

CANADA / JUDGMENT

Cao v. Chen

2020 BCSC 2050

COURT

Supreme Court of British Columbia

DECIDED

22 December 2020

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2020 BCSC 2050 Cao v. Chen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cao v. Chen,

2020 BCSC 2050

Date: 20201222

Docket: E100233

Registry: Vancouver

Between:

Weihong Cao aka Wei Hong Cao

Claimant

And

Yongchang Chen aka Yong Chang Chen and Chao Chen

Respondents

- and -

Docket: S194328

Registry: Vancouver

Between:

Chao Chen

Plaintiff

And

Yong Chang Chen also known as Yongchang Chen

and Jie Chen

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for Weihong Cao, Claimant (E100233) and Applicant (S194328):

G. Forrester

Counsel for Chao Chen, Respondent (E100233) and Plaintiff (S194328):

B. Blake

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

October 29, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 22, 2020

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Introduction

- [1] I have been seized with the Cao v. Chen proceeding since September 2017. The claimant, Weihong Cao, and the respondent, Yongchang Chen, were married in China in January 1994. They had three children together (collectively "the Children"). The eldest child, Jie Chen, was born in August 1994. Prior to this marriage, Yongchang Chen was previously married and had one son, Chao Chen, born in 1981.
- [2] Throughout these reasons, I will refer to Yongchang Chen as "Mr. Chen"; to Weihong Cao as "Ms. Cao"; to Chao Chen as "C. Chen"; and to Jie Chen as "J. Chen".
- [3] On January 22, 2010, Ms. Cao brought a claim against Mr. Chen and C. Chen in British Columbia. Ms. Cao sought a divorce, sole guardianship and custody of the Children, maintenance and support for herself and the Children, division of family assets, and a trust claim respecting certain property in British Columbia. The claim asserted that C. Chen owns certain property situated in British Columbia in trust for Mr. Chen (the "Family Law Proceeding").
- [4] In May and November 2019 I heard the trial of the issue of whether the Chinese judgment issued by the Intermediate Court of Weifang City, People's Republic of China, in a proceeding commenced by Mr. Chen, against Ms. Cao in China, should be recognized in British Columbia and whether this Court should assume jurisdiction on the remaining issues.
- [5] During that trial, it surfaced that C. Chen had commenced an action against Mr. Chen and J. Chen on April 10, 2019 (the "Debt Proceeding"). At the time of trial, that action had not yet been served on the defendants. The action claimed that C. Chen had loaned money to Mr. Chen in 2015 for the purpose of purchasing a property, being 6650 Wiltshire Street, Vancouver, BC (the "Wiltshire Property"). As a result, C. Chen asserted a constructive trust or resulting trust over the Wiltshire Property. Further, the claim asserted that Mr. Chen had used some of the loan money to pay the mortgage, property taxes, and maintenance fees on two properties: 19459 Richardson Road, Pitt Meadows, BC (the "Richardson Property") and 721 Southborough Drive, West Vancouver, BC (the "Southborough Property"). C. Chen also asserted a constructive trust or equitable mortgage over these properties. C. Chen has filed certificates of pending litigation against the Wiltshire, Richardson, and Southborough

Properties.

- [6] In the Family Law Proceeding, Ms. Cao initially made a claim against the Southborough Property which was registered in the name of Mr. Chen. She also claimed an interest in five properties registered in the name of C. Chen. On March 24, 2016, Ms. Cao filed an amended notice of family claim in the Family Law Action in which she made a claim against three additional properties. The amendment included claims against the Richardson Property registered in the name of Mr. Chen and the Wiltshire Property registered in the name of Mr. Chen and J. Chen. Ms. Cao has filed certificates of pending litigation on all the properties listed in her amended notice of family claim, including the Richardson, Southborough, and Wiltshire Properties.
- [7] The reasons from the trial of the jurisdictional issue are indexed as 2020 BCSC 735 (the "Reasons"). I found that BC was the appropriate forum to consider the claims respecting property situated in BC. The trial date in the Family Law Proceeding is set to commence on April 26, 2021 for 30 days before me. The history, circumstances, and funding for the purchase of all of the properties will be canvassed at the trial.

Summary of Findings

- [8] I intend to first deal with the issue of whether the two actions should be heard at the same time. I have found that they should be. On that basis, I have found that it is not necessary to add Ms. Cao as a defendant in the Debt Proceeding nor to set aside the default judgment obtained against Mr. Chen. I am seizing myself of the Debt Proceeding. Any application made in the Debt Proceeding, including any assessment of damages against Mr. Chen and any relief against J. Chen, will be heard before me.

Nature of Applications

- [9] On October 29, 2020, I heard two applications that were filed September 18, 2020. Both applications were brought by Ms. Cao; one application in the Debt Proceeding and one application in the Family Law Proceeding.
- [10] In the Debt Proceeding, Ms. Cao seeks the following relief:
- That she be added as a party to the action;
 - An order that C. Chen file an amended notice of civil claim adding Ms. Cao as a party within 7 days of the order, and that Ms. Chen shall have 21 days from the date of service to file a response to civil claim; and
 - Costs in the cause.
- [11] In the Family Law Proceeding, Ms. Cao seeks the following relief:

- a. Subject to the direction of the trial judge, that the Family Law Proceeding and the Debt Proceeding, be tried together or consecutively, in the discretion of the trial judge, with evidence in each of the following related proceedings, during pre-trial procedures and trial, admissible as evidence in the other, subject to the right of any party to dispute the admissibility, on the basis of relevance or otherwise;
- b. No default judgment be granted against Mr. Chen or J. Chen in the Debt Proceeding or, in the alternative, if default judgment has been granted, that it be set aside; and
- c. Cost of this application to Ms. Cao.

[12] Although interwoven, I will deal with each of the applications separately.

[13] I pause to note that Mr. Chen, who clearly has an interest in what happens to the properties and is a party in both proceedings, did not appear at the hearing of the two applications. Counsel for Ms. Cao advised that Mr. Chen had been served. Mr. Chen was represented by counsel in the Family Law Proceeding but dismissed his counsel shortly before the trial of the jurisdictional issue. He attended the trial and acted on his own behalf, but played a limited role. I advised him previously and will do so again, that it would be in his best interests to retain counsel to assist him, particularly at the trial scheduled to commence on April 26, 2021. The value of the properties and assets involved in the Family Law Proceeding amount to millions of dollars. It would assist the Court and Mr. Chen if he retained counsel to ensure his position is appropriately put forward, ensure his argument is heard, and that his evidence is appropriately presented. For those reasons, I request that counsel for Ms. Cao serve a copy of these reasons on Mr. Chen.

The Application to Have the Two Actions Heard Together

Ms. Cao's Position

- [14] Ms. Cao submits that hearing the Debt Proceeding separately from the Family Law Proceeding could result in inconsistent findings. She submits that the claims made by C. Chen in the Debt Proceeding directly contradict the allegations made by Ms. Cao in the Family Law Proceeding.
- [15] Ms. Cao argues that a consolidation of the two proceedings is necessary to avoid a multiplicity of proceedings, and will result in saving time and expense, as well as the better administration of justice. The same witnesses will be called at both trials and there are common claims, disputes, and relationships existing between the parties.
- [16] The only individual who could be seriously inconvenienced is J. Chen, but she was going to be a witness in the Family Law Proceeding in any event. Ms. Cao submits that if J. Chen retains counsel in the Debt Proceeding, then accommodations can be made on when she needs to attend the trial in order to reduce any prejudice to her arising from the need to retain counsel.

C. Chen's Position

- [17] C. Chen submits that the Family Law Proceeding was commenced in 2010 and is now almost 11 years old. It is in its final stages with a trial date set for April 2021. The Debt Proceeding involves a debt matter. It was only started in 2019. Default judgment has already been obtained against Mr. Chen.
- [18] C. Chen argues that there is no reason to co-mingle the two proceedings. He notes that there is only the bare assertion made by Ms. Cao that hearing the two cases together will result in trial time being saved. He expresses concern that if the two actions are joined, Ms. Cao may drag out the Debt Proceeding in the same manner as she did in the Family Law Proceeding.
- [19] In support, C. Chen relies on the decision in *Grewal v. Grewal*, 2017 BCSC 291, citing *McMartin v. Nestouk*, 2002 BCSC 282, 17 C.P.C. (5th) 115, that evidence should be presented to support the bald assertion that hearing the two actions at the same time will result in a savings of time and expense.
- [20] C. Chen agrees not to pursue the assessment of damages in the default judgment obtained against Mr. Chen in the Debt Proceeding until after the trial in the Family Law Proceeding.
- [21] Finally, C. Chen raises issues as to the involvement of J. Chen in the Family Law Proceeding and the potential "huge fees" she will be forced to pay and "psychological pain" she may have to endure, hearing her parents' "arguments and quarrels".

Applicable Law

- [22] Rule 22-5(8) of the Supreme Court Civil Rules gives the court discretion to order the consolidation of proceedings, or to order proceedings to be tried at the same time.
- [23] The legal test for whether two proceedings should be tried together was set out by Master Shaw in *Egan v. ICBC*, 2010 BCSC 1042 at paras. 16-19, referring to *Merritt v. Imasco Enterprises Inc.*, 2 C.P.C. (3d) 275, [1992] B.C.J. No. 160 (S.C.). The first question is whether they involve common claims, disputes, and relationships.
- [24] The second question which must be asked is are they "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and expense": *Hui v. Hoa*, 2012 BCSC 1045 at para. 34. To determine this question the following factors should be considered:
- Whether the order will create a savings in pre-trial procedures;
 - Whether there will be a real savings in experts' time and witness fees;
 - The potential for a party to be seriously inconvenienced by being required to attend a trial in which they may only have a marginal interest;
 - Whether the number of trial days will be reduced if the matters are heard together;

- e. Whether one of the actions is at a more advanced stage than the other;
- f. Whether an order will result in a delay of the trial of one of the proceedings and, if so, whether prejudice to a party from delay will outweigh the potential benefits of a combined trial; and
- g. Whether there is a risk of inconsistent findings.

Hui at paras. 34-35; Bhinder v. 170248 B.C. Ltd., 2007 BCSC 805 at para. 3;

Merritt at para. 19.

[25] The real issue, to paraphrase Merritt, is "will the order make sense in the circumstances": Murray v. Morgan, [2000] B.C.W.L.D. 110, [1999] B.C.J. 2871 at para. 2.

Analysis

- [26] In answering the first question set out by the authorities, these proceedings largely involve common claims, disputes, and relationships. Although one proceeding is a family law action and the other a debt action, both involve allegations concerning the relationship between the various parties and the same properties. The same fundamental questions underlie both proceedings: who purchased the properties, how were those purchases funded, and what contributions did C. Chen make to them.
- [27] Central issues in both proceedings are the trust claims advanced by both Ms. Cao and by C. Chen against some of the same properties. Ms. Cao asserts a trust claim on the basis that family money was used to purchase the Wiltshire Property. C. Chen asserts a trust claim on the basis that Mr. Chen used C. Chen's money to purchase the Wiltshire Property and maintain the other two properties.
- [28] These competing trust claims should be determined at the same trial, before the same judge, and on the evidence adduced at one trial. To have separate hearings on such an issue would be undesirable and could attract the real possibility of inconsistent results. Determining C. Chen's trust claims in a separate proceeding would put the parties to needless time and expense. I accept that "there is much to be gained and nothing lost by having the actions heard together": Tylon Steepe Homes Ltd., v. Landon, 2010 BCSC 192 at para. 28.
- [29] The foundation of C. Chen's defence in the Family Law Proceeding is that he had the financial ability to purchase the properties and did so without any financial assistance of Mr. Chen. In the Debt Proceeding, C. Chen claims that he provided the financing to Mr. Chen to purchase the Wiltshire Property and to allow Mr. Chen to maintain the Southborough and Richardson Properties. These issues will have to be determined in both actions. They involve the same parties.

- [30] The only party not common to the two actions is J. Chen. Her involvement in the Debt Proceeding is only based on the fact that she is a registered owner of the Wiltshire Property, along with Mr. Chen, her father. There is no allegation that she was a part to the alleged original agreement entered into between Mr. Chen and C. Chen.
- [31] In the notice of civil claim in the Debt Proceeding, C. Chen seeks judgment for a debt against Mr. Chen and, in the alternative, against both defendants. There is no factual basis set out in the notice of civil claim to support any claim in debt against J. Chen. It is not clear on the pleadings the basis for such a claim against her.
- [32] The reasons for avoiding two separate trials are compelling. The same evidence is required in both proceedings, and the parties should not have to give evidence twice about the same factual matrix. The Court must decide what each party, being C. Chen, Mr. Chen, and Ms. Cao, contributed to the purchase and maintenance of the properties. There is a strong commonality that exists and I am not convinced there is any merit in hearing the two proceedings separately.
- [33] In answering the second question, the factors weigh in favour of the actions being heard together. In my view, there will be a saving of trial days if the two actions are heard together. There will be no need for a separate hearing in the Debt Proceeding to determine J. Chen's liability nor to assess damages against Mr. Chen.
- [34] As I noted above, J. Chen is the only party who could be seriously inconvenienced by the joinder. She did not have counsel at the applications. She had not yet even been served with the notice of civil claim in the Debt Proceeding. In an affidavit from J. Chen, sworn October 28, 2020, she states that she does not intend to respond to or oppose the application to have the two proceedings heard at the same time. In my view, any inconvenience to J. Chen can be addressed by allowing her leave to only appear at the trial when necessary. At this stage, I anticipate her involvement being very limited. I place no merit on C. Chen's argument that somehow J. Chen will be exposed to evidence in the Family Law Proceeding that would be psychologically damaging to her. She is an adult. She was scheduled to be called as a witness in the Family Law Proceeding. If she chooses to be absent while her father, mother, and half-brother testify, such an application will be favourably considered by me.
- [35] The Family Law Proceeding is at a more advanced stage than the Debt Proceeding but this should not impact either proceeding. I see no risk of a delay in the Family Law Proceeding by having the two actions heard together. I am directing that the two actions be heard during the time that has already been reserved for the trial in the Family Law Proceeding. I see no risk that adding the Debt Proceeding will expand the length of time required. The same evidence on the crucial issues of the purchases and maintenance of the properties will be covered in both proceedings.

- [36] In my mind, it only makes sense to hear the two proceedings at the same time. This lifts the burden not only on the parties, but also on me as the trial judge to have to listen to the same evidence in separate proceedings.
- [37] C. Chen relies on Grewal for the principle that some evidence must be brought to support the bare assertion that joining proceedings will save time and expense. In Grewal, all the evidence suggested joining the proceedings would extend the pre-trial and trial procedures, and the plaintiffs did not bring any evidence to support their assertion that joinder would save time nor did they rebut any of the evidence. Joining the two proceedings in Grewal would have caused significant prejudice to one party, since one of the proceedings was an advanced family claim and joinder would have prevented one of the spouses from accessing family property for her and her daughter's maintenance. The two actions in Grewal dealt with different issues. In McMartin, also relied on by C. Chen, counsel for one party claimed that both counsel had agreed the trial would be shorter if the actions were joined, but brought no evidence of that agreement. The application to join two separate motor vehicle accidents, one advanced and one not, one involving ICBC and the other not, was denied.
- [38] In this case there is sufficient evidence to suggest joinder will save time and expense.
- [39] In all of the circumstances and based on my extensive knowledge of these parties, I have concluded that I should exercise my discretion to grant the order that the two actions be tried together before me as the trial judge.

The Application to Add Ms. Cao in the Debt Proceeding

Ms. Cao's Position

- [40] Ms. Cao submits that the acts advanced by C. Chen in the Debt Proceeding contradict Ms. Cao's allegations in the Family Law Proceedings. Ms. Cao submits that C. Chen did not have the financial means to loan money to Mr. Chen to purchase the Wiltshire Property. She claims that Mr. Chen transferred properties to C. Chen for no or inadequate consideration and provided support to C. Chen to purchase properties, attracting a presumption of resulting trust in C. Chen's properties in favour of Mr. Chen.
- [41] She submits that the three properties referenced in the Debt Proceeding are the same properties that she claims are family assets in the Family Law Proceeding. She argues that until the Family Law Proceeding is heard and determined there can be no final adjudication or apportionment of those properties. She points out that issues relating to the funding of the properties are identical in both proceedings. As a result she claims she should be added to the Debt Proceeding pursuant to R. 6-2(7)(b) on the basis she meets either criteria in the subrule: she is a party that ought to be joined and her participation is necessary to ensure all matters in the proceeding are effectively adjudicated on. She also submits that the criteria in R. 6-2(7)(c) are met, being that there is a question or issue relating to the relief claimed and the subject matter of the proceeding, between her and Mr. Chen, who is a party to the proceeding.

- [42] Ms. Cao advised that the Wiltshire Property is currently in a foreclosure proceeding since Mr. Chen has not paid the mortgage. Counsel advised that the plan is that the Wiltshire Property will be sold and, after paying off the mortgage and other related expenses, the net proceeds will be paid into court. It is anticipated that the net proceeds will be in the range of \$1.5 million.

C. Chen's Position

- [43] C. Chen submits that R. 6-2(7)(b) has a narrow scope and it is meant to be used to correct a "party defect" in the proceeding. He claims that in order for this rule to apply there must be a cause of action between the plaintiff and the proposed defendant. He relies on the Court of Appeal decision in *Byrd v. Cariboo* (Regional District), 2016 BCCA 69 at para. 36:

Rule 6-2(7)(b) has been given a narrow interpretation. It is intended to remedy defects in the proceeding as it stood prior to the application to add a party. "Ought to have been joined" deals with the situation where the person sought to be added has a direct interest in the outcome of the existing action. "[N]ecessary to ensure that all matters may be effectually adjudicated" deals with a situation where the participation of the person sought to be added is required in order for the existing claim to be fully and properly adjudicated.

- [44] C. Chen argues that it is not necessary to add Ms. Cao in order to ensure that the matters are effectually adjudicated upon. He further submits that Ms. Cao as party would not be the just and convenient test, and would amount to an abuse of process. In essence, she is attempting to re-litigate the issues in the Family Law Proceeding in a second proceeding. He disputes that there is any cause of action between himself and Ms. Cao, and that the Debt Proceeding is primarily a debt and breach of contract claim that does not involve her. Ms. Cao is not a necessary party in the Debt Proceeding since the issues between the existing parties can be decided without her. Ms. Cao is not a party to the loan agreement and it would not be in the interest of justice to allow her to be inserted in the proceeding since the outcome of the Debt Proceeding will not directly impact her.
- [45] C. Chen further points out that Ms. Cao and Mr. Chen were separated in 2009 and divorced in 2013. The Wiltshire Property was not purchased until April 2015. He submits Ms. Cao's interest in the assets ended upon the date of the divorce and she has no claim to property purchased after this date.
- [46] He further submits that to add Ms. Cao would result in complicating the Debt Proceeding and would contravene the objects of the Rules, being a just, speedy, and inexpensive determination of the proceeding on its merits. He submits that if Ms. Cao is added as a party there will be the risk of greater expense on the existing parties, particularly for J. Chen if she chooses to defend the Debt Proceeding. She would have to hire a lawyer and sit through a 30 day family law trial. In addition, he points to the prejudice that J. Chen will suffer as she has not yet been served with the Debt Proceeding and is not being heard at the applications. He raises the concern that Ms. Cao may attempt to prolong the litigation in the same

manner as she dragged out the litigation in the Family Law Proceeding.

[47] C. Chen advised that a default judgment was obtained against Mr. Chen on September 15, 2020, for his failure to file and serve a response to civil claim within the time allowed by the Rules. He submits that Ms. Cao was abusive towards J. Chen when she was a minor and that if Ms. Cao was added to the Debt Proceeding it may cause J. Chen to "endure psychological pain." He submits that, at the very least, J. Chen should be given an opportunity to provide her position on this application prior to a decision being made by the Court.

[48] An order for substituted service, to serve J. Chen, has been obtained, and it is anticipated that she will be served shortly.

Applicable Law

[49] Rule 6-2 (7) provides that:

Adding, removing or substituting parties by order

- (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),
 - (a) order that a person cease to be party if that person is not, or has ceased to be, a proper or necessary party,
 - (b) order that a person be added or substituted as a party if
 - (i) that person ought to have been joined as a party, or
 - (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and
 - (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
 - (i) any relief claimed in the proceeding, or
 - (ii) the subject matter of the proceeding

that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[50] A good summary of applicable principles for adding parties was set out in *Thomas v. Rio Tinto Alcan Inc.*, 2016 BCSC 1474:

THE POWER TO ADD PARTIES TO THE LAWSUIT

[13] Rule 6-2(7) of the Supreme Court Civil Rules gives the court discretion to add a person as a party to the litigation at any stage of the lawsuit. In *Alexis v. Duncan*, 2015 BCCA 135, the Court of Appeal confirmed that this subrule creates three separate and discrete circumstances in which the court may exercise its power to add a party:

1. the person ought to have been joined as a party at the outset (subrule (b)(i));
2. the person's participation in the proceeding is necessary to ensure that all matters in the proceeding are effectually adjudicated (subrule (b)(ii)); or
3. as between the person sought to be added and any party to the proceeding, there exists a question or issue relating to/connected with either the relief claimed in the proceeding or the subject matter of the proceeding and, in the opinion of the court, it would be just and convenient to determine such question or issue as between those persons (subrule (c)).

[14] In *Meade v. Armstrong*, 2011 BCSC 1591, Mr. Justice Dley reviewed the relevant case law and summarized the principles governing the addition of parties to a lawsuit as follows (citations omitted):

1. A party should be added where that party's participation is necessary for the proper determination of the case;
2. The discretion to add parties should be generously exercised so as to enable effective adjudication upon all matters;
3. In exercising the discretion to add a party, the court should not concern itself as to whether the action will be successful other than to be satisfied that there may exist an issue or question between the applicant and the party being joined;
4. Evidence is not required in support of a joinder application. The pleadings may be sufficient to establish that there is a question to be tried between the parties;
5. Where an applicant relies on pleadings alone, the facts alleged, which if assumed to be true, must disclose a cause of action;
6. Unless there is prejudice, amendments should be granted liberally to enable the issues to be tried;

(at para. 16)

[15] To this list I would also add a couple of propositions which can be found in *Kitimat (District) v. Alcan Inc.*, 2006 BCCA 562 as follows:

7. Use of the word "ought" (in subrule (b)(i)) encompasses all those cases in which joining the person is a necessity and may even be broader to include situations in which joining the person may be more than mere convenience but less than a necessity.
8. In order to have a right of appeal under the Court of Appeal Act, an appellant must have been a party to the underlying lawsuit and a right to pursue such an appeal is an important component to the effectual adjudication of the issues in question, particularly so where one or the other parties to the litigation may not wish to pursue appeal; and

9. The prime consideration in in [sic] determining whether a person should be a party to the litigation is the interests of justice, a consideration that is triggered when the party proposed to be added has significant interests or legal agreements that may be directly affected by the matters litigated in the action.
- [51] A party seeking to be added must demonstrate a direct interest in, or that they are directly affected by, the outcome of the proceedings or that their participation is necessary for effectual adjudication. A party may be added where the applicant demonstrates a real issue between themselves and the existing parties and where the court determines that the addition of the party is just and convenient. In determining what is just and convenient, a court must consider whether the proposed party and their claim would effectively hijack the proceedings by increasing the number of parties, issues, and overall scope of the litigation with resulting costs and delays: *Gladue v. British Columbia (Attorney General)*, 2010 BCSC 788 at paras. 11 and 13.

Analysis

- [52] I am not convinced that it is necessary for Ms. Cao to be added as a defendant in the Debt Proceeding. As C. Chen pointed out, there is no claim being advanced against Ms. Cao in that proceeding. It is not clear to me what claim C. Chen would plead in the amended notice of civil claim that Ms. Cao is seeking an order to compel. A notice of civil claim needs to set out the cause of action that the plaintiff is seeking and a concise statement of the material facts giving rise to the claim: *Tiamzon v. Vandt*, 2020 BCCA 336 at paras. 21-25.
- [53] Ms. Cao is rightfully concerned that there could be a finding respecting C. Chen's entitlement to advance a trust claim against the Wiltshire, Southborough, and Richardson properties, which could impact her trust claims against those same properties. This concern is addressed by the order that I have made that the two proceedings be heard at the same time. It will be during the one trial that a finding will be made respecting the trust claims being advanced.
- [54] I am not convinced that it is just and convenient to force C. Chen to sue Ms. Cao in the Debt Proceeding. Ms. Cao has a direct interest in ensuring that her trust claims are not impacted by any decision made in the Debt Proceeding. Ms. Cao's concerns have been adequately addressed with the order that the two proceedings be heard at the same time. This order will ensure that all matters in both proceedings will be effectively adjudicated on.
- [55] I am not prepared to exercise my discretion and order the addition of Ms. Cao as a defendant in the Debt Proceeding.

Should the Default Judgment Against Mr. Chen be Set Aside

- [56] On September 15, 2020, C. Chen in the Debt Proceeding obtained a default judgment for the failure of Mr. Chen to file a response. The default judgment provides that damages are to be assessed.
- [57] Ms. Cao argues that any default judgment obtained against Mr. Chen should be set aside and no default judgment should be permitted against the defendants in the Debt Proceeding. She points out that she did not receive any notice of an application for default judgment against Mr. Chen in the Debt Proceeding. She claims that under R. 8-1(7) she was entitled to receive notice as she is a person affected by the default judgment. As a result, she claims that the default judgment against Mr. Chen should be set aside.
- [58] C. Chen argues that Ms. Cao has no standing to apply to set aside the default judgment obtained against Mr. Chen in the Family Law Proceeding. The right to make such an application would be Mr. Chen's right in the Debt Proceeding.

Analysis

- [59] Ms. Cao is not affected by the default judgment so there was no requirement for C. Chen to give her notice of the application under R. 8-1(7). The default judgment does not interfere with her legal rights since there has yet to be an assessment of damages, and it is possible that all C. Chen will obtain is an assessment of monetary damages. If a court had awarded C. Chen an interest in any of the three properties then the situation would be different.
- [60] Ms. Cao will be present at the assessment of damages in the Debt Proceeding as it will be heard at the same time as the Family Law Proceeding and she can make submissions on how the assessment of damages may impact her claims against the properties. I find it is not necessary to set aside the default judgment.

Summary of Orders made

[61] The following is a summary of the orders made:

1. The application of Weihong Cao dated September 18, 2020 in the Chen v. Chen Van. Reg. No. S194328 (the "Debt Proceeding") is dismissed.
2. The plaintiff, Chao Chen, is entitled to costs against Weihong Cao in any event of the cause for opposing the application to add Weihong Cao in the Debt Proceeding.
3. I am seizing myself of the Debt Proceeding and any and all applications made in that proceeding will be before me.
4. The application by Weihong Cao to set aside the default judgment against Yongchang Chen in the Debt Proceeding is dismissed.

5. The Cao v. Chen proceeding Van. Reg. No. E100233 will be tried together with the Debt Proceeding with evidence in each proceeding, including pre-trial discovery, being admissible as evidence in the other, subject to the right of any party to dispute the admissibility, on the basis of relevance or otherwise.
 6. The trials of both proceedings will commence on April 26, 2021 for 30 days.
 7. The plaintiff, Weihong Cao, is entitled to her costs as against the respondent Chao Chen in any event of the cause for the application filed September 18, 2020 in the Cao v. Chen proceeding.
- [62] I request that counsel arrange for early trial management conferences in both proceedings before me. I suggest that a half day be reserved. As I have noted earlier, I request that counsel for Ms. Cao serve a copy of these reasons on Mr. Chen.

"Forth J."

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