CANADA / JUDGMENT

Cao v. Chen

2020 BCSC 735

COURT
Supreme Court of British Columbia

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2020 BCSC 735 Cao v. Chen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cao v. Chen,

2020 BCSC 735

Date: 20200513

Docket: E100233

Registry: Vancouver

Between:

Weihong Cao also known as Wei Hong Cao

Claimant

And

Yongchang Chen also known as Yong Chang Chen

and Chao Chen

Respondents

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Claimant:

G. Forrester

C. Law

Respondent, Yongchang Chen also known as Yong Chang Chen, appearing in person:

Y. Chen

Counsel for the Respondent, Chao Chen:

B.H.Y. Blake

Place and Dates of Trial:

Vancouver, B.C.

May 6-10, 13-16, 21, 27, 30 and November 7-8, 2019

Place and Date of Judgment:

Vancouver, B.C.

May 13, 2020

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Introduction

[1] On June 10, 2013, the Intermediate Court of Weifang City, People's Republic of China, issued a judgment between the claimant, Weihong Cao, as wife, and the respondent, Yongchang Chen, as husband (the "Chinese Judgment"). The issue at this trial was whether the Chinese Judgment should be recognized in British Columbia, and whether this Court should assume jurisdiction on the remaining issues to be resolved between the parties.

[2] On September 22, 2017, I made an order in this proceeding that the issue of the recognition of the Chinese Judgment be severed from the main trial and tried separately, see reasons for judgment indexed at 2017 BCSC 1851 at para. 56 (the "2017 Reasons").

[3] The trial of this issue proceeded in May and November 2019 (the "Hearing"). At the Hearing, the respondent, Yongchang Chen, was not represented by counsel, although he was represented earlier in these proceedings. He did attend for the majority of the Hearing, but he played a limited role. He did not conduct any cross-examination, although he did give some evidence through being called as a witness during the claimant's case and through cross-examination by the other parties, and as a witness on his own behalf. He also made some minimal submissions.

[4] Throughout these reasons I will refer to Yongchang Chen as "Mr. Chen" or "the respondent husband"; and to Chao Chen, Mr. Chen's son from a previous marriage, as "C. Chen" or "the respondent son". The claim against C. Chen is that he owns certain property situated in British Columbia in trust for Mr. Chen.

Background Facts

[5] The claimant was born in February 1970, and Mr. Chen was born in June 1954. They were married on January 25, 1994 in Weifang, Shandong Province, China. The parties had three children together: J.C., born August 1994; H.C., born April 2004; and J.X.C., born October 2005 (collectively, the "Children").The parties separated on September 14, 2009.

[6] The claimant has a vocational school certificate in accounting and was working full-time when she met Mr. Chen. After meeting him, she left her employment. She stayed home and looked after the Children.

[7] Mr. Chen owned a transportation company. In approximately 2002, he purchased a coal mine in China. The claimant testified that Mr. Chen then purchased two more coal mines and a railway.

[8] C. Chen is Mr. Chen's first born son from an earlier marriage. C. Chen's exact date of birth was not entirely clear from the evidence, but it appears to have been in 1981 or near to that year. At some time, C. Chen studied in New Zealand.

[9] The claimant first came to Canada in May 2007 and has been a permanent resident since that time. The claimant travels to China and spent more time in China between 2010 and 2013 to deal with the legal proceedings there. The claimant currently owns no property in China. When she returns, she stays with her parents in Weifang, Shandong Province.

[10] In 2007, J.C. started school in Richmond, British Columbia. and attended consecutively there. By 2012, all of the Children were enrolled in schools in British Columbia.

[11] From 2013 to 2015, the claimant and the Children lived at a property on Deering Island Place. When Mr. Chen came to BC, he would stay at the same property. The claimant testified this was because she did not want the Children to know there were "changes in the family". The claimant testified that she and Mr. Chen did not share the same bedroom.

[12] In approximately 2015, the claimant and the Children moved out of the Deering Island Place property to a property on Wiltshire Street, Vancouver (the "Wiltshire Street Property"). As at the date of the Hearing, the claimant and Children continued to live at the Wiltshire Street property.

[13] The respondent husband testified that the Children have been living primarily with the claimant.

[14] It is not entirely clear where Mr. Chen resides. He was reluctant to answer questions of how much time he spends in Canada. He did admit that he spends most of his time in North America and was not able to recall the last time he was in China. He also testified that he is a Canadian citizen as of April 2019.

a. Overview of Legal Proceedings in China and British Columbia

[15] On September 4, 2009, Mr. Chen started a claim ("Family Claim #1") against the claimant in Weifang City, Shandong Province, China in the Kuiwen District Court. Mr. Chen withdrew Family Claim #1 on January 15, 2010.

[16] On January 22, 2010, the claimant commenced this action against the respondents, Mr. Chen and C. Chen. It was commenced by way of a writ of summons and statement of claim. The claimant 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. As she began these proceedings before the Family Law Act, S.B.C. 2011, c. 25 [FLA] was introduced, the division of property is governed by the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA]: FLA s. 252.

[17] On March 3, 2010, the respondent husband commenced a new claim against the claimant ("Family Claim #2") in the Fangzi District Court, Weifang City, Shandong Province, China.

[18] On March 15, 2010, the claimant disputed the jurisdiction of the Fangzi Court in Family Claim #2. However, her jurisdictional challenge related to whether the claim was brought in the appropriate Chinese court, not whether the Chinese court should decline jurisdiction in favour of the British Columbia proceedings. The Fangzi Court dismissed the claimant's jurisdictional challenge on April 30, 2010. Her appeal of that decision was also dismissed.

[19] On March 30, 2010, the respondent husband filed a statement of defence in this action in which he did not oppose a division of family assets situated in Canada, but claimed reapportionment in his favour. In respect of the assets in China, he requested that the British Columbia court decline jurisdiction due to Family Claim #2. He opposed the divorce and the issue of custody of the Children on the basis that the issue should be dealt with in Family Claim #2, but he took the position that if the British Columbia court took jurisdiction, the claimant should have sole custody of the Children provided he have joint guardianship and specified access. He opposed maintenance or support for the claimant, but he did not oppose the Children's primary residence being with the claimant. He also agreed to pay child support on a monthly basis.

[20] Also on March 30, 2010, the respondent son filed a statement of defence in which he disputed that the properties registered in his name formed part of the family assets. He stated that he did not oppose the granting of a divorce, guardianship of the Children, custody of the Children, maintenance or support of the claimant, and maintenance or support of the Children.

[21] On June 9, 2010, the respondent husband filed a counterclaim seeking a reapportionment of assets in Canada in his favour and declarations respecting the claimant's assets on the basis of constructive trust, resulting trust, or express trust. In his pleadings, the respondent husband set out that the Children had been habitually resident in British Columbia since 2008 and 2009.

[22] On June 28, 2010, the claimant filed a statement of defence to the counterclaim opposing joint guardianship and the division of assets in Canada being reapportioned to the respondent husband.

[23] Family Claim #2 first went to trial in 2011 and Mr. Chen's claim for divorce was dismissed in July 2011. His appeal was successful and a new trial was ordered by the Intermediate Court in October 2011. This new trial took place in late 2012 and early 2013. At both trials, the claimant was represented by counsel, participated in the trials, and made submissions.

[24] On January 21, 2013, the Fangzi District Court made the following orders in Family Claim #2 pursuant to the trial judgment (the "trial judgment"):

a. a divorce was granted;

b. custody and child support were determined, with Ms. Cao receiving custody of H.C. and Mr. Chen receiving custody of J.X.C. and each party bearing the support of the child in their custody;

c. family assets in China were determined and divided; and

d. spousal support was denied to the claimant.

[25] On January 24, 2013, the claimant appealed the trial judgment to the Weifang Intermediate Court. She had counsel appear and argue her appeal.

[26] On June 10, 2013, the Weifang Intermediate Court dismissed the appeal and upheld the trial judgment.

[27] On June 30, 2014, the respondent son brought an application seeking to have the Chinese Judgment recognized and given effect by the British Columbia Supreme Court. Justice Burke dismissed the application on July 25, 2014, and directed that the issue of the recognition of the foreign judgment should be dealt with at trial by the trial judge.

[28] On March 24, 2016, an amended notice of family claim was filed seeking the same relief as in the original writ of summons and statement of claim, and an order for the division of family property and certificates of pending litigation to be registered against five additional properties in British Columbia.

[29] On May 9, 2016, the respondent son filed his response to the amended family claim. He took no position on the claims for divorce, parenting arrangements, or child and spousal support. He disagreed with the claims made respecting the properties he held in his name.

[30] On May 12, 2016, a consent order granted by Master Muir (the "Muir Order") provided that the respondent husband would pay the claimant $6,000 per month for support commencing June 1, 2016 and on the first day of every month thereafter. The payment was without prejudice to either party's argument with respect to the quantum of support and to its characterization. The parties were represented by counsel when they consented to the Muir Order.

[31] On August 22, 2017, the respondent husband filed his response to the amended family claim. The response states it is being filed on behalf of Mr. Chen and C. Chen, although C. Chen had already filed a response on May 9, 2016. Mr. Chen's position was that a divorce had already been granted in China, child support and spousal support had been determined in China, and he disagreed with the orders sought with respect to property.

[32] On September 17, 2017, I granted an adjournment of the trial in this action which was scheduled to proceed on September 18, 2017 for 19 days. On September 18 to 20, 2017, I heard a series of application brought by the parties: the 2017 Reasons. One of the applications was brought by the claimant seeking to amend her amended notice of family claim to add three companies and two individuals in China, the wife of the respondent son, and two Canadian companies as parties. The application to add the Chinese companies and individuals as parties was adjourned pending the hearing of the trial of the issue of whether the Chinese Judgment should be recognized.

[33] At the commencement of the Hearing, the claimant advised that she was abandoning any claim for relief pertaining to parties or properties situated in China. She further agreed she was abandoning her application to amend the amended notice of family claim seeking to add the three companies and two individuals in China as parties. I was informed by her counsel that she has counsel in China pursuing these claims as well as other claims the Chinese Judgment left open for future determination, which I will explain in the following section.

b. The June 10, 2013 Chinese Judgment

[34] At the Hearing, a certified English translation of the Chinese Judgment was admitted into evidence by way of a notice to admit. Of significance are the following findings:

a. Divorce--affirmed;

b. Child Support for J.C.--since J.C. was already over 18 years old and "has full capacity for civil conduct", she does not meet the statutory condition for child support. No child support ordered to the claimant.

c. Custody/Child Support for H.C.--custody to the claimant and the claimant to shoulder child support.

d. Custody/Child Support for J.X.C--custody to Mr. Chen and Mr. Chen to shoulder child support.

e. Spousal support--Since the claimant is capable of working, she did not [translation]: "meet the conditions of offering proper economic assistance for the party having life difficulty as stated in the Marriage Law given that the [claimant] failed to provide sufficient and valid evidence to prove her life difficulty." No spousal support was ordered.

f. Family Property--Mr. Chen was given Room 102 of Unit 1, and the claimant Room 1002, of a property located in Chongwen District of Beijing. The market value of Room 102 is about 8 to 9.5 million Yuan more than Room 1002. There was no adjustment made because the claimant had sold two other condominiums for 11.45 million Yuan and she did not provide sufficient evidence that she had used the proceeds on loan payments or other family needs.

g. Shanxi Zhongsheng Weiye Company--the Court found that 100% of the equity was registered in the name of a third party and therefore a finding that 100% of the equity is family property could not be established. Any payment obtained from transferring the equity may be dealt with by the parties in a separate proceeding.

h. Shouyang Zhongshen Weiye Dongwan Coal Mine Railway Special Line Management Co.--As at April 27, 2009, only 0.3% of the company equity was under the name of Mr. Chen and 99.7% was registered under the name of a third party. Therefore, the Court could not find that 100% of the equity in the company, and the 35 million Yuan obtained from the transfer, were family property.

i. No. 23, Beili West District, Donghuashi Baorunyuan, Beijing City--this property was registered in the name of Zhongsheng Guodian Company, and the Court held that it was not appropriate for it to decide whether the increase in value of the condo was family property.

j. Zhongsheng Guodian Investment Group Co., Ltd.--according to the enterprise industrial and commercial registration information, the contributors were third parties to this case. There was insufficient evidence to support the claim that the total contribution of 50 million Yuan in the company was family property.

[35] The Chinese Judgment noted that it was [translation]: "hard to find the properties involving [the] rights and interests of other parties to be the family property. The [claimant] may deal with it later when obtaining sufficient evidence."

c. Expert Evidence

[36] The claimant and C. Chen tendered expert reports and both experts testified at the Hearing on the subject of Chinese law. The claimant called Prof. Jie Cheng, a Lecturer at the Peter A. Allard School of Law at the University of British Columbia and a lawyer licenced to practice in China, and tendered a report authored by Prof. Cheng dated March 18, 2019 (the "Cheng Report"). C. Chen called Prof. deLisle, a professor of Chinese law at the University of Pennsylvania Law School, and tendered a report dated July 1, 2017, a report dated February 21, 2018 (the "2018 Report"), and a rebuttal report dated May 6, 2019.

[37] Both experts agreed to the following principles in Chinese law:

a. There are no separate procedural rules for family law;

b. There is no "party driven" discovery, in that parties are not compelled as a general rule to disclose documents in their possession that may tend to prove or disprove a material issue in dispute;

c. The parties can seek to have a court investigate information, including financial information, held by the other party, but they must provide some "clues" or information to the court in order to obtain an order requiring financial institutions to provide an opposing litigant's financial information.

[38] Prof. deLisle testified that the Chinese Judgment did not decide the claimant's allegation that Mr. Chen transferred family assets to third parties for inadequate consideration. That claim would not have been properly brought before the court in a matrimonial action. The proper way to proceed with such a claim is to commence a proceeding against the third party in question and allege unjust enrichment.

[39] Prof. deLisle in his 2018 Report states:

Chinese law does not establish a general right to alimony or spousal support. Nonetheless, Chinese law does provide for the equivalent of alimony/spousal support under some circumstances. Where, at the time of the divorce, one ex-spouse has serious financial difficulties , the other ex-spouse is required to provide "appropriate assistance" , using his or her house and other personal property. Marriage Law, art. 42. The relevant "difficulties" are defined to include a situation where the ex-spouse's own property/assets and property/assets received in the division of marital property at the time of the divorce are insufficient for that spouse to maintain the basic standard of living in the area where he or she lives. Marriage Law Interpretation (I), art. 27.

Under these circumstances, the parties are to agree to specific arrangements. When they fail to do so, the court decides the issues. Marriage Law, art. 42.

As the definition of relevant "difficulties" suggests, in many cases of divorce in China, the division of marital property is the principal means of providing the support to an ex-spouse that might otherwise be provided by an award of spousal support or alimony.

[40] He testified that within the Chinese law:

a. property division is the primary means of providing financial resources for a divorcing spouse;

b. spousal support is awarded to maintain a "floor" of a basic standard of living; it is not awarded to reflect the marital standard of living that was enjoyed by both of the former spouses;

c. spousal support does not reflect an equitable distribution between the spouses of the economic consequences of the marriage;

d. no consideration is made of whether the spouse has sacrificed labour force participation to care for children, both during the marriage and after marriage breakdown, in allocating spousal support; and

e. no compensation is awarded through spousal support for the loss of economic opportunity or the economic disadvantage resulting from the roles adopted in the marriage.

[41] Prof. Cheng's evidence was that the Chinese Judgment is final in the sense it is enforceable, but it is not final in that there can still be a further review or challenge. Her opinion was that it is not final in the same sense as in British Columbia or in other common law jurisdictions. She explains in her Report:

As a rule, a civil lawsuit in China typically includes two-tier adjudication and the retrial opportunity. Parties have right to appeal and courts have obligation to proceed the second instance proceeding. After the second instance decision, the court decision takes into effect automatically. Parties have right to petition review of the case, courts will review and petition and decide whether or not to grant the retrial (art. 199-205 of the [Civil Procedure Law]).

Does this make the second instance decision final? If being final means that the decision is enforceable, then it is. But if being final means it is not challengeable or appealable, then it is not

[42] Prof. Cheng explains that the divorce decree is final and there can be no reversal of the marriage, but issues relating to family assets or spousal support can still be challenged. This is because the divorce decision is about a personal relationship, rather than a proprietary relationship, and second-instance decisions are final with respect to personal relationships. There is no opportunity for retrial for personal relationships as there is for proprietary relationships. In addition, she notes that the Chinese Judgment left several issues open to further or separate litigation.

[43] Prof. deLisle's evidence was that the Chinese Judgment was final, although there is a Chinese civil procedure for a retrial which is permitted in certain circumstances, including if new evidence is discovered. This process is different from an appeal. If a party wishes to commence a retrial petition they must do so within six months from the date of the relevant judgment or within six months from the date that the party knew, or ought to have known, of the new evidence.

[44] Prof. deLisle agreed that the divorce decree is final. He opined that all of the issues decided in the Chinese judgment were final, including support, property division, and custody. However, he noted in his 2018 Report that child custody and support arrangements may be revisited in certain circumstances. In his testimony, he agreed that if there was a change in circumstances, such as a child not living with a custodial parent but instead living with the other parent in a different jurisdiction, that would be a basis for revisiting the support and custody arrangements.

[45] I will make specific findings of fact with respect to the content of Chinese law where necessary in my analysis of the issues.

Issues

[46] The pleadings, evidence, and submissions raise the following issues:

a. Should the admissions made in the pleadings by the respondent husband be permitted to be withdrawn?

b. Should the claimant be estopped from challenging the forum?

c. Does this Court have territorial competence?

d. Should the Court decline to exercise its territorial competence?

e. Should the Chinese Judgment be recognized by this Court?

a. Admissions in the Pleadings

[47] C. Chen raised the issue of whether the admissions made by Mr. Chen in the pleadings should be considered an admission and, if so, whether they should be withdrawn.

i. Position of the Claimant

[48] The claimant sought to rely on certain admissions made by Mr. Chen in his statement of defence filed March 30, 2010 and in his counterclaim filed June 9, 2010. The key admissions were:

a. The claimant has been ordinarily resident in British Columbia since February 23, 2008.

b. The parties ceased cohabitation on September 14, 2009.

c. The Children all reside with the claimant.

d. J.C. become a resident of British Columbia in February 2008, H.C. became a resident in August 2008, and J.X.C. became a resident in April 2009.

e. The claimant was the primary caregiver for the Children during the marriage.

[49] The claimant's position is that, in light of these admissions and the evidence of Mr. Chen and the claimant, there is no reason that the admissions in the pleadings should be withdrawn.

ii. Position of C. Chen

[50] Counsel for C. Chen submitted that the statements in the pleadings should not be taken as judicial admissions, as there is no unambiguous evidence that they were made for the purpose of a deliberate and clear concession to the other party. Counsel further submitted that the statements should be permitted to be withdrawn as they were "never meant to admit for the purpose of concession to the Wife".

iii. Position of Mr. Chen

[51] Mr. Chen made no submissions on the issue of the judicial admissions. In his testimony, he admitted that the Children habitually resided in British Columbia since 2008, primarily with the claimant.

b. Legal Framework

[52] Rule 9-6(5) of the Supreme Court Family Rules, B.C. Reg. 169/2009 provides:

Withdrawal of admission

(5) A party is not entitled to withdraw

(a) an admission made in response to a notice to admit,

(b) a deemed admission under subrule (2), or

(c) an admission made in a pleading, petition or response to petition

except by consent or with leave of the court.

[53] The same rule appears in Rule 7-7(5) of the Supreme Court Civil Rules, B.C. Reg. 168/2009. In order for a statement of fact to be considered an admission by the pleading party, there must be unambiguous evidence that it was made as a deliberate and clear concession to the other party: Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd., 2016 BCSC 489 at paras. 29-30, rev'd on other grounds, 2016 BCCA 432 and 2017 BCCA 176.

[54] An admission that has been made inadvertently, hastily, without knowledge of the facts, or when facts come to the knowledge of the applicant only after the admission was made are all matters to be considered by the court when assessing whether it is in the interests of justice to allow the withdrawal of a judicial admission: Doman Forest Products et al v. GMAC Commercial Credit Corp., 2005 BCSC 205 at para. 18, citing Norlympia Seafoods Ltd. v. Dale & Co. (1982), 41 B.C.L.R. 145 (C.A.).

c. Analysis

[55] At the time that Mr. Chen admitted, in his statement of defence, that the claimant was ordinarily resident in British Columbia since February 2008, he had already commenced Family Claim #2 in China. He was aware that he had made claims in Family Claim #2 relating to the Children and the claimant. Mr. Chen then made the further admission in his counterclaim, filed June 9, 2010, that J.C. became a resident of British Columbia in February 2008, H.C. became a resident in August 2008, and J.X.C. became a resident in April 2009.

[56] There is no evidence from Mr. Chen that these admissions were made in haste, inadvertently, or without knowledge of the facts. Mr. Chen would have known where the claimant and Children were residing at the relevant times. He was paying for the mortgage on the house on Semlin Court in Richmond, British Columbia where the claimant and Children were residing in 2010 when the subject pleadings were filed, and he would stay

with them in their residence when he was in British Columbia. When he filed these pleadings, he had a lawyer acting on his behalf who signed the statement of defence and counterclaim. He also took the same position about the residency of the Children in his testimony during this trial.

[57] I am persuaded that Mr. Chen did intend to make the concessions in his statement of defence and counterclaim in respect to the residency of the claimant and the Children for the claimant's benefit, with the benefit of legal advice. I see no basis on which to withdraw these admissions.

Should the Claimant Be Estopped from Challenging the Forum?

a. Position of the Parties

i. Position of C. Chen

[58] C. Chen argues that the claimant should be estopped from arguing that British Columbia is the appropriate forum to adjudicate this dispute on the basis that the claimant retained lawyers and defended the Chinese proceedings at every step. Reference was made to the case of Sangi v. Sangi, 2011 BCSC 523, in which the Court held that, since the wife had chosen the forum of Iran for divorce, she was estopped from later seeking to have issues dealt with in British Columbia.

ii. Position of Mr. Chen

[59] Mr. Chen made no submissions on whether the claimant should be estopped from making her jurisdictional arguments. As I understood his submissions at the Hearing, he agrees that British Columbia is now the appropriate forum in which to deal with the child custody and child support issues.

iii. Position of the claimant

[60] The claimant submits that the Chinese Judgment does not provide C. Chen with any claim for res judicata and that issue estoppel does not apply. In particular, she submits that C. Chen was not a party to any of the proceedings in China.

b. Analysis

[61] C. Chen did not specify whether he was challenging the claimant's jurisdictional argument on the basis of issue estoppel or cause of action estoppel. Cause of action estoppel requires the parties to a proceeding to bring forward all claims and defences, and the failure to do so will prevent them from raising them in subsequent proceedings. In Cliffs Over Maple Bay (Re), 2011 BCCA 180 at para. 28, the Court outlined the following criteria:

a) the decision must be a final decision from a court of competent jurisdiction;

b) the parties to the subsequent litigation must have been parties to or in privy with the parties to the prior action;

c) the cause of action and the prior action must not be separate and distinct; and

d) the basis of the cause of action and the subsequent action was argued or could have been argued in the prior action if the parties had exercised reasonable diligence.

[62] In order for issue estoppel to apply, the following conditions must be met: Danyluk v. Ainsworth Technologies Inc., 2001 SCC 44 at para. 25:

a) the same question has been decided;

b) the judicial decision which is said to create the estoppel was final; and

c) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

[63] In my view, C. Chen's argument must fail because he was not a party to the proceedings in China, nor can he be said to be a privy of Mr. Chen for the purposes of those divorce proceedings. The claims adjudicated in China only had to do with the divorce of Mr. Chen and the claimant, the properties held by them in China (with which C. Chen was not involved), and the child custody and support claims. C. Chen had nothing to do with those claims. The claims against C. Chen in this action are only with respect to properties situate in British Columbia that were not adjudicated on by the Chinese courts. For these reasons, regardless of which branch of res judicata he raises, it must fail.

[64] I would distinguish the Sangi case, which I will consider again below with respect to the recognition of the Chinese Judgment. In that action, Ms. Sangi, the wife, had signed a separation agreement in Iran and she had commenced divorce proceedings there in 2004. The divorce was granted by the Iranian court in February 2004. Ms. Sangi commenced the British Columbia proceeding on August 10, 2007, seeking to challenge the validity of the Iranian divorce order. The Court in Sangi found that Ms. Sangi chose the forum of Iran for the divorce. Having chosen the forum of Iran for the divorce, she was estopped from challenging that forum: Sangi, para. 201. By contrast, in the case at bar, the claimant had commenced the British Columbia proceeding prior to the respondent husband commencing the divorce proceeding in China. She did not "choose" that forum by starting a claim there.

[65] It does appear to be the case that the claimant did not challenge the Chinese court's jurisdiction or raise a forum non conveniens argument during the Chinese divorce proceedings. Counsel for C. Chen, in submissions that she said she made as officer of the court, argued that the claimant should be estopped from arguing that British Columbia is the appropriate forum with respect to the entirety of the issues dealt with in the Chinese proceedings. However, I do not think it is appropriate to consider these arguments with respect to aspects of the Chinese Judgment with which her client is not in any way involved. This is especially the case because, as I understand Mr. Chen's position, he does not disagree that this Court is the appropriate forum in which to decide certain issues, particularly those concerning the Children.

Does this Court have Territorial Competence?

a. Legal Framework

[66] When a court determines whether to take jurisdiction over a dispute, it engages in a two-step process. First, the court determines whether it has territorial competence, sometimes called jurisdiction simpliciter, over the dispute. The burden of establishing territorial competence rests with the party asserting its existence: Aleong v. Aleong, 2013 BCSC 1428 at para. 80.

[67] Second, the court determines whether it ought to exercise that jurisdiction, or whether, instead, there is another more appropriate forum, sometimes called the forum non conveniens: Club Resorts Ltd. v. Van Breda, 2012 SCC 17 at para. 108. The burden at this stage rests with the party asserting that another forum is more appropriate: Club Resorts Ltd., para. 103.

b. British Columbia Legislation

[68] The Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28, s. 2(2) [CJPTA] provides that territorial competence must be resolved solely by reference to Part 2 of the CJPTA. Section 3 of the CJPTA states:

3 A court has territorial competence in a proceeding that is brought against a person only if

(a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,

(b) during the course of the proceeding that person submits to the court's jurisdiction,

(c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,

(d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or

(e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

[69] A set of non-exhaustive circumstances which create a presumption that a real and substantial connection under s. 3(e) exists are set out in s. 10 of the CJPTA, which provides:

10 Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding

(a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,

(b) concerns the administration of the estate of a deceased person in relation to

(i) immovable property in British Columbia of the deceased person, or

(ii) movable property anywhere of the deceased person if at the time of death he or she was ordinarily resident in British Columbia,

(c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to

(i) property in British Columbia that is immovable or movable property, or

(ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia,

(d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:

(i) the trust assets include property in British Columbia that is immovable or movable property and the relief claimed is only as to that property;

(ii) that trustee is ordinarily resident in British Columbia;

(iii) the administration of the trust is principally carried on in British Columbia;

(iv) by the express terms of a trust document, the trust is governed by the law of British Columbia,

(e) concerns contractual obligations, and

(i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,

(ii) by its express terms, the contract is governed by the law of British Columbia, or

(iii) the contract

(A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and

(B) resulted from a solicitation of business in British Columbia by or on behalf of the seller,

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia,

(g) concerns a tort committed in British Columbia,

(h) concerns a business carried on in British Columbia,

(i) is a claim for an injunction ordering a party to do or refrain from doing anything

(i) in British Columbia, or

(ii) in relation to property in British Columbia that is immovable or movable property,

(j) is for a determination of the personal status or capacity of a person who is ordinarily resident in British Columbia,

(k) is for enforcement of a judgment of a court made in or outside British Columbia or an arbitral award made in or outside British Columbia, or

(l) is for the recovery of taxes or other indebtedness and is brought by the government of British Columbia or by a local authority in British Columbia.

[70] Section 12 of the CJPTA provides, if there is a conflict or inconsistency between Part 2 of the CJPTA and another Act of British Columbia or Canada that expressly confers or denies jurisdiction or territorial competence on a court, that other Act prevails.

[71] Because she agrees that the Chinese divorce decree should be recognized, the claimant acknowledges that this Court does not have jurisdiction to grant corollary relief under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). However, she is not precluded from seeking relief under provincial legislation, and she seeks to do so in this case: R.N.S. v. K.S., 2013 BCCA 406 at para. 34.

[72] With respect to orders regarding guardianship, parenting arrangements, or contact with the Children, Division 7 of Part 4 of the FLA governs the jurisdictional issues. The relevant provisions are:

Definitions and interpretation

72 (1) In this Division:

"extraprovincial order" means an order of an extraprovincial tribunal that is similar in nature to an order respecting guardianship, parenting arrangements or contact with a child;

"extraprovincial tribunal" means a court or tribunal, outside British Columbia, having authority to make an extraprovincial order.

(2) For the purposes of this Division, a child is habitually resident in the place where the child most recently resided

(a) with his or her parents,

(b) if the parents are living separate and apart, with one parent

(i) under an agreement,

(ii) with the implied consent of the other parent, or

(iii) under an order of a court or tribunal, or

(c) with a person other than a parent on a permanent basis for a significant period of time.

(3) The removal or withholding of a child without the consent of a guardian does not affect the child's habitual residence unless the guardian from whom the child is being removed or withheld acquiesces or delays in applying for an order of a court or an extraprovincial tribunal.

Purposes

73 The purposes of this Division are as follows:

(a) to ensure that court applications respecting guardianship, parenting arrangements or contact with a child are determined on the basis of the best interests of the child;

(b) to avoid the making of orders respecting guardianship, parenting arrangements or contact with a child, respecting the same child, in more than one jurisdiction;

(c) to discourage child abduction as an alternative to determining by due process the guardianship of, or parenting arrangements with respect to, a child;

(d) to provide for effective enforcement of orders respecting guardianship, parenting arrangements or contact with a child, and for the recognition and enforcement of extraprovincial orders.

Determining whether to act under this Part

74 (1) This section applies if an order respecting guardianship, parenting arrangements or contact with a child may be made, respecting the same child, in more than one jurisdiction.

(2) Despite any other provision of this Part, a court may make an order under this Part respecting guardianship, parenting arrangements or contact with a child only if one of the following conditions is met:

(a) the child is habitually resident in British Columbia when the application is filed;

(b) the child is not habitually resident in British Columbia when the application is filed, but the court is satisfied that

(i) the child is physically present in British Columbia when the application is filed,

(ii) substantial evidence concerning the best interests of the child is available in British Columbia,

(iii) no application for an extraprovincial order is pending before an extraprovincial tribunal in a place where the child is habitually resident,

(iv) no extraprovincial order has been recognized by a court in British Columbia,

(v) the child has a real and substantial connection with British Columbia, and

(vi) on the balance of convenience, it is appropriate for jurisdiction to be exercised in British Columbia;

(c) the child is physically present in British Columbia and the court is satisfied that the child would suffer serious harm if the child were to

(i) remain with, or be returned to, the child's guardian, or

(ii) be removed from British Columbia.

(3) A court may decline to make an order under this Part if the court considers that it is more appropriate for jurisdiction to be exercised outside British Columbia.

Recognition of extraprovincial orders

75 (1) A court must recognize an extraprovincial order if all of the following apply:

(a) the extraprovincial tribunal would have had jurisdiction to make the order under the rules that are applicable in British Columbia;

(b) each party to a proceeding in which the extraprovincial order was made had

(i) reasonable notice that the order would be made, and

(ii) a reasonable opportunity to be heard respecting the order;

(c) the extraprovincial tribunal was required by law to consider the best interests of the child;

(d) it would not be contrary to public policy in British Columbia to recognize the order.

(2) On recognition by a court,

(a) an extraprovincial order has the same effect, and may be enforced, as if it were an order made under section 45 [orders respecting parenting arrangements], 51 [orders respecting guardianship] or 59 [orders respecting contact], as applicable, and

(b) the court may, if necessary to give effect to the extraprovincial order, make any order that the court may make under this Act.

(3) If an application is made to recognize more than one extraprovincial order and the orders conflict, the court must recognize the order that is most consistent with the best interests of the child.

Superseding extraprovincial orders

76 (1) On application, a court may make an order that supersedes an extraprovincial order that has been recognized under section 75 [recognition of extraprovincial orders] if satisfied that

(a) the child would suffer serious harm if that child were to

(i) remain with, or be returned to, the child's guardian, or

(ii) be removed from British Columbia, or

(b) a change in circumstances affects, or is likely to affect, the best interests of the child and subsection (2) of this section applies.

(2) For the purposes of subsection (1) (b), an order may be made only if

(a) the child is habitually resident in British Columbia when an application is filed, or

(b) the child is not habitually resident in British Columbia when the application is filed, but the court is satisfied that

(i) the circumstances described in section 74 (2) (b) (i), (ii), (v) and (vi) [determining whether to act under this Part] apply, and

(ii) the child no longer has a real and substantial connection with the place where the extraprovincial order was made.

[73] With respect to the property division claims, as noted above, they must be determined under the FRA since they were started before the FLA was introduced. Although the FLA contains specific rules regarding jurisdiction with respect to property division (see Division 6 of Part 5), the FRA does not include comparable provisions.

c. Position of the Parties

i. Position of the Claimant

[74] The claimant submits that this Court has the jurisdiction to deal with all matters relating to the division of properties in British Columbia, custody, and child and spousal support.

ii. Position of C. Chen

[75] Counsel for C. Chen argues that although the respondent husband filed a statement of defence in this proceeding, giving this Court territorial competence in respect to him after that date, both the respondent husband and the claimant submitted to China's jurisdiction after the British Columbia proceeding was commenced. The British Columbia action laid dormant until early 2014 while the respondent husband and the claimant participated extensively and actively in the Chinese proceeding. Counsel argues that both the respondent husband and the claimant agreed that China was the proper jurisdiction to adjudicate issues relating to divorce, custody and child support, spousal support, and property located in China.

[76] C. Chen submits that the court should decline to exercise its territorial competence on all matters that have been decided in the Chinese Judgment.

[77] I note that C. Chen took no position with respect to the divorce, custody, or support issues in his statement of defence or response to family claim.

iii. Position of Mr. Chen

[78] Mr. Chen made no submissions on this point at the hearing. However, he did raise the issue of whether this Court has jurisdiction in his statement of defence and response to amended family claim. In his statement of defence filed March 30, 2010, he asserted that the divorce, custody, and assets would be dealt with in China but did not oppose the division of family assets situate in British Columbia. In his response to amended family claim filed August 22, 2017, he asserts that the parties were divorced and the Chinese court dealt with custody, child support, spousal support, and division of assets.

d. Analysis

[79] I am satisfied that as of the date the action was commenced on January 22, 2010, the respondent husband was not ordinarily resident in British Columbia. In his statement of defence, he denies being a resident of Canada. Shortly after the action was commenced, he started Family Claim #2 in China. There is no evidence that supports that he was living in British Columbia at that time. As such, s. 3(d) of the CJPTA does not apply.

[80] However, the respondent husband filed an appearance, statement of defence, and counterclaim to the action after having started Family Claim #2 in China. His statement of defence addresses his position on the merits of the issues raised in the statement of claim. C. Chen also filed a statement of defence and a response to amended family claim addressing the issues with which he is involved on their merits.

[81] After the Chinese Judgment was issued, in May 2016, Mr. Chen consented to the Muir Order, which required him to pay support to the claimant without prejudice to the parties' arguments on the quantum of support and its characterization. There was nothing to indicate the order was made without prejudice to his ability to challenge this Court's jurisdiction with respect to support. Mr. Chen then filed a response to amended family claim in August 2017, in which he submitted that the Chinese Judgment had already addressed the relevant issues.

[82] The fact that Mr. Chen has filed a counterclaim in this action and has consented to a substantive order with respect to support are sufficient to satisfy me that he has attorned to this Court's jurisdiction during the course of the proceeding, and s. 3(b) of the CJPTA therefore applies to give this Court territorial competence. C. Chen also attorned as he filed both a statement of defence and a response to amended family claim.

[83] If I am wrong about this Court having territorial competence under s. 3(b) of the CJPTA, I would nonetheless find that this Court has jurisdiction under s. 3(e) on the basis of a real and substantial connection to British Columbia. Both ss. 10(a) and 10(k) of the CJPTA apply to create a rebuttable presumption that there is a real and substantial connection with British Columbia, since the property claims are dealing with property situate in this province and since the respondents seek to recognize the Chinese Judgment in British Columbia. I see no basis on which to find that these presumptions have been rebutted.

[84] Finally, I find that this Court has territorial competence with respect to the claims regarding the Children under s. 74(2)(a) of the FLA on the basis that they were habitually resident in British Columbia at the time the proceedings were commenced. Even if the Chinese Judgment is recognized, it is clear that there has been a change in circumstances since that decision was made, as the Children have all resided with the claimant, contrary to what the Chinese Judgment anticipated. Therefore, s. 76(1)(b) would apply to give this Court jurisdiction.

[85] As discussed above, Mr. Chen admits that the Children have been habitually resident in British Columbia since 2008 and 2009. They have been living with the claimant at all times since the separation. It may be that for a period of time in 2010 and 2011, the claimant and the two youngest children returned to China while the claimant was immersed in dealing with the legal proceedings there. Once concluded, the claimant and children returned to British Columbia and have remained resident here ever since. In my view, the evidence supports that the Children were habitually resident in British Columbia as of January 2010, and are currently residing in British Columbia.

[86] If I am wrong on this, I am of the view that s. 74(2)(b) of the FLA would also apply to establish territorial competence with respect to the Children. The first of the factors are met in that the Children were physically present in British Columbia when the action was started: FLA, s. 74(2)(b)(i). The Children have been in British Columbia on a full-time basis attending school since at least 2012, and as such, there would be substantial evidence concerning the best interests of the Children available in British Columbia: FLA, s. 74(2)(b)(ii). There is no application for an extraprovincial order pending before an extraprovincial tribunal: FLA, s. 74(2)(b)(iii). There is an extraprovincial order, being the Chinese Judgement, which is not yet recognized in British Columbia. This is an issue that will be decided as part of these reasons: FLA, s. 74(2)(b)(iv). The Children clearly have a real and substantial connection with British Columbia since they have been living here on a full-time basis, attending school, and as of the Hearing have likely spent the majority of their lives in British Columbia: FLA, s. 74(b)(v).

[87] For these reasons, I find that the British Columbia Court has territorial competence.

Should this Court Decline to Exercise its Territorial Competence?

[88] Having determined this Court has territorial competence, I must now consider whether this Court should nevertheless decline it on the basis that China is the more appropriate forum for the resolution of this ongoing dispute.

[89] It is the respondent husband who bears the burden of displacing the claimant's choice of forum. In Club Resorts Ltd., Justice LeBel described this aspect of the analysis as follows at paras. 103 and 108-109:

[103] If a defendant raises an issue of forum non conveniens, the burden is on him or her to show why the court should decline to exercise its jurisdiction and displace the forum chosen by the plaintiff. The defendant must identify another forum that has an appropriate connection under the conflicts rules and that should be allowed to dispose of the action. The defendant must show, using the same analytical approach the court followed to establish the existence of a real and substantial connection with the local forum, what connections this alternative forum has with the subject matter of the litigation. Finally, the party asking for a stay on the basis of forum non conveniens must demonstrate why the proposed alternative forum should be preferred and considered to be more appropriate.

[108] Regarding the burden imposed on a party asking for a stay on the basis of forum non conveniens, the courts have held that the party must show that the alternative forum is clearly more appropriate. The expression "clearly more appropriate" is well established. On the other hand, it has not always been used consistently and does not appear in the CJPTA or any of the statutes based on the CJPTA, which simply require that the party moving for a stay establish that there is a "more appropriate forum" elsewhere .

[109] The use of the words "clearly" and "exceptionally" should be interpreted as an acknowledgment that the normal state of affairs is that jurisdiction should be exercised once it is properly assumed. The burden is on a party who seeks to depart from this normal state of affairs to show that, in light of the characteristics of the alternative forum, it would be fairer and more efficient to do so and that the plaintiff should be denied the benefits of his or her decision to select a forum that is appropriate under the conflicts rules. The court should not exercise its discretion in favour of a stay solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces or states. It is not a matter of flipping a coin. A court hearing an application for a stay of proceedings must find that a forum exists that is in a better position to dispose fairly and efficiently of the litigation. But the court must be mindful that jurisdiction may sometimes be established on a rather low threshold under the conflicts rules. Forum non conveniens may play an important role in identifying a forum that is clearly more appropriate for disposing of the litigation and thus ensuring fairness to the parties and a more efficient process for resolving their dispute.

[90] The test in British Columbia has been codified in s. 11 of the CJPTA, which states:

Discretion as to the exercise of territorial competence

11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

(2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

(a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,

(b) the law to be applied to issues in the proceeding,

(c) the desirability of avoiding multiplicity of legal proceedings,

(d) the desirability of avoiding conflicting decisions in different courts,

(e) the enforcement of an eventual judgment, and

(f) the fair and efficient working of the Canadian legal system as a whole.

[91] Although the Court is required to consider the factors in s. 11(2) in the exercise of its discretion, the list is non-exhaustive and other factors may be considered: Club Resorts Ltd., para. 105.

e. Discussion of the s. 11 Factors

i. Comparative Convenience and Expense

[92] It appears that some of the evidence in respect to the issues to be dealt with in this action will involve documents and potentially witnesses located in China. However, the main witnesses will be the parties themselves and currently none of them reside in China. Mr. Chen testified that, as of April 2019, he is a Canadian citizen, although it is not clear exactly where he resides.

[93] All parties agree that China is the most appropriate forum to deal with issues relating to the Chinese businesses and properties. However, there will also need to be litigation in British Columbia dealing with the properties situate here.

[94] In my view, the remaining issues to be dealt with weigh in favor of British Columbia being the more appropriate forum because all of the major parties are Canadian--or at least North American--residents, and so a trial in British Columbia would save time and expense of traveling.

ii. Applicable Law

[95] The parties appear to agree that if this Court accepts jurisdiction, the law of British Columbia would apply to the resolution of the remaining disputes. They have not made any submissions about this point, but it would appear that if this Court declined to exercise its jurisdiction in favour of the Chinese courts, those courts would apply Chinese law.

[96] I find that this factor is neutral.

iii. Avoiding Multiple Proceedings

[97] Since the parties are dealing with family properties in both China and British Columbia, a multiplicity of proceedings is somewhat inevitable. The proceeding in British Columbia remains necessary regardless of my decision with respect to the enforcement of the Chinese Judgment, since that judgment did not deal with the family assets in British Columbia or the trust claims against the properties owned by C. Chen.

[98] The court in China has already made a decision on the evidence before it which relates to some of the same issues, being child custody and support and spousal support. Since there has clearly been a change in circumstances with respect to child custody and support, as the Chinese order has not been followed, that issue will need to be addressed again by one court or the other.

[99] I would consider this factor neutral.

iv. Avoiding Conflicting Decisions

[100] There is a high risk of a conflicting decision if the Chinese Judgment is not recognized, particularly with regard to spousal support, since the laws of Canada and British Columbia differ significantly from Chinese law. With respect to child custody and support, the expert evidence supports that the current arrangements between the parties would be grounds on which to seek a revised order from the Chinese courts, so regardless of which jurisdiction proceeds, it would be likely that that aspect of the Chinese Judgment would be modified.

[101] There will be no conflicting judgment in respect to the Chinese properties since this Court will not be deciding those issues, nor to the assets in British Columbia since the Chinese courts did not decide those issues.

[102] The only conflicting outcomes would be in respect to support and custody issues. I will deal with this issue further when considering the enforcement of the Chinese Judgment. However, the potential for conflicting judgments would weigh in favour of this Court declining jurisdiction.

v. Enforcement of Eventual Judgment

[103] Since the parties no longer reside in China, and all of the assets the claimant is seeking to have divided are properties situated in British Columbia, there is a significant advantage to having the action proceed here.

[104] In addition, the support and custody orders that need to be made are orders with respect to individuals who are British Columbia residents. Having these orders made by a British Columbia court would make their enforcement significantly easier, since, as I will discuss later in these reasons, China is not a reciprocating jurisdiction under the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29 [ISOA].

[105] This factor weighs in favour of allowing this action to proceed.

vi. The Fair and Efficient Working of the Canadian Legal System

[106] The Chinese child support order was made over six years ago and was based on the respondent husband having custody and responsibility for J.X.C. and the claimant for H.C. The reality is that the claimant had all of the Children living with her in British Columbia from the time of the Chinese Judgment until present. Although their positions differed in their pleadings, as of the date of the Hearing, the parties appear to agree that this Court is best situated to determine the issues respecting the Children.

[107] While the principle of comity with courts in other countries must also be considered, this action needs to proceed to ensure that support orders for the Children, who have been British Columbia residents for over ten years at this point, can be enforced and because the issue of the division of the family asserts and the claims against C. Chen have yet to be heard.

[108] This factor weighs in favour of allowing this action to proceed.

vii. Conclusion on s. 11 Factors

[109] In my view, the balance of factors weighs in favour of allowing this Court to proceed. In the circumstances, I am of the view that this action should be allowed to proceed on all issues, except the assets located in China. I conclude this Court has territorial competence in this matter and that British Columbia is the appropriate forum.

Should the Chinese Judgment Be Recognized by the British columbia Court?

a. Legal Principles

[110] The traditional common law position was that, for a foreign judgment to be recognizable and enforceable, it had to be: (a) for a debt or definite sum of money; (b) final and conclusive; and (c) made by a court of competent jurisdiction: Pro Swing Inc. v. Elta Golf Inc., 2006 SCC 52 at para. 10. In Pro Swing Inc., the Supreme Court of Canada expanded this to allow judgments in the nature of equitable remedies to be enforceable in certain circumstances. However, these criteria do not always translate well within the family law context.

[111] In Beals v. Saldanha, 2003 SCC 72, the Supreme Court of Canada affirmed that the "real and substantial connection" test, which had been adopted for the recognition and enforcement of interprovincial judgments in Morguard Investments Ltd. v. De Savoye, [1990] 3 S.C.R. 1077, applies to assessing jurisdictional competence with respect to foreign judgments rendered outside Canada: paras. 19, 37-38. The "real and substantial connection" test requires a significant connection between the cause of action and the foreign court: Beals, para. 32. In addition, the "traditional indicia of jurisdiction", being attornment, agreement to submit, residence, and presence in the foreign jurisdiction, may also be used to establish jurisdiction: Beals, para. 37; Litecubes v. Northern Light Products, 2007 BCSC 1545 at para. 47.

[112] The requirement for a judgment to be final and conclusive means that it cannot, after the granting of the judgment, be disputed in the court in which it was pronounced: Litecubes, para. 12. The fact that the decision may be appealed to a higher court does not change the judgment's finality in this sense. In other words, a final judgment is one for which the court that granted the judgment has no jurisdiction or residual power to abrogate or vary it or to retry the issue that it decided, under the laws of the jurisdiction where it was made: Four Embarcadero Center Venture v. Mr. Greenjeans Corp. (1988), 64 O.R. (2d) 746 (H.C.J.), citing Nouvion v. Freeman (1889), 15 App. Cas. 1 (H.L.).

[113] The enforcement of foreign judgments in Canada is subject to defences on the basis of natural justice, public policy, and fraud: Beals, paras. 35, 39. These defences are narrow in application: Beals, para. 41. In addition, Canadians facing legal proceedings internationally can raise the doctrine of forum non conveniens to claim that the international court is not the proper forum: ibid.

b. Position of the Parties

i. Position of the Claimant

[114] The claimant agrees that the divorce that was granted in the Chinese Judgment and the disposition relating to Chinese assets should be recognized. However, she submits that the corollary relief with respect to spousal support and child support should not be recognized. She also says that her claims with respect to properties situated in British Columbia are solely within the jurisdiction of this Court and that "no finding of fact or law in the Chinese Judgment is binding upon the Courts of British Columbia in respect of her claims that properties located in British Columbia are family assets."

[115] Her basis for this is threefold. First, she argues that the Chinese courts only had jurisdiction over part of the subject matter of the foreign judgment, namely, divorce and foreign assets. She says Mr. Chen attorned to this court's jurisdiction by entering appearances and defending the claims on the merits. She also points out that Mr. Chen, in his submissions to the Court, agrees that he has paid and is willing to continue to pay support.

[116] Second, she says that the Chinese Judgment is not final and conclusive because it can still be challenged or appealed, and it left several issues open to further or separate litigation.

[117] Finally, she argues that the Chinese Judgment is contrary to public policy and/or offends principles of natural justice. In particular, she submits that Chinese law with respect to spousal support is contrary to public policy, and therefore the support order should not be recognized. She further submits that the lack of party-driven discovery in Chinese law is contrary to public policy as the discovery process is fundamental to the Canadian legal system's guarantee of a fair hearing.

[118] Alternatively, the claimant argues that the Chinese support orders cannot be recognized in Canada. She argues that the ISOA is a complete code and support orders from foreign jurisdictions, such as China, that are not reciprocating jurisdictions under the ISOA, cannot be recognized in British Columbia under common law. By extension, she says that the Chinese court's dismissal of support also cannot be recognized.

ii. Position of Mr. Chen

[119] The position of Mr. Chen was difficult to ascertain. In Mr. Chen's response to amended family claim, he took the position that the parties were divorced in China and that the Chinese court dealt with corollary relief; that the Chinese court orders are final; and that the claimant took part in the various court hearings. He took the position that this Court has no jurisdiction to order spousal support or child support, as the Chinese court already dealt with those issues.

[120] In his closing submissions at the Hearing, he stated that his view was that the Chinese Judgment was correct. He emphasized this in particular with respect to the properties in China. He claimed that he has been paying spousal support and that he has transferred "huge sums of money" to the claimant in China. He suggested that he has voluntarily paid spousal support in the amount of "tens of millions". He also points to the fact that he has been paying thousands of dollars per month in child support. He advised the court that he still loved the claimant and the Children. He advised the court that no matter what the judgment was, he would respect it.

iii. Position of C. Chen and Submissions of Counsel for C. Chen, Ms. Blake

[121] Counsel for C. Chen submits that the Chinese Judgment should be recognized and enforced in British Columbia because there is a real and substantial connection to the Chinese forum, the judgment is final, and no defences apply. C. Chen did not take any position with respect to the issues raised in the Chinese Judgment in his statement of defence or response to amended family claim, and he concedes that the Chinese Judgment has no application to the trust claim against him in British Columbia and that he was not a party to the Chinese proceedings.

[122] Counsel for C. Chen, Ms. Blake, explained that she made submissions on these issues as an officer of the court because Mr. Chen was self-represented at the Hearing. Counsel for the claimant did not object to Ms. Blake drawing the Court's attention to relevant authorities as an officer of the court, but he did object to Ms. Blake making lengthy submissions on behalf of Mr. Chen with respect to support.

[123] Ms. Blake submits that until the Muir Order was entered on May 12, 2016, the Chinese Judgment was binding and enforceable on the parties regarding support issues. The Muir Order constituted an acknowledgement of both parties that from that date forward, they would submit to the British Columbia court on the issue of support. Accordingly, the Muir Order "superseded" the Chinese Judgment with respect to support.

[124] Ms. Blake also submits that the real and substantial connection test is met as both parties had greater connection to China than Canada before 2015. With respect to the finality of the decision, she submits that both experts agreed that the decision was enforceable, which she says is key with respect to finality. Although the claimant could have applied for a re-trial, the limitation period has long expired.

[125] With respect to the defences, Ms. Blake relied on the case of Britton v. Simon (Estate), 2016 SKQB 30 for authority that differences in court procedure and rules do not equate to a denial of natural justice. The foreign court proceeding need not be perfect, but must meet minimum standards of fairness, such as notice and an opportunity to be heard. She submits that the Chinese procedure meets this standard and relies on Wei v. Li, 2019 BCCA 114 at para. 28, in support.

[126] Ms. Blake further notes that a public policy defence was rejected in Britton. The fact that the judgment related to a cause of action not recognized in Saskatchewan or that the damage award was high by Saskatchewan standards was not sufficient. She submits that the defence of public policy is not available since it has to be the very remedy that is contrary to public policy, and not simply that the foreign judgment relates to a cause of action not recognized in the enforcing jurisdiction, or because the damage award in the foreign judgment was too high: Britton, para. 60.

c. Analysis

[127] There is no dispute that the Chinese court was the proper jurisdiction in which to litigate the Chinese properties and assets. That aspect of the judgment is not at issue in these proceedings.

i. The Divorce Decree

[128] Section 22 of the Divorce Act provides the statutory framework for the recognition in Canada of a foreign divorce:

22 (1) A divorce granted, on or after the coming into force of this Act, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so shall be recognized for all purposes of determining the marital status in Canada of any person, if either former spouse was ordinarily resident in that country or subdivision for at least one year immediately preceding the commencement of proceedings for the divorce.

(2) A divorce granted, after July 1, 1968, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so, on the basis of the domicile of the wife in that country or subdivision determined as if she were unmarried and, if she was a minor, as if she had attained the age of majority, shall be recognized for all purposes of determining the marital status in Canada of any person.

(3) Nothing in this section abrogates or derogates from any other rule of law respecting the recognition of divorces granted otherwise than under this Act.

[129] In Pitre v. Nguyen, 2007 BCSC 1161, Justice Martinson explained the application of s. 22 of the Divorce Act in the context of the common law conflict of laws rules. She held that where the foreign divorce order, on its face, comes within s. 22 of the Divorce Act (in that case, the parties had been living in the foreign jurisdiction in the preceding year to come within s. 22(1)), the question then becomes whether there are grounds on which the Court should refuse to recognize the validity of the divorce: paras. 12-13. She explained, at paras. 13-15:

[13] The question is whether there are grounds on which this Court should refuse to recognize the validity of the Florida divorce order. In Jean-Gabriel Castel & Janet Walker, Canadian Conflict of Laws, 6th ed., loose-leaf (Markham: LexisNexis Canada Inc., 2007) at §17.2.c, the authors helpfully review the grounds on which Canadian courts may refuse to recognize foreign divorces:

Although the foreign court that granted the decree may be jurisdictionally competent in the eyes of Canadian law, recognition will be refused if the respondent did not receive notice of the proceeding, especially if fraud was present. The jurisdiction of the foreign court must not be established "through any flimsy residential means" and the petitioner must not have resorted to the foreign court for any fraudulent and improper reasons such as solely "for the purpose of obtaining a divorce." The foreign decree must not be contrary to Canadian public policy. Denial of natural justice may also be a reason for refusing recognition, as was the case when a divorce was granted in Jordan ex parte and there was evidence that the respondent wife, who was notified after the fact and who had no connection to Jordan, would have had no role to play in the proceedings. In sum, there must be no injustice in granting recognition, but lack of consent is not itself a ground for refusing recognition.

If the foreign divorce has been rendered by a court that had jurisdiction in the eyes of Canadian law, the ground upon which the decree was granted or the law which the foreign court applied is irrelevant, although the foreign court may have applied the lex fori instead of the law of the husband's or wife's actual domicile. Such a decree is conclusive on the merits. Thus, in the absence of fraud going to jurisdiction, Canadian courts will not inquire whether the foreign court made a mistake in applying the relevant law.

[14] In Powell v. Cockburn, [1977] 2 S.C.R. 218, 68 D.L.R. (3d) 700 at 709 (S.C.C.), Dickson J. dealt with the question of fraud in obtaining a foreign divorce order:

... If the fraud in obtaining the foreign decree goes to the merits of the petition, domestic Courts will not pay heed to it, as the substantive grounds upon which the decree is granted have never been of concern to the recognizing Court [citations omitted]. Fraud going to the jurisdiction of the foreign Court is another matter [citation omitted]. If the foreign Court is fraudulently misled into believing the jurisdictional facts are such as to give it jurisdiction, when in truth they are not, this will be a ground for refusal of the domestic Court to recognize the decree [citation omitted by Martinson J.].

[15] Recognition of a foreign divorce order, therefore, can be refused in fairly limited circumstances. Those include situations where the respondent did not receive notice; where the foreign order is contrary to public policy; where the foreign court did not properly have jurisdiction; or where fraud was present. If fraud is alleged, it must go to jurisdiction and not simply the merits of the case.

[130] In the case at bar, the parties, being the claimant and the respondent husband, both agree that the requirements of s. 22 of the Divorce Act are met and the Chinese divorce order should be recognized. It is not clear on which ground this agreement is based on, but in any case, the evidence supports that the respondent husband was ordinarily resident in China for at least one year immediately preceding the commencement of proceedings for the divorce, which would engage s. 22(1).

[131] There was no evidence to support that any of the limited circumstances in which a divorce order should not be recognized applied. In light of the parties' agreement and the application of s. 22 of the Divorce Act, I accept that the divorce granted in the Chinese Judgment should be recognized in British Columbia.

ii. Custody

[132] As I understand Mr. Chen's position, he has abandoned his claim to recognize the Chinese Judgment with respect to custody. He admits that all of the Children have been residing with the claimant and he does not seek to enforce the terms of the Chinese order.

[133] As I mentioned earlier in these reasons, even if the Chinese custody and child support were recognized, it would not be determinative of this Court's jurisdiction due to the operation of Division 7 of Part 4 of the FLA. Section 76 of the FLA gives this Court jurisdiction to supersede a valid foreign order where there has been a change in circumstances affecting the best interests of the child and child is habitually resident in British Columbia. It is not seriously in dispute that the parties do not intend to enforce the Chinese custody orders and that this Court has jurisdiction to make new orders regarding custody under the FLA.

iii. Support

[134] Although the claimant and Ms. Blake both submitted that the parties have attorned to this Court's jurisdiction for the purposes of determining support since at least the time of the Muir Order, it was not clear to me from Mr. Chen's submissions that he agreed with this position or whether he was abandoning his application to recognize the Chinese Judgment with respect to support, in particular with respect to spousal support. Although he submitted at the Hearing that he has been paying support and would continue to do so, he also submitted that the Chinese Judgment was "correct". It was also not clear whether he was agreeing to pay support for all of the children and spousal support, or if he was only agreeing to pay child support, or some other combination.

[135] Because Mr. Chen was self-represented at this trial, I have considered these issues on the basis that he seeks to enforce all of the support orders in the Chinese Judgment to take his position at its highest point.

Is the ISOA a complete code?

[136] I begin by considering the ISOA. In my view, the support orders in the Chinese Judgment do not come within the purview of the ISOA for two reasons. First, China is not a "reciprocating jurisdiction" as defined in s. 1 of the ISOA (see schedule of reciprocating jurisdictions in the Interjurisdictional Support Orders Regulation, B.C. Reg. 15/2003, s. 6). Second, even if China were a reciprocating jurisdiction, it is not clear that the orders would come within the definition of "support order" in the ISOA. In s. 1 of the ISOA, "support order" is defined as an order or interim order made by a court or administrative body that requires the payment of support. In this case, the Chinese Judgment did not require spousal support or child support to be paid.

[137] The next question is then whether the ISOA is a complete code with respect to the recognition of support orders, or whether the common law may be applied to determine whether or not to recognize the Chinese Judgment with respect to support. The claimant relies on Besha v. Lisanework, 2010 BCCA 580 at paras. 24-26, for authority that the ISOA is a complete code:

[24] These British Columbia authorities demonstrate that this Court has consistently regarded the ISOA as the proper avenue for recognition and enforcement of foreign support orders.

[25] Indeed, the ISOA provides the only procedure available in British Columbia to recognize, enforce, or vary a foreign support order.

[26] Because the ISOA is a complete code for the recognition and enforcement of foreign support orders, the registration in British Columbia of the foreign support order in this case could only have been effected by compliance with the mandatory procedure set out in ss. 17-19 of the ISOA.

[138] The claimant argues that since China is a non-reciprocating jurisdiction and the ISOA does not apply to recognize its support orders, the same goes for the recognition of orders dismissing claims for support. Therefore, she says that this Court cannot recognize the Chinese Judgment's dismissal of support.

[139] In my view, the ISOA does not prevent this Court from applying common law principles to the question of whether or not to recognize foreign support orders from non-reciprocating jurisdictions.

[140] The Besha case involved an application to vary a child support order from Washington State, U.S.A., which was a reciprocating jurisdiction. It stands for the proposition that where the order comes from a reciprocating jurisdiction, any application to vary support must be brought under the ISOA. It did not decide the question of whether the common law can apply to non-reciprocating jurisdictions.

[141] Besha also relied on the Court of Appeal decision in Virani v. Virani, 2006 BCCA 341 for authority that the ISOA is a complete code. The BC Supreme Court, in Virani considered whether the FRA empowered a court in British Columbia to make an original order for support against a non-resident parent who has never been a resident of Canada. It held at para. 62:

[62] In my opinion, the answer to this question is "no", for the simple reason that by enacting the Interjurisdictional Support Orders Act, the Legislature intended to make a code and did so for a very good reason; that is, to enact legislation which is complementary to legislation existing in jurisdictions with which we have reciprocal arrangements.

[142] Again, Virani dealt with a circumstance where the foreign jurisdiction was a reciprocating jurisdiction under the ISOA. The holding that a British Columbia court could not make an order for support under the FRA instead of the ISOA in the context of a reciprocating jurisdiction is not determinative of the issue of whether foreign judgments respecting support can be recognized when it comes to non-reciprocating jurisdictions.

Child support

[143] I will first consider the decision with respect to child support. Although the claimant raises the issue of the Chinese court's authority to assume jurisdiction with respect to child support, I find it unnecessary to consider the jurisdiction issue because I find that the Chinese child support order was not a final order for the purposes of recognition in Canadian law, and I would decline to recognize it on that basis.

[144] Prof. deLisle's opinion that the custody and child support orders were final were based on his view of the definition of finality in Chinese law. However, the question I must ask is whether the orders were final as that term is defined in Canadian law with respect to the recognition of foreign judgments. As noted above, a final order is one that cannot be revisited in the court that made the order. I accept Prof. deLisle's evidence that child custody and support orders can be revisited in Chinese law under certain changes in circumstances, such as those present in the case at bar. Therefore, the child support orders cannot be said to be final for the purposes of recognizing them in Canada, and I would decline to do so.

Spousal support

[145] The issue is more difficult with respect to spousal support.

[146] The claimant argued that the Chinese court did not have jurisdiction to decide spousal support. I disagree. The claimant did not challenge the Chinese court's jurisdiction or argue that it should decline jurisdiction in favour of British Columbia, and she participated fully with the assistance of counsel at every stage of the proceedings. I find that she attorned to the jurisdiction of the Chinese court and that the jurisdictional requirement was met on this basis.

[147] The claimant also argues that the decision was not final. She points to the fact that the Chinese Judgment left open certain issues in support of her position. In my view, the fact that the decision left open issues between the parties that may need to be resolved at a later date is not particularly relevant to the question of whether the issues that it did decide were decided finally or not. In any case, the issues that were left open were unrelated to child custody, child support, or spousal support.

[148] With respect to Chinese law on spousal support, Prof. Cheng and Prof. deLisle agreed that article 42 of the Marriage Law governs. A certified translation of the Marriage Law entered as an exhibit at trial translates article 42 as follows:

If, at the time of divorce, either party has difficulties in life, the other party shall render appropriate assistance with his or her personal property like house, etc. Specific arrangements shall be agreed upon by both parties. In case no agreement is agreed upon, the people's court shall make the decision.

[Emphasis added.]

[149] Prof. deLisle explained that the Interpretation of the Marriage Law by the Supreme People's Court provides further guidance of when "difficulties" are experienced for the purposes of article 42. Article 27 of the Marriage Law Interpretation, as translated, provides:

The circumstance under which "either party has difficulties in life" as mentioned in Article 42 of the Marriage Law means that it can't sustain the local basic living level by depending on the personal property and the property divided to him (her) at the time of divorce.

A party who has no domicile after divorce conforms to the circumstances of having difficulties in life.

At the time of divorce, one party may help the party who has difficulties in life by offering the dwelling right to or ownership of the house out of his (her) personal properties.

[Emphasis added.]

[150] These provisions are consistent with Prof. deLisle's evidence that property division is the primary means of wealth division between divorcing spouses, and that support is only awarded in certain circumstances where a basic standard of living is not attainable. I accept his evidence in that regard.

[151] This leaves the question of whether the denial of spousal support is a final order. Neither expert specifically addressed whether spousal support can be revisited in a way similar to child support. However, I can infer from their evidence about civil law generally and from the text of the translated versions of the law in evidence before me that spousal support is intended to address the circumstances of the spouses at the time of the divorce. Unlike Canadian law, there does not appear to be a means of revisiting support based on changing means and needs of the spouses after the spouses have separated.

[152] Further, the language of article 42 on spousal support (being "at the time of divorce") contrasts the provision governing child support, article 37 of the Marriage Law, which refers to the parents owing support "after the divorce". It is also distinct from the rules governing the division of family assets, in which there is a specific rule for revisiting the division of assets in certain circumstances, including where a party has concealed jointly owned property in an effort to avoid its division according to Chinese family law (article 47 of the Marriage Law).

[153] I find that, under Chinese law, spousal support is only intended to address an inability to meet a basic standard of living at the time of divorce. It is not intended to equalize wealth between the parties of a long-standing relationship and it is not subject to changes in the means and needs of the spouses in the years following the divorce. This supports the Chinese court's decision to deny spousal support being a final order.

[154] This leaves the issue of whether the Chinese retrial system is sufficient to mean that the order denying spousal support to the claimant is not final for the purposes of recognizing the Chinese Judgment.

[155] As discussed above, Prof. Cheng explained that a second-instance decision is generally final. However, parties may petition to review the case and ask for a retrial. Prof. deLisle explained that the retrial process is distinct from the appellate process, whereby a party who loses a case at the trial level has an appeal as of right, with no need to show error, resulting in a trial de novo, or a trial in the second instance, by the next level of court. After the second instance trial, the decision is final according to article 175 of the Chinese Civil Procedure Law.

[156] Articles 199-205 of the Civil Procedure Law govern the retrial process. In particular, article 199 provides conditions for a retrial where a party "deems that an effective judgment or ruling is erroneous". It explains that the judgment is not suspended during the petition for retrial.

[157] Article 200 provides a list of conditions under which the case must be reviewed. A translation of article 200 provides:

Where a petition for retrial filed by a party falls under any of the following circumstances, the people's court shall conduct a retrial:

(1) There is any new evidence which suffices to overturn the original judgment or ruling.

(2) The basic facts found in the original judgment or ruling are not evidenced.

(3) The primary evidence admitted in the original judgment or ruling for finding facts is forged.

(4) The primary evidence admitted in the original judgment or ruling for finding facts has not been cross-examined.

(5) For objective reasons, a party is unable to gather any primary evidence necessary for the trial of a case and applies in writing for the people's court to investigate and gather the evidence, but the people's court has not investigated and gathered the evidence.

(6) There is any erroneous application of law in the original judgment or ruling.

(7) The composition of the trial organization is illegal or any judge who shall be disqualified in accordance with law fails to be disqualified.

(8) The legal representative of a person without competency to participate in the action fails to participate in the action on behalf of the person or a party which shall participate in the action, which is not attributable to the fault of the party or the litigation representative thereof.

(9) A party's right to debate is illegally denied.

(10) A default judgment is entered against a party which has not been subpoenaed.

(11) The original judgment or ruling has omitted any claims or exceeded the claims of the parties.

(12) The legal instrument on which the original judgment or ruling is based has been revoked or modified.

(13) When trying the case, a judge commits embezzlement, accepts bribes, practices favoritism for personal gain, or adjudicates by bending the law.

[158] Article 202 prevents a party from petitioning for a retrial for a judgment dissolving a marriage. Article 203 requires a party petitioning for a retrial to submit a written petition and other materials. It provides the service rules and gives an opportunity for the opposing party to reply. Under article 204:

A people's court shall, within three months after receiving a written retrial petition, examine the petition and, if the petition complies with the provisions of this Law, issue a ruling to retry the case, or if the petition does not comply with the provisions of this Law, issue a ruling to dismiss the petition.

[159] Finally, under article 205, the limitation period for petitioning for a retrial is six months from the effective date of a judgment or ruling, or within six months from the date the party knows or should have known about the circumstances permitting a retrial (where the ground is based on item (1), (3), (12), or (13) of article 200).

[160] Prof. deLisle opined that the retrial procedure can be understood as a way to "collaterally attack" the judgment by way of petition or application to the court.

[161] In my view, the retrial process does not disturb the finality of the judgment for the purposes of recognizing the judgment in Canadian law. It seems to me that the retrial process is more similar to what we might think of in this jurisdiction as an appeal, in that it requires something equivalent to leave of the court in order for the retrial to take place. Although the second instance trial is described as an appeal, it is more like a second-instance trial court that orders final judgments, that are equivalent to what we might think of as a final judgment from this Court.

[162] As discussed above, the fact a decision can be appealed does not mean it is not final for the purposes of recognizing it in Canadian law. However, the Nouvion test of not being able to dispute the judgment in the court in which it was pronounced does not seem to sit particularly well with how the Chinese court system is structured, based on the evidence of these experts.

[163] Overall, I find that the conditions in article 200 are more like what a court here would consider in an application for leave to appeal or an application to set aside a decision on the basis of procedural unfairness, or something akin to this. In my view, the retrial process does not disturb the finality of Chinese decisions issued by second-instance courts for the purpose of their recognition in Canadian law.

iv. Do any defences apply?

Natural justice

[164] In Beals, Justice Major affirmed that the denial of natural justice is a basis for challenging a foreign judgment that, if proven, allows the Canadian court to refuse enforcement. To make out this defence, the party seeking to assert it must prove on a balance of probabilities that the foreign proceedings were contrary to Canadian notions of fundamental justice: Beals, para. 59.

[165] The defence of natural justice is about the form of the foreign procedure and the process by which it arrived at its judgment. If the foreign court followed its valid procedure, but that procedure is contrary to Canada's concept of natural justice, the defence will apply: Beals, para. 64.

[166] The domestic court must be satisfied that minimum standards of fairness were applied by the foreign court and that the defendant was granted a fair process: Beals, paras. 60-61. A "fair process" is one that, in the system from which the judgment originates, "reasonably

guarantees basic procedural safeguards such as judicial independence and fair ethical rules governing the participants in the judicial system": para. 62. Justice Major acknowledged that this process is more difficult to evaluate when the foreign legal system is not similar to the Canadian system and process.

[167] Our Court of Appeal recently considered the natural justice defence in Wei. In that case, the Court of Appeal upheld Justice Macintosh's finding that the defendants had failed to demonstrate a breach of natural justice and that a Chinese judgment for a debt owed to the plaintiff, plus interest, should be recognized in British Columbia. Justice Macintosh found that the defendants had attorned to the jurisdiction of the Chinese court. A mediation was conducted through the Chinese court, a settlement agreement was reached, and the Chinese court issued a judgment confirming the terms of the agreement.

[168] In Wei, the Court of Appeal rejected the appellant's argument that natural justice was breached because she had no prior notice of the mediation, and that the judge erred in finding that she participated in the mediations through an agent. Justice Newbury, writing for the Court of Appeal, wrote, at paras. 27-28:

[27] The underlying principle, then, was that Ms. Li had to demonstrate at least a "reasonable apprehension of unfairness" by showing that she was not given "adequate notice" of the claim against her or did not have an opportunity to defend it. The question of whether she was personally served with notice of the mediation meeting is not necessarily determinative of that question, given that a foreign system of law may have rules for service that are different from those of countries with different traditions. (I note that Ms. Liang told us that in China, parties are served by court officials rather than by opposing parties. However, there was no expert evidence to this effect because, Ms. Liang contends, the matter was not raised.) As I read Beals, as long as the defendants were made aware of the case they had to meet and were given an opportunity to meet it, the requirements of natural justice will be met. (See also South Pacific Import, Inc. v. Ho 2009 BCCA 163 at para. 54.)

[28] In my opinion, the findings of the summary trial judge in this case to the effect that Ms. Li and her husband had attorned to the jurisdiction of the Chinese court and participated "at every stage, including commencing the Petition for Retrial", are sufficient to satisfy this court that these defendants received the benefit of the rules of natural justice. The judge made detailed findings as to what had occurred in China and considered the statements contained in the Documents carefully. He also made clear findings of credibility. No clear and palpable error has been shown in his findings. I would therefore dismiss the grounds for appeal advanced by Ms. Li, except those relating to interest, to which subject I now turn.

[Emphasis added.]

[169] As this excerpt demonstrates, the case law concerning the natural justice defence has focused on the need for adequate notice and the opportunity to defend against the claim.

[170] In this case, the claimant impugns the discovery process employed by the Chinese legal system. She argues that the lack of party-driven discovery is contrary to natural justice as the discovery process is fundamental to the Canadian legal system's guarantee of a fair hearing.

[171] Both experts agreed that the Chinese legal system does not have a party-driven discovery process. Prof. Cheng explained that the parties are responsible for submitting their own evidence. They must prepare a list of evidence and present and exchange evidence within a certain time limit. However, parties to civil litigation cannot make a discovery request of the opposing party. She affirmed that there is no specific set of rules or procedure for document disclosure, which includes disclosure of financial records, in family law proceedings; it is governed by the Civil Procedure Law.

[172] Prof. Cheng explained that, if one party desires evidence held by another party, it cannot compel the other party to turn over evidence by way of a discovery request. If a party believes that the opposing side is hiding assets, she must provide proof or "clues", to borrow the language used by Prof. Cheng. With these "clues", the party can apply to the court to request financial institutions to provide the relevant information. Both experts agreed that banks are required to provide this information when so requested by the court under the Commercial Bank Law.

[173] Prof. deLisle agrees that the Chinese discovery rules are not similar to those found in common law jurisdictions, but he opined that it would be incorrect to infer that Chinese law leaves parties in the position they would be in in American or Canadian courts if discovery rules were eliminated. He explained that the Chinese legal system is structured in such a way that acquiring evidence involves a more central role for the court, and a lesser role for the parties and their counsel, than is typical in common law adversarial systems.

[174] Prof. deLisle explained that Chinese laws and courts impose obligations on parties and witnesses to provide, and offer means of acquiring, relevant evidence. Article 49 of the Civil Procedure Law gives parties the right to "collect and provide evidence", to "consult material relevant to their case", and to "copy relevant material and legal documents". Parties and non-parties have a legal duty to provide testimonial evidence and to comply with court orders to provide evidence. Under article 64 of the Civil Procedure Law, if a party is unable to obtain evidence "for objective reasons", it may seek the court's assistance and the court "shall investigate and collect" such evidence. The court may appoint investigators to acquire evidence from parties and non-parties under articles 64 and 67 of the Civil Procedure Law.

[175] Prof. deLisle further explained that where a party withholds or destroys evidence, the court may detain or impose fines on that party. In addition, as discussed above, if a party impedes the court's adjudication by concealing jointly held property in the context of a divorce proceeding, the court may impose sanctions under article 47 of the Marriage Law, which includes reducing or even eliminating their share of the property and imposing additional sanctions in accordance with the civil procedure law.

[176] On the evidence before me, I find that the requirements of natural justice have been met. Although it is more difficult to evaluate a legal system that is based on different rules and procedures than those used in Canada, it seems that the Chinese legal system has similar rights and obligations on the parties when it comes to providing evidence and similar consequences for those who fail to comply with the rules to those that we have in place in this jurisdiction, albeit in a different form.

[177] Further, the Court of Appeal's decision in Wei suggests that where a party has attorned to the jurisdiction of a foreign court and participated actively in the proceedings, that is sufficient to satisfy the requirements of natural justice. Those criteria are met in this case.

Public policy

[178] The public policy defence prevents a foreign judgment from being enforced where it is "contrary to the Canadian concept of justice", an assessment which "turns on whether the foreign law is contrary to our view of basic morality": Beals, para. 71. The focus of the inquiry is the foreign law on which the decision is based, and not on the facts of the particular case.

[179] The public policy defence is one that must be interpreted narrowly in accordance with international comity. Justice Major explained in Beals at para. 75:

The use of the defence of public policy to challenge the enforcement of a foreign judgment involves impeachment of that judgment by condemning the foreign law on which the judgment is based. It is not a remedy to be used lightly. The expansion of this defence to include perceived injustices that do not offend our sense of morality is unwarranted. The defence of public policy should continue to have a narrow application.

[180] In Beals, the appellant's argument that the damage award granted by a Florida jury was so excessive as to shock the conscience of or be unacceptable to Canadians was rejected. Justice Major held at para. 76:

The public policy defence is not meant to bar enforcement of a judgment rendered by a foreign court with a real and substantial connection to the cause of action for the sole reason that the claim in that foreign jurisdiction would not yield comparable damages in Canada.

[181] In Boardwalk Regency Corp. v. Maalouf (1992), 6 O.R. (3d) 737 (C.A.), Justice Carthy described the question as one of "essential morality". It "must be more than the morality of some persons and must run through the fabric of society to the extent that it is not consonant with our system of justice and general moral outlook to countenance the conduct, no matter how legal it may have been where it occurred."

[182] Evidence of what would be contrary to public policy can be found in the body of the constitutional and statute law and the case law of the forum that reflects the local sense of justice and public welfare: Lloyd's v. Meinzer (2001), 55 O.R. (3d) 688 (C.A.) at 713, citing J.G. Castel, Canadian Conflict of Laws, 4th ed. (Toronto: Butterworths, 1997) at 171-72. It is not

sufficient to deny recognition because the foreign law and domestic law differ on the point at issue; fundamental values must be at stake: Old North State Brewing Co. v. Newlands Services Inc., [1999] 58 B.C.L.R. (3d) 144 (C.A.) at para. 49.

[183] Justice Gray considered the public policy defence in the context of matrimonial proceedings in the case of Sangi. Citing Kuwait Airways Corporation v. Iraqi Airways Company and others, [2002] U.K.H.L. 19, she noted that "it is well established that the power to disregard foreign law on the basis of public policy is to be exercised 'exceptionally and with the greatest circumspection'": at paras. 273-75. In that decision, she held that it would not be contrary to public policy to recognize a separation agreement that was incorporated into an Iranian divorce order, despite the fact that Iranian law did not include an equivalent to the doctrine of unconscionability to set aside the agreement, holding:

[284] Is it contrary to "essential public or moral interest" or to our view of basic morality for foreign law of contract to omit a doctrine of unconscionability? In my view it is not. The doctrine of unconscionability is an important protection for the vulnerable under our law of contract. However, it is not so essential a part of our law that its omission would shock the conscience. The defence of public policy has a narrow application, which is consistent with the principle of comity.

[285] It can be argued that it is more essential to our law for the doctrine of unconscionability to apply to contracts in settlement of matrimonial claims. However, in my view, it is still not so essential a part of our law that it is shocking to the conscience for it to be unavailable in matrimonial cases.

[Emphasis in original.]

[184] Justice Gray went on to hold that the terms of the agreement would not be unconscionable under British Columbia law, even if the claimant would have received more after a trial in British Columbia.

v. Law regarding spousal support for divorced spouses in China and Canada

[185] I now turn to the law regarding spousal support for divorced spouses in China and Canada. I have made some findings with respect to the Chinese law above, but I will summarize relevant points again here.

Chinese law

[186] There is no general right to spousal support in Chinese law. Support is only awarded where, at the time of the divorce, one spouse has "difficulties in life" such that they are unable to maintain a basic standard of living in their region. This is assessed after taking into consideration the property/assets they received in the division of marital property, which is the primary means of addressing the financial consequences of divorce under Chinese law.

[187] Spousal support in Chinese law is not intended to reflect the marital standard of living enjoyed by both spouses prior to separation, nor is it aimed at reflecting an equitable distribution of the economic consequences of the marriage. It is not intended to compensate spouses for sacrificing labour force participation to take care of family responsibilities, nor is it awarded for loss of economic opportunity or economic disadvantage resulting from the roles adopted during the marriage.

[188] Since property division is the primary means of addressing the financial circumstances of the spouses in divorce proceedings, it is also relevant to consider. The experts were in general agreement on the legal principles.

[189] According to the Marriage Law, property acquired by the husband and wife during the marriage is considered "joint property". Joint property includes, among other things, income earned, real estate, stocks, bonds, shares, and other investments. Some property is excluded, such as property that belonged to one party before the marriage (except where it has been jointly used during the marriage for a long period of time) and certain items that were specifically used by one spouse during the marriage. The parties may also exclude property by written agreement.

[190] Upon divorce, parties are encouraged to agree on the division of property, but the court will decide where they are unable to do so. Where parties come to their own agreements, the court may require a readjustment where one spouse has contributed disproportionately to raising the children, supporting elderly relatives, or assisting the other spouse in his or her work (article 40, Marriage Law).

[191] Where the parties do not reach an agreement, the court determines the division of property based on the circumstances of the case. Generally, jointly owned property and debts are divided equally between the spouses, but courts may decide otherwise based on what is appropriate in the circumstances, including their standards of living. There is also a principle of disposition in favour of children's and women's rights and interests which means that, if the court becomes involved in the division of property, the court must consider the rights and interests of the children and the wife in its decision.

[192] As noted above, according to article 42 of the Marriage Law, which the experts agree is the closest equivalent to the Canadian notion of spousal support, if one spouse is unable to support himself or herself at the time of the divorce after the jointly held property has been divided, the other spouse must assist them with his or her property.

Canadian law

[193] In Canada, entitlement to spousal support is not automatic. A claiming spouse must establish their entitlement to spousal support based on the objectives outlined in s. 15.2(6) of the Divorce Act:

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

(a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

(b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

(c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and

(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[194] The Divorce Act recognizes three conceptual grounds for spousal support: compensatory, contractual, and non-compensatory: Bracklow v. Bracklow, [1999] 1 S.C.R. 420 at para. 15. The claimant relies primarily on the compensatory basis in arguing that the Chinese Judgment is contrary to Canadian public policy with respect to spousal support.

[195] In Moge v. Moge, [1992] 3 S.C.R. 813, Justice L'Heureux-Dubé explained the compensatory basis for spousal support under the Divorce Act. The spousal support provisions recognize that while both parties sacrifice personal priorities in the interests of shared goals for the marriage and the family, those sacrifices are often felt by some spouses (usually, wives) more than others when the marriage ends. As these decisions were made jointly by the spouses in the best interests of the family, it is only fair that the consequences of them be shared equally. Spousal support is intended to compensate for the non-monetary contributions to the family and for the career sacrifices made that impair one spouse's earning potential on breakdown of the marriage, while enhancing that of the other spouse by freeing up their time to pursue economic aims. Justice L'Heureux-Dubé summarized this principle at 864:

The doctrine of equitable sharing of the economic consequences of marriage or marriage breakdown upon its dissolution which, in my view, the Act promotes, seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse. Significantly, it recognizes that work within the home has undeniable value and transforms the notion of equality from the rhetorical status to which it was relegated under a deemed self-sufficiency model, to a substantive imperative. In so far as economic circumstances permit, the Act seeks to put the remainder of the family in as close a position as possible to the household before the marriage breakdown. As Judge Abella wrote in "Economic Adjustment On Marriage Breakdown: Support", supra, at p. 3:

To recognize that each spouse is an equal economic and social partner in marriage, regardless of function, is a monumental revision of assumptions. It means, among other things, that caring for children is just as valuable as paying for their food and clothing. It means that organizing a household is just as important as the career that subsidizes this domestic enterprise. It means that the economics of marriage must be viewed qualitatively rather than quantitatively.

[196] Justice McLachlin, as she then was, explained the basis for the non-compensatory ground for support in Bracklow. It is based on the idea that marriage is a joint endeavour and a socio-economic partnership out of which certain obligations may arise to provide for your spouse both during and after the relationship. It attempts to strike a balance between spouses' needs for independence after relationships end, and the recognition that marriage may create profound interdependency such that a spouse may not be able to become self-sufficient on their own after the relationship breakdown. Justice McLachlin explained at para. 49:

[C]ontract and compensation are not the only sources of a support obligation. The obligation may alternatively arise out of the marriage relationship itself. Where a spouse achieves economic self-sufficiency on the basis of his or her own efforts, or on an award of compensatory support, the obligation founded on the marriage relationship itself lies dormant. But where need is established that is not met on a compensatory or contractual basis, the fundamental marital obligation may play a vital role. Absent negating factors, it is available, in appropriate circumstances, to provide just support.

[197] At para. 48, Justice McLachlin explained that the equitable dealing of the economic consequences of marriage breakdown lying at the heart of the Divorce Act "may well accord, in my belief, with society's sense of what is just": para. 48. It is noteworthy that this statement was made in the context of discussing awarding support to a disabled spouse, which would likely fall within the ambit of article 42 of the Chinese Marriage Law. She went on to cite the Report of the Scottish Law Commission, Family Law: Report on Aliment and Financial Provision (1981), at pp. 111-12, with respect to the non-compensatory rationale and policy considerations of spousal support:

Financial provision on divorce is not . . . simply a matter of abstract principle. It is essential that any system should be acceptable to public opinion and it is clear from the comments we have received that many people would find it hard to accept a system which cut off, say, an elderly or disabled spouse with no more than a three-year allowance after divorce, no matter how wealthy the other party might be.

Divorce ends the marriage. Yet in some circumstances the law may require that a healthy party continue to support a disabled party, absent contractual or compensatory entitlement. Justice and considerations of fairness may demand no less.

Analysis

[198] Where a spouse is entitled to support, the court must consider the condition, means, needs and other circumstances of each spouse in making a support order, including: the length of cohabitation; the functions performed by each spouse during cohabitation; and any order, agreement or arrangement relating to support of either spouse: Divorce Act, s. 15.2(4).

[199] While Sangi, discussed above, considered the enforceability of a separation agreement, the public policy defence has also been considered with respect to support orders from foreign jurisdictions in several other Canadian cases, and judges have gone both ways in deciding how to apply the defence.

[200] In Zhang v. Lin, 2010 ABQB 420, the Court refused to recognize a Texas divorce for being contrary to public policy. In that case, the parties were married in China but had lived in Alberta for several years before the husband moved to Texas for a job opportunity. The Texas divorce did not provide for any support for the wife or for their adult child who was attending university. The wife had given up an engineering career in China to follow the husband to Canada, but was unable to work as an engineer in Canada and she instead worked a variety of minimum wage jobs. The Court held that there was a real and substantial connection to Texas, but that the Texas court's treatment of child and spousal support was contrary to public policy. In coming to that conclusion, the Court considered the fact that it would be unable to grant corollary relief under the Divorce Act if the Texas divorce was recognized: Zhang, para. 69. The trial judge noted that there was no evidence that the husband moved to Texas to avoid Canadian law, but the effect of the Texas divorce degree was very different from what it would be in Alberta. Furthermore, at para. 70, the trial judge explained:

[T]he support of former spouses is an important component of Canada's divorce laws. Although divorce legislation requires that each case be considered on its own merits, Canadian law recognizes that some spouses are entitled to support from a former spouse even after the marriage is ended and, in the case of long marriage where the relationship built an economic dependency on the part of one spouse, even for potentially long periods of time after the marriage ended. Moreover, these policy positions relative to spousal support have developed in the context of debate other policy alternatives such as the clean break approach and the presumptive award. Therefore, the conclusion that some former spouses are entitled to ongoing support is a well settled and important policy.

[201] Similarly, in Marzara v. Marzara, 2011 BCSC 408, the Court refused to recognize an Iranian divorce decree on the basis that the support orders were contrary to public policy. Although the husband had resiled from his position that the corollary relief dealt with in the Iranian divorce decree be enforced and accepted the British Columbia court's jurisdiction to deal with corollary relief, the trial judge held the parties could not consent to give the Court jurisdiction that it would not otherwise possess, and considered the public policy defence: Marzara, para. 64. As in this case, Mr. Marzara, in his statement of defence, took the

position that the Iranian court had dealt with the corollary relief: Marzara, para. 70. The Court in Marzara considered the Zhang decision in holding that the Iranian divorce should not be recognized for being contrary to public policy. Although the Court had no evidence of Iranian law, it held that the awards for support (for $1,500) and division of property ($30,000) were "starkly in contrast with the policy reflected in our legislation and jurisprudence with respect to division of property and the support of former spouses" when considering that the parties had assets in excess of $1 million: Marzara, paras. 77, 79. The Court was also influenced by the fact that the husband had initiated the divorce proceedings in Iran to avoid the corollary relief orders that Ms. Marzara would obtain if the proceedings went forward in British Columibia: Marzara, paras. 78-79.

[202] By contrast, some more recent decisions have tended towards upholding divorce decrees that were challenged as being contrary to public policy. In Essa v. Mekawi, 2014 ONSC 7409, the Court enforced an Egyptian divorce. The wife relied on Zhang in arguing that she would be barred from claiming property division if the divorce was recognized, as the Ontario limitation period had expired. The Court was not persuaded by this argument, noting that the delay was self imposed and considering the fact that she could still make her claim under Egyptian law: Essa, paras. 83-84. The Court also considered that the wife had removed the children from Egypt contrary to the Egyptian court order and without the husband's knowledge, which is itself contrary to Canadian public policy. The fact that Egyptian divorce laws are "substantially different from Canada's when it comes to the rights of each spouse" was not sufficient to make out the public policy defence: Essa, para. 85.

[203] Another Egyptian divorce was recognized in Hossein v. Nouh, 2018 ABQB 912. The parties had been married in Egypt and moved to Canada in July 2001. In 2012, the Egyptian divorce was granted and it did not deal with spousal support. There was no evidence as to whether this was because the wife did not seek it, or because it was unavailable under Egyptian law. The husband provided the wife with support until 2017 pursuant to an oral agreement they made after receiving legal advice that was to last for five years. The wife then claimed for spousal support in the Alberta court, and the husband submitted that the court lacked jurisdiction due to the Egyptian divorce. The wife argued that it would be contrary to public policy to recognize the divorce. The Zhang case was distinguished on the basis that: (1) the claimant did not adduce any evidence as to Egyptian divorce law and spousal support, and the Court could not entertain the public policy argument without such evidence: Hossein, para. 11, and (2) it was the claimant in this case who obtained the Egyptian divorce, and having chosen Egypt as the jurisdiction in which to proceed, she could not now attempt to abandon that choice and the legal consequences of having made it: Hossein, paras. 12-15.

[204] Finally, in Pontes v. Viana, 2017 NBQB 130, the Court recognized a Portuguese divorce that would bar the wife's ability to claim support in New Brunswick. She had no income and had physical and mental health problems that prevented her from working. The wife did not claim spousal support in the Portuguese proceeding, as she was attempting to bring the divorce claim within New Brunswick and there were ongoing parallel proceedings in both

jurisdictions. The evidence was that, under Portuguese law, she could apply for support--which is determined by need and the ability to pay--in that jurisdiction at any time. However, the wife raised a concern about the ability to enforce such an order in New Brunswick: para. 39. After considering Zhang and Marzara, the Court in Pontes rejected the wife's claim because she had taken issue with the outcome in Canada of the Portuguese divorce, rather than the Portuguese law itself, at paras. 46-47:

[46] Ms. Viana has not suggested that the Portuguese court was corrupt or biased. She has not argued that Portuguese law is contrary to the fundamental morality of the Canadian legal system or basic morality. She has not taken issue with the foundation or the state of the law in Portugal or the validity of the proceeding or its outcome. She has taken issue with the outcome here in Canada if the Portuguese divorce is recognized. She says that her claim for spousal support corollary to the divorce petition will disappear and that any order for spousal support in Portugal (the availability of which is not disputed by her) will not be enforceable in New Brunswick. Those realities have nothing to do with the foundation or state of the law in Portugal or how it was, or may be, applied. They are realities that arise from the state of enforcement law in Canada, or the absence thereof, and the fact that Ms. Viana chose to pursue her claim for spousal support pursuant to the Divorce Act and not the Family Services Act. By choosing as she did, and by maintaining her divorce proceeding in New Brunswick even after the Portuguese court allowed the divorce proceeding in its jurisdiction to continue, Ms. Viana courted the risk. In the view of this court, these facts do not support this court's invocation of the public policy defence, particularly in the expanded form that would have to be embraced in order to achieve such a result.

[47] This court recognizes that the issue in Beals v. Saldanha was the enforcement of a foreign judgment as opposed to a recognition of a foreign divorce. However, the distinction (which may be a fine one) does not in the view of this court justify for the reasons proposed by Ms. Viana any expansion of the public policy defence as that has been articulated by the Supreme Court of Canada. To do so, in this court's further view, and as noted by Bernard Hovius in his article "Recognition of Foreign Divorce: A Primer", 2016 35 C.F.C.Q. 259, would introduce "considerable uncertainty into the law on recognition of foreign divorces".

[205] The claimant argues that Chinese law is "at odds" with the principles of spousal support in the Divorce Act because:

a) Chinese law does not award spousal support to reflect the marital standard of living that was enjoyed by both of the former spouses;

b) Chinese law does not include the principle that support should reflect an equitable distribution between the spouses of the economic consequences of the marriage, both its advantages and disadvantages;

c) Chinese law does not consider whether a spouse has sacrificed labour force participation to care for children, both during the marriage and after its breakdown; and

d) Chinese law does not compensate for the loss of economic opportunity or the economic disadvantage resulting from the roles adopted during the marriage.

[206] Although my decision must be based on the law underlying the decision and not the facts of this particular case, the claimant points to the fact that she was employed, but stopped working when she met Mr. Chen. Shortly thereafter, she became a housewife and attended to raising the Children. The fact that she gave up her employment to raise the Children and the loss of economic opportunity she faced as a result were not factors that could be considered with respect to awarding spousal support under Chinese law. Therefore, she submits that the order should not be recognized for being contrary to public policy.

[207] The case law is clear that it is insufficient to invoke the public policy defence only because the foreign law is based on different policies or leads to different outcomes than it would have had Canadian law been applied. The issue is: is the Chinese law regarding spousal support so unjust as to offend Canadian sense of justice and basic morality?

[208] In my view, the high bar needed to invoke the public policy defence is not met in this case. Although the bases for awarding spousal support are different in Canadian and Chinese law, the Chinese law is not so contrary to public policy as to offend basic Canadian standards of morality.

[209] A major difference between Canadian and Chinese law is that Canadian law recognized a compensatory ground for spousal support, while Chinese law does not. However, in both jurisdictions, support may be awarded on a non-compensatory basis when a spouse is unable to meet their basic needs and the other spouse has the means to provide for them.

[210] In addition, it is relevant that some of the compensatory principles for awarding spousal support in Canada are embodied in the Chinese law regarding division of property, which is the primary means of equalizing the financial situation of spouses in Chinese law. For example, courts may set aside agreements respecting property division where one spouse has disproportionately contributed to raising the children, supporting relatives, or assisting the other spouse in their work. Courts are also required to consider the rights of women and children when making and order with respect to property division.

[211] For these reasons, the Chinese Judgment is not contrary to public policy. As no defences apply, it should be recognized in British Columbia.

[212] The fact that Mr. Chen consented to the Muir Order to pay support in 2016 is somewhat at odds with my finding that the Chinese Judgment finally decided the issue of spousal support and that it should be recognized in British Columbia. However, given that Mr. Chen is self-represented and he did not clearly agree before me that he was not seeking to recognize the Chinese Judgment with respect to spousal support, and since no arguments were raised to estop Mr. Chen from seeking to have this aspect of the judgment recognized, I have concluded that it should be enforced.

[213] I would add that this finding does not preclude the claimant from making any arguments at the trial on the division of the British Columbia properties that the denial of spousal support is a relevant factor to be considered in the appropriate division of the British Columbia properties.

Conclusion

[214] The divorce order and the order dismissing spousal support in the Chinese Judgment are recognized. China is the appropriate jurisdiction in which to determine any remaining issues with respect to the Chinese assets.

[215] The child custody and child support orders in the Chinese Judgment are not recognized, and British Columbia is the appropriate forum in which to resolve any further orders with respect to the Children.

[216] Since the evidence of C. Chen was not part of the Chinese proceeding, there are no findings made in the Chinese Judgment that should be relied upon in the trial of the main action. The claimant is entitled to the pre-trial procedures, of discovery of documents and examinations for discovery, that apply in British Columbia. She will also be entitled to the cross-examination of C. Chen should the matter proceed to trial. It is only after the relevant and admissible evidence has been heard by this court that findings of facts can be made respecting the properties held by C. Chen in British Columbia.

[217] A summary of the orders made are:

a) The Chinese divorce decree is recognized in British Columbia.

b) The Chinese order respecting spousal support is recognized in British Columbia.

c) The Chinese orders respecting custody and child support are not recognized in British Columbia. British Columbia is the appropriate forum in which to determine any further issues, including custody and support, respecting the Children.

d) British Columbia is the appropriate forum in which to consider the claims respecting property situate in British Columbia.

[218] The parties are to set down a judicial management conference as soon as the operations of the court return to normal. At that time, a trial date for the main trial can be set. The parties should be prepared to provide an estimate of time for the main trial.

[219] In addition, the parties should consider what other pre-trial steps are needed to prepare for the main trial, including any issue with the affidavit of Mr. Chen sworn October 17, 2017. If possible, a draft litigation management order should be discussed and circulated.

Costs

[220] The costs of this Hearing will be cost in the cause.

"Forth J."

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