action. He was attempting to find Ms. Cho in South Korea so that he could get back the money given to her. When Mr. Han did find her, and she told him there was no money, he slapped her spontaneously out of a sense of frustration. I find that Mr. Han feels true remorse. I also find that the slap did not give rise to any emotional or physical harm. Taking these factors into consideration, including Ms. Cho's own

dismissive view of a single slap, I conclude that real damages were not suffered, and that only nominal damages are warranted in recognition of the fact that a tort did occur.

[154] The English authorities give some guidance on the meaning of nominal damages, as summarized in Harvey McGregor and John Dawson Mayne, ***McGregor on Damages***, 17th ed. (London: Sweet and Maxwell, 2003) at paras. 10-002 and10-006):

> The best statement as to the meaning and incidence of nominal damages is given by Lord Halsbury L.C. in *The Meidana* [1900] A.C. 113 at 116 where he said:
>
> > "'Nominal damages' is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed."
>
> Thus nominal damages may be awarded in all cases of breach of contract and in torts actionable *per se*.
>
> …
>
> 'Nominal damages', said Maule J. in *Beaumont v. Greathead* (1853) 13 (1846) 2 C.B. 494 at 499 'means a sum of money that may be spoken of, but that has no existence in point of quantity'.

[155] In ***McGregor on Damages***, the authors noted that the courts in England traditionally awarded £2 in nominal damages; this more recently increased to £5 but it has also been as low as £1 in the House of Lords (***Grobbelaar v. News Group Newspapers Ltd.***, [2002] 1 W.L.R. 3024).

[156] S. M. Waddams says in ***The Law of Damages,*** looseleaf ed. (Aurora, ON: Canada Law Book, updated to Nov. 2008) at para. 10.10,

> Nominal damages are awarded if a plaintiff establishes a breach of contract or tort that is said to be "actionable per se" but fails to establish a loss caused by the wrong. … The practical significance of a judgment for nominal damages is that the plaintiff thereby establishes a legal right.

[157] According to Waddams at para.10.20, Canadian courts have awarded nominal damages ranging from $0.20 to $250 or more. He notes that "larger amounts are sometimes referred to as nominal damages, but in most such cases there is evidence that the court intended to give compensation for a loss that it found difficult to quantify." He continues at 10.30, "the nature of nominal damages… is not to give compensation for anything that could be bought with money but to mark symbolically the infringement of a right."

[158] I conclude that an appropriate award on the counterclaim is $10 in nominal damages to Ms. Cho.

Costs

[159] The plaintiffs are successful in the main action and are entitled to their costs.

[160] Ms. Cho failed in proving the outrageous allegations in her counterclaim, and only succeeded in a finding of battery based on a single slap, something she claimed she would not have complained about if this was the only wrongful conduct. I award her no costs of the counterclaim. Since the plaintiffs were successful in defeating the allegations that were the focus of the counterclaim, I award them the costs of the counterclaim as well.

[161] The plaintiffs seek special costs based on Ms. Cho's conduct of the litigation and on her pre-litigation conduct giving rise to the plaintiffs' claims.

[162] In my view, Ms. Cho's conduct during the litigation is sufficient to justify an award of special costs, and it is not necessary to consider whether her pre-litigation conduct will also justify such an award or will be double-compensation given the other awards.

[163] Ms. Cho persisted throughout the litigation in attacking the plaintiffs on a personal level, advancing the most scandalous allegations against them in her pleadings, her cross-examination of them, and her submissions. She advanced the outrageous and baseless suggestion that Mr. Han was a gangster and that he and Mrs. Park were behind the frauds. She accused Mr. Han and Mrs. Park of kidnapping and beating her. She accused anyone who gave evidence against her of being a liar. She maintained in her statement of defence a version of events that was completely different than her evidence at trial. Her production of documents was scanty and she never revealed what happened to the monies that were the subject of the fraud. I find that Ms. Cho's litigation conduct was reprehensible and entitles the plaintiffs to special costs.

[164] There is another item of costs to address, and that is the cost of an interpreter for Ms. Cho. Ms. Cho refused to hire an interpreter for herself during the trial, notwithstanding the fact that she is not fluent in English. She refused to use the services of her daughters to assist her in a rough translation, even though her daughters live in Vancouver and speak English, and even though Jioh indicated to this court that she would be willing to assist her mother in this regard. Ms. Cho claimed she had no money, without proving what happened to the money the plaintiffs had given her. Because she was self-represented, was incarcerated, and because of the seriousness of the claims against her, in the interests of justice I ordered that the plaintiffs' interpreter be made available to Ms. Cho as needed and that the costs of this would be born by the Ministry of the Attorney General through Court Services until the outcome of the trial. I therefore also now order that Ms. Cho is to reimburse Court Services for that portion of the interpreter's services that were provided to Ms Cho.

Conclusion

[165] Mr. Yun is entitled to damages of CAD$1,015,200 plus CAD$50,000 punitive damages against Ms. Cho.

[166] Mr. Han and Mrs. Park are together entitled to damages of CAD$1,285,920 plus CAD$50,000 punitive damages against Ms. Cho.

[167] Ms. Cho is entitled to nominal damages of CAD$10 on the counterclaim.

[168] The plaintiffs are entitled to special costs against Ms. Cho. Ms. Cho must reimburse Court Services for the interpreter's services provided to her during the trial.

"S. Griffin, J."
The Honourable Madam Justice S. Griffin