

CANADA / JUDGMENT

Chang v. Siew

2014 BCSC 1360

COURT

Supreme Court of British Columbia

DECIDED

11 June 2014

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2014 BCSC 1360 Chang v. Siew IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chang v. Siew, 2014 BCSC 1360 Date: 20140611 Docket: S126229 Registry: Vancouver Between: Pi-Yu Tseng Chang Plaintiff And Ching Wei Siew also known as Ching Wei Liu, Ching Wei Liu Siew, Ivy Siew and Esther Siew, Boon Guan Siew and Forever Holding, LLC Defendants Before: The Honourable Madam Justice Gropper Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: K. A. G. Bridge Counsel for the Defendants: M. S. Weintraub Place and Date of Trial/Hearing: Vancouver, B.C. June 5, 2014 Place and Date of Judgment: Vancouver, B.C. June 11, 2014

- [1] THE COURT: This is a resumption of the plaintiff's application of May 7, 2013, seeking an order that this action continue as if no response to the civil claim had been filed and dismissing the counterclaim. I reviewed the history of this proceeding and my reasons for judgment of January 28, 2014, indexed at 2014 BCSC 253. I will give the briefest of overview. Overview
- [2] The action was commenced in September 2012. By May 2013 the defendants had not produced any documents. This application came before Master Taylor who ordered that documents be produced and delineated specific areas. The Taylor order was reiterated by Mr. Justice Kelleher.
- [3] In July 2013, some documents were produced but the plaintiff brought the application again before Master Muir who gave the defendants one final chance. There was a hearing scheduled to consider this application again in August but those dates could not proceed. Nothing of import to this application occurred between August 2013 and January 2014.
- [4] In January, after I heard the parties, I gave the defendants another opportunity and ordered that they provide their documents in an affidavit of documents within ten days: February 7, 2014. The defendants did file affidavits by that date and produced some documents. Position of the Parties
- [5] The plaintiff says that the defendants still have not complied with the Taylor order, particularly their obligations to disclose documents. The plaintiff raised this at the judicial management conference in March 2014 with counsel advising that the plaintiff intended to resume this application.

- [6] The plaintiff relies on the affidavits of John Mao dated August 26, 2013, and April 9, 2014. Mr. Mao is the solicitor for the plaintiff according to the affidavits. He has meticulously reviewed the defendants' documents and the affidavits of the defendants and he addresses in those affidavits what he considers to be gaps in the documents specifically related to the sale of the McKay property in Burnaby; the defendants' TD accounts; the defendants' mortgage on the McKay property; the defendant, Ching Wei Siew's Taiwanese bank account; and the destination of nine transfers of funds totalling \$291,000 and the amount of \$168,119 US transferred to the proceeds. She seeks to trace the proceeds of sale from the McKay property.
- [7] The plaintiff refers to "further evidence of the cavalier and contentious attitude of the defendants." The plaintiff refers to *Schwarzinger v. Bramwell*, 2011 BCSC 304, at para 144: "There comes a time when the Court must say 'enough'".
- [8] The defendants say that they have complied with the Taylor order. They are not resisting the disclosure of documents. They assert that the court must consider the context of this action.
- [9] The defendants are husband and wife who came to Canada from Taiwan in 1989. The plaintiff is Ms. Siew's aunt. They acknowledge the receipt of a large amount of money from the plaintiff but say it was not given to them as an investment as the plaintiff asserts, but as a gift. They say there was no documentation that the plaintiff has produced to demonstrate that the plaintiff's providing of these funds to the defendants was other than a gift. The defendants intermingled the money with their own and they did not keep records.
- [10] In 2010, the plaintiff informed the defendants that she needed money and the defendants provided financial assistance to her in light of their long-standing close relationship and the plaintiff's generous gift to them.
- [11] In compliance with the Taylor order, the defendants have produced one list of documents and eight amended list of documents: over 2,600 documents. They have taken steps to address the questions raised in Mr. Mao's affidavit number 1 and are continuing to address Mr. Mao's affidavit number 2. The defendants assert that their conduct does not warrant the censure of the court but if it does, the court must apply the Schwarzinger factors. Decision
- [12] I am satisfied that the defendants are in substantial compliance with the Taylor order even though the production of documents and information have, in the plaintiff's words, come piecemeal in an overextended period. The defendants continue to provide disclosure and to address the concerns Mr. Mao expresses in his affidavits.
- [13] While Mr. Mao's scrutiny of the documents has shown that there are gaps, I am not prepared to draw the inference that the plaintiff says arises, that the defendants are hiding documents, avoiding disclosure or acting in a cavalier or contentious manner. The reality is that documentation in litigation may be piecemeal and may be provided over an extended period. It is rarely perfect.

- [14] I consider that the defendants have now grasped their obligations and are being responsive and are not in breach of the Taylor order which, it must be recalled, was issued when there was no disclosure of documents at all by the defendants.
- [15] I therefore dismiss the plaintiff's application.
- [16] Another matter has arisen that Mr. Bridge mentioned in the judicial management conference and that is the terminal illness of the plaintiff. I cannot blame any delay between the hearing of the judicial management conference and now on the defendants. The plaintiff is dominus litis and she has chosen to proceed as she has. She has not made herself available for examination for discovery in spite of the defendants' request that she do so. I can only encourage the parties to get on with the litigation. I am available for further judicial management conferences as required. (Discussion re costs)
- [17] THE COURT: The usual rule is that costs follow the event. I appreciate that there was a real issue between the parties about disclosure. Each party comes to court believing that they genuinely have a reasonable position. I accept that while the plaintiff had a genuine belief in her position, I do not find that to be a basis for denying the defendants' costs. They were successful in this application and they are entitled to costs at scale B. "Gropper, J."

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