

**Business**

## B.C. court awards \$77K for cannabis startup expenses pursuant to oral agreement

By **Anosha Khan**

(January 3, 2023, 3:29 PM EST) -- An oral agreement between shareholders to start a cannabis cultivation operation was enforceable due to the shareholders' knowledge and conduct to establish the business, the Supreme Court of British Columbia has ruled.

*Case National Investment Ltd. v. 1219925 B.C. Ltd., 2022 BCSC 2250* pertained to "a claim for monies paid out pursuant to an oral agreement between the three shareholders of a start-up cannabis cultivation business." The plaintiff sought repayment of \$79,253.50 for expenses occurred in the course of setting up the business.

The court awarded \$77,153.50 to the plaintiff, finding the oral agreement was binding.

"For the oral agreement to be enforceable, it is necessary that a reasonable person in that party's situation would believe that the party was assenting to the terms proposed by the other party," wrote Justice Emily Burke in the Dec. 29 decision. "This is an objective test; the parties' subjective intentions are not determinative."

In August 2019, plaintiff Choa Liu entered into an oral agreement with defendants Huan Xian Wang and Hong Jun Zhao regarding a cannabis growing operation. The parties agreed to invest funds into the corporate entity for the operation in exchange for shares, and incorporation documents were signed the same month. Liu and Zhao would each own 30 per cent of shares while Wang would own 40 per cent of shares.

Liu alleged the parties agreed he would be sole director since he was the only person who had experience in the industry, including locating, surveying and designing the premises to be used for cannabis cultivation. He claimed that defendants failed to compensate him for these reasonable expenses.

The draft shareholders' agreement stated that each individual had to personally guarantee financial debts, and that "The company must reimburse each director for the reasonable expenses that he or she may incur in and about the business of the company."

The defendants claimed they had no knowledge of expenses incurred and claimed the agreement was unenforceable and the action should therefore be dismissed. They submitted that no agreement between shareholders was ever finalized.

The court found that there was a binding oral agreement that required the defendants to compensate Liu for their proportionate share of the start-up costs he incurred, and that the defendants were in fact aware and agreed to the expenses in question. This was in part cited in the parties' communication on the WeChat app, where the defendants also acknowledged that a draft of the shareholders' agreement was the same as what was discussed in person.

"I do not agree there was uncertainty in the terms of the agreement sufficient to render it unenforceable. Based on the evidence before me, I conclude that the terms of the oral agreement were clear and acted upon by all involved," wrote Justice Burke in her reasons.

Pursuant to the agreement, the defendants owed the plaintiff:

- a) \$63,000 for retaining Nibbler’s consulting services;
- b) \$1,780 for surveying by Measure Masters Surrey;
- c) \$4,725 for surveying by Vector Geomatics Land Surveying Ltd;
- d) \$15,000 for Sacha Canow’s design work; and,
- e) \$18,000 in wages for Mr. Liu’s three months of work.”

Wang works in the real estate industry and found a suitable property in Chilliwack for cultivation. All parties signed the purchase contract. In October 2019 the parties retained Nibbler Technology Inc. to assist with the cannabis licensing application for the Chilliwack property; all parties had dinner with the owner and consultant to discuss the matter. The parties, along with employees of Nibbler, also visited the property.

Half of Nibbler’s \$120,000 fee was to be paid upfront, and Liu paid \$63,000 for the fees and taxes in 2019. The court found that the defendants were unable to adequately explain their ignorance of the contract, since their WeChat messages contradicted this claim.

“The evidence demonstrates both that a reasonable person in the position of Mr. Liu would believe that Mr. Wang and Mr. Zhao were assenting to the terms proposed and entered into a contract with him,” Justice Burke found.

“Having concluded that there was an enforceable oral agreement to share the Company’s expenses proportionate to the parties’ share interests, it follows that the fees associated with retaining Nibbler should be shared proportionally between Mr. Liu, Mr. Wang and Mr. Zhao.”

Costs were awarded to the plaintiff in the total amount of \$77,153.50.

Counsel for the plaintiff was Roy Luo of Wiebe Wittmann Robertson LLP.

Counsel for the defendants was Alyssa Leung of Chen & Leung.

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