

CANADA / JUDGMENT

1003730 B.C. Ltd. v. 0969939 B.C. Ltd.

2025 BCSC 2128

COURT

Supreme Court of British Columbia

DECIDED

12 May 2025

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2025 BCSC 2128 1003730 B.C. Ltd. v. 0969939 B.C. Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: 1003730 B.C. Ltd. v. 0969939 B.C. Ltd., 2025 BCSC 2128 Date: 20250512

Docket: S1912568 Registry: Vancouver Between: 1003730 B.C. Ltd., Jintae Kim, Andrew Kim, Yoon Kyung Kim, Seh Young Holdings Ltd., 1021914 B.C. Ltd., Hyun Geon Kim, Kyung Hee Lee, Su Jung Choi and Manha Park Plaintiffs And 0969939 B.C. Ltd., Sung Soo Kim also known as Charles Kim and Kyo Wan Kim also known as Lloyd Kim Defendants Before: The Honourable Justice Thomas Oral Reasons for Judgment In Chambers Counsel for the Plaintiffs: G. Holeksa Counsel for the Defendants, 0969939 B.C. Ltd. and Kyo Wan Kim: D. Milojkovic Place and Date of Trial/Hearing: Vancouver, B.C. May 12, 2025 Place and Date of Judgment: Vancouver, B.C. May 12, 2025

- [1] THE COURT: This was a complex alleged fraud damage case in which the defendant 096 and Lloyd Kim failed to comply with the rules and defend the action such that the matter was ordered to proceed as if no response had been filed to the notice of civil claim and the plaintiff subsequently took default judgment. No steps were taken for well more than a year with respect to this.
- [2] Today the plaintiff seeks to assess damages against 096. Given the complexities the matter was to proceed with affidavit evidence and viva voce evidence. After the lunch break, the defendants Lloyd Kim and 096 appeared through counsel seeking an adjournment. No materials were filed or provided. Counsel offered no excuse for his clients' noncompliance. He advised that he needed an adjournment so that he could bring an application to have the default judgment overturned or appealed.
- [3] I allowed counsel to make submissions on behalf of his client, not in defence to the default damage assessment, but simply to make an application to adjourn the proceedings so that he would have an opportunity to state his reasons for seeking to adjourn the application, which were so that, essentially, the default could be rectified.
- [4] Both parties rely on Navarro v. Doig River First Nation, 2015 BCSC 2173 [Navarro], and they rely on the tests set out there in paras. 18-28. It is apparent that the defendants have no explanation for their past misconduct. I note that they did lose their lawyer due to, apparently, a conflict and represented themselves for a period of time, but this is no excuse. The defendants were served by the plaintiffs, which they did not have to do. And despite this

courtesy, the defendants provided no notice of their position or even that they would be attending today. I understand their counsel was actually only retained today.

- [5] This is a matter involving a considerable amount of money. There is no evidence of substantive prejudice to the plaintiff for an adjournment outside of continued delay and considerable expense thrown away for this hearing, which was complex and meticulously prepared at considerable expense. The plaintiffs have legitimate concerns the defendants will not pay any out-of-pocket costs as the defendant is a company with no assets and Mr. Kim has apparently failed to pay expenses or costs on previous occasions.
- [6] In my view, the delay is inexcusable but does not result in an injustice at this point, as characterized in para. 26 of Navarro, because trial fairness has not been impacted. I have concerns about nonpayment of costs thrown away, but in my view, these concerns can be mainly alleviated by orders attached to any adjournment.
- [7] The primary issue is that the defendants, through their own fault, face substantial prejudice, whereas the plaintiffs face no real prejudice, and the terms I will impose, in my view, will give them satisfactory protections such that they will be able to recover any out-of-pocket costs.
- [8] To that end, in my view, the conduct of the defendants is scandalous or outrageous or necessarily deserving of reproof or rebuke. In my view, it clearly meets the test in *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570, of reprehensible conduct; however, I am open to hearing submissions from the defendants with respect to this finding. I say there is no evidence on it, but I feel that they should have an opportunity to address my comments with respect to the conduct of the defendants. [SUBMISSIONS RE REPREHENSIBLE CONDUCT]
- [9] THE COURT: I appreciate what you are saying here, but given the amount of delay and especially since, in this case, the plaintiffs went to the courtesy to provide notice of what they were doing and then were ambushed when they appeared in court, causing them to simply throw away considerable expense used to prepare and appear in court today, this, is reprehensible conduct deserving of rebuke.
- [10] To ensure that the plaintiffs receive full compensation, I am ordering that they receive special costs for this hearing, as if this hearing were brought as a summary trial application. Because in my view, given the complexity of the hearing, a summary trial incorporates the appropriate steps that they took and provides a fair basis for compensation for costs. This will be both for preparation and for the hearing itself.
- [11] To clarify the procedure to be used if an assessment is required. The typical procedure is that the plaintiffs would provide the defendants' solicitor with their bill of costs. If there is an agreement on the bill, it can be paid; if not, it would have to be assessed. If assessed the assessment would occur on a special costs basis as well. I wish to clarify if there is an assessment, it is on a special costs basis.

[12] The defendants are ordered to pay the bill forthwith. Both the corporation and Mr. Kim are jointly responsible. The defendants will then have 45 days, after receiving either an agreed-upon bill or an assessed bill, to set down any applications to address their status in the litigation. However, the defendants may not bring such an application until the bill has been paid. So, essentially, it is to be paid forthwith, and you are not to bring your application until the bill has been paid. After 45 days, if no application has been set down, the plaintiffs are at liberty to set down a new application for assessment of damages. However, the plaintiffs will have to serve the defendants even if they remain in default and are not parties to the action. [DISCUSSION RE REASONS]

[13] THE COURT: Okay. So what I am going to also order is that within two weeks, \$25,000 be paid in trust to Mr. Kim's counsel as security for the cost award. "Thomas J."

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Prepared on 26 October 2026 · Esheria