

CANADA / JUDGMENT

British Columbia (Securities Commission) v. Bossteam E-Commerce Inc.

2019 BCSC 943

COURT

Supreme Court of British Columbia

DECIDED

15 May 2019

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2019 BCSC 943 British Columbia (Securities Commission) v. Bossteam E-Commerce Inc. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: British Columbia (Securities Commission) v. Bossteam E-Commerce Inc., 2019 BCSC 943 Date: 20190515 Docket: S171007 Registry: Vancouver Between: British Columbia Securities Commission Petitioner And Bossteam E-Commerce Inc., Yan Zhu also known as Rachel Zhu, Guan Qiang Zhang, and Zhi Yu Zhang Respondents Before: The Honourable Mr. Justice Basran Oral Reasons for Judgment In Chambers Counsel for the Receiver, Grant Thornton Limited: S.A. Turner Appearing on His Own Behalf by Videoconference From Toronto: J. Li Place and Date of Hearing: Vancouver, B.C. May 15, 2019 Place and Date of Judgment: Vancouver, B.C. May 15, 2019

INTRODUCTION

[1] THE COURT: Mr. Li appeals the decision of a receiver, Grant Thornton, to reject his claim in respect of amounts he purportedly invested in Bossteam E-Commerce Inc.

BACKGROUND

[2] The relevant facts are set out in the application response of the receiver.

[3] By order dated April 7, 2017, this Court granted the British Columbia Securities Commission a receivership order appointing Grant Thornton as receiver of Bossteam's funds. The Commission had earlier frozen funds deposited to bank accounts held by Bossteam and two of its principles.

[4] By a decision dated August 8, 2014, the Commission found that Bossteam, Victor Zhang, and Rachel Zhu obtained the frozen funds by defrauding thousands of mostly small investors.

[5] Among other things, the Commission ordered that Mr. Zhang and Ms. Zhu each pay an administrative penalty of \$14 million.

- [6] This Court, in this proceeding, made several findings, including that:
- a) Mr. Zhang and Ms. Zhu were the directing minds of Bossteam;
 - b) Bossteam raised approximately \$14 million from more than 14,000 investors;
 - c) These funds were raised by creating false impressions in support of their scheme to sell advertising packages; and
 - d) This scheme caused deprivation.
- [7] Further details are set out in paragraphs 6 to 8 of the Court's decision, which is indexed as 2017 BCSC 787.
- [8] Individuals invested in Bossteam in different ways, as noted by the receiver in its first report to the Court. In some cases, investors, to whom the receiver referred as "Uplines", sold advertising packages to other investors, referred to as "Downlines", apparently on the expectation that the Uplines, would earn additional monies on the Bossteam websites.
- [9] The Commission sought the appointment of the receiver to:
- (a) take possession of the receivership funds;
 - (b) implement and administer a claims process; and
 - (c) distribute the receivership funds to investors and other creditors.
- [10] Concurrently with the receivership order, the Court issued a Claims Process and Distribution Order (the "CPDO"), which:
- (a) established a process for:
 - i. notifying investors and other creditors of these proceedings and of their right to submit claims; and ii. submitting proofs of claim.
 - (b) set a claims bar date; and
 - (c) required the receiver to adjudicate its submitted claims in a just, speedy, and inexpensive manner.
- [11] On August 1, 2017, the applicant submitted a proof of claim to the receiver in accordance with the CPDO. This proof of claim was for approximately US \$364,000.
- [12] The claim filed by the applicant was unclear. On August 1, 2017, the receiver wrote to the applicant and said: Our Vancouver office received a package from you today in relation to Proof of Claims for Bossteam E-Commerce Inc. Please provide a summary of the claim submitted via email to myself. The package was unorganized and we do not understand the information you are providing.

- [13] The applicant did not respond to this communication. In his affidavit filed May 31, 2018, the applicant deposed, at para. 12: I received an email from the receiver advising that they did not understand the information I was providing... but I was sure once they reconciled my various transaction records with the details of my U.CASH accounts they would understand the totality of my investments.
- [14] On May 10, 2018, the receiver disallowed the applicant's claim in its entirety on the basis that he had not provided the receiver with documentation or other evidence to show that he had actually paid funds to Bossteam.
- [15] The CPDO provides that a claimant may appeal any disallowance in whole or in part by bringing a summary application to the court within 21 days of the receiver having delivered a notice of disallowance to the claimant. The CPDO provides that any appeal shall be conducted as a true appeal and not a hearing de novo. The applicant filed his notice of application with the Court on May 31, 2018, which the receiver accepted as an appeal from its notice of disallowance.
- [16] The applicant has now filed an affidavit in which he says that he invested a total of US \$150,000 in Bossteam. These amounts are significantly less than the amounts claimed by the application in his original proof of claim.
- [17] The applicant's affidavit is somewhat unclear. However, the applicant appears to claim that he made a series of deposits to different accounts held by Bossteam between November 18, 2011 and April 19, 2012.
- [18] On June 20, 2018, the receiver wrote to the applicant's counsel at the time and said: Our client's concern, with respect to these deposit slips, is that your client has been described by other investors as "the number one Upline in the Toronto area". "Uplines", as we understand it, acted as conduits for investments in Bossteam. Typically, a "Downline" investor would provide funds, often in cash, to an Upline such as your client, who would then deposit the money to Bossteam's account and, subsequently, arrange for the transfer of an equivalent amount of "U.CASH" from his (the Upline's) Bossteam account to the Downline investor's account. Bearing this in mind, what evidence, if any, does your client have to show that the funds deposited to Bossteam's CIBC accounts, as reflected in the deposit receipts attached to his affidavit, actually came from him as opposed to Downline investors? . . . Our client would also ask for the names and ID #s of [Mr. Li]'s Downlines . . .
- [19] So, to reiterate, the receiver asked for the names and identification numbers of Mr. Li's Downlines.
- [20] On June 28, 2018, the Court made a further order directing the receiver, in circumstances where Downline and Upline investors had both submitted claims for the same investments, to pay the Downline investors in preference to the Uplines.

- [21] On September 10, 2018, the receiver wrote again to Mr. Li's counsel and reiterated his request for information that established that Mr. Li invested his own funds as opposed to those of other investors. He also again asked Mr. Li to identify his Downlines. DISCUSSION
- [22] The applicant did not provide a substantive response to these requests. In particular, he did not provide evidence that the funds he purported to have invested in Bossteam came from him, as opposed to others such as his Downlines.
- [23] Despite being asked twice to identify his Downlines, Mr. Li failed to provide this information.
- [24] Mr. Li did provide evidence that he invested US \$7,500 and the receiver accepted that amount as his claim.
- [25] The CPDO sets out that the applicant's appeal is to proceed as a true appeal and not a trial de novo. The receiver's findings with respect to the legitimacy of proofs of claims are largely factual, so the standard of review is reasonableness. I refer here to the British Columbia Court of Appeal decision in *Galaxy Sports Inc. (Re)*, 2004 BCCA 284 at para. 39 and the decision of the Court of Queen's Bench of Saskatchewan in *Business Development Bank of Canada v. Pinder Bueckert & Associates Inc.*, 2009 SKQB 458 at para. 24.
- [26] The receiver reviewed the evidence submitted by the applicant and made further requests for information that would show that the amounts claimed came from Mr. Li. He did not adequately respond to these requests.
- [27] In my view, the receiver's correspondence to Mr. Li's previous counsel, dated June 20, 2018, and September 10, 2018, clearly set out the nature and extent of information that was required, and Mr. Li failed to provide it. At the hearing of the application, Mr. Li inexplicably blamed his previous lawyer and counsel for the respondent for his own failure to provide further information.
- [28] In his original proof of claim, Mr. Li claimed approximately US \$364,000. In a subsequent affidavit, he reduced his claim to approximately US \$150,000. He failed to provide a credible explanation for this significant difference.
- [29] Mr. Li also failed to provide the names and identification information for his Downlines. Without this information, it is not possible for the receiver to determine if the funds invested in Bossteam came directly from an investor or from an Upline conduit. It is, therefore, not possible to determine if two different investors are claiming the same amount.
- [30] Mr. Li failed to provide information to show that the amounts he was claiming came from his own funds. Most of the amounts he purportedly deposited to Bossteam's account do not match withdrawals from his bank account. The amounts that do correspond to withdrawals from his bank account form part of the US \$7,500 that the receiver is accepting as his proof of claim.

- [31] In my view, the receiver did a reasonable review of the evidence submitted by Mr. Li, provided him with an opportunity to provide additional information, properly assessed his failure to provide further substantiating information, and made reasonable conclusions based on all of the available information. In short, the receiver acted reasonably in regards to the claims of Mr. Li.
- [32] Mr. Li has not established that he invested more than the US \$7,500 that the receiver has accepted as his claim.
- [33] Mr. Li's appeal is allowed to the extent of his claim of US \$7,500. The appeal in respect of the remainder of his claim is dismissed.
- [34] There will be no order as to costs. "Basran J."

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