

CANADA / JUDGMENT

Frost v. Li

2025 BCSC 2499

COURT

Supreme Court of British Columbia

DECIDED

17 December 2025

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2025 BCSC 2499 Frost v. Li

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Frost v. Li,

2025 BCSC 2499

Date: 20251217

Docket: S240426

Registry: Vancouver

Between:

Darryll Frost

Plaintiff

And

Hang Li also known as Elsie Li, Xing Li, Meiping Hang,

Meilleur Group Distribution Ltd., Montecito Group Co. Limited,

Bernina Trading Jiangsu Co., Ltd. and Nantong Zhensu Trade Co, Ltd.

Respondents

- and -

Docket: S241621

Registry: Vancouver

Between:

Hang Li also known as Elsie Li

Petitioner

And

ALNA Packaging Co. Ltd. and Darryll Frost

Respondents

- and -

Docket: S242415

Registry: Vancouver

Between:

Hang Li also known as Elsie Li

Plaintiff

And

Darryll Frost

Defendant

- and -

Docket: S255831

Registry: Vancouver

Between:

Darryll Frost

Petitioner

And

ALNA Packaging Co. Ltd.

Respondent

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

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Introduction

- [1] This decision addresses two applications argued together.
- [2] In Action No. S240426, all defendants, apart from Ms. Li, apply to strike Mr. Frost's claims against them on the basis that they are bound to fail.
- [3] In Action No. S255831, Mr. Frost seeks leave to bring a derivative action by ALNA Packaging Co. Ltd. against the same defendants he is personally suing in the first Action.
- [4] Mr. Frost and Ms. Li are ALNA's owners and directors. Mr. Frost alleges that Ms. Li misappropriated money and businesses belonging to ALNA, with the knowledge and assistance of her parents and companies they control in China. He further alleges she committed tax fraud, costing ALNA approximately \$3 million in interest, and obstructed ALNA from prosecuting these valid claims against her and her family. Ms. Li denies the allegations.
- [5] In the strike application, the defendants argue that Mr. Frost's claims must fail because they assert wrongs, not against him personally, but against ALNA. Thus, it is only ALNA that can prosecute them under what is known as the rule in *Foss v. Harbottle*.
- [6] In response, Mr. Frost relies on decisions of our Court of Appeal holding that, in a two-shareholder company built on a special relationship between the parties, one shareholder can claim in oppression and also, in limited circumstances, in breach of fiduciary duty, against the other shareholder/director, for alleged misappropriation of the company's money, assets and opportunities.

- [7] I agree with Mr. Frost that these decisions provide an arguable case that his allegations against Ms. Li support claims in oppression and breach of fiduciary duty, and for knowing participation and assistance against the other defendants. Mr. Frost's pleadings therefore make out an arguable case for both causes of action and the application to strike is dismissed.
- [8] Turning to Mr. Frost's application for derivative leave under s. 232 of the Business Corporations Act, S.B.C. 2002, c. 57 [BCA], he seeks leave for ALNA to sue Ms. Li, her parents, and four companies they are involved with, for the same claims as in his personal lawsuit against these defendants.
- [9] Ms. Li opposes most of the proposed derivative action. She submits that the claims for misappropriated money and business are contrary to ALNA's best interests because they: (a) implicate ALNA in contravening Canada's sanctions against Russia for the war against Ukraine; and (b) are bound to fail under the Limitation Act, S.B.C. 2012, c. 13. She argues the claim for obstructing ALNA's prosecution is also bound to fail because her impugned actions were reasonable and lawful. She does not oppose leave for the claim regarding ALNA's taxes, though she says it will be defended on the facts and Mr. Frost and others will be third parties.
- [10] In my view, leave should be granted. Mr. Frost's evidence of the potential strength and value of the claims entails that it is in ALNA's best interests to pursue them despite the defences raised by Ms. Li.

Parties

- [11] ALNA Packaging Co. Ltd. is a British Columbia company, incorporated in 2018. It distributes packaging products made in China, with its main product-line being aluminum cans and lids.
- [12] Mr. Frost resides in Vancouver. He is a director and the majority shareholder of ALNA, holding 55% of its shares through a family trust.
- [13] Ms. Li also resides in Vancouver and is a Chartered Professional Accountant. She is ALNA's other director and owns 45% of its shares through a BC corporation.
- [14] Meilleur Group Distribution Ltd. is a British Columbia company incorporated in 2021, owned 50/50 by Mr. Frost and Ms. Li.
- [15] Montecito Group Co. Limited is a Hong Kong company, incorporated in 2021. Mr. Frost and Ms. Li are its two directors. They owned it 50/50 until Ms. Li transferred her shares to her mother.
- [16] Nantong Zhensu Trade Co, Ltd. was incorporated in the People's Republic of China in 2019. Ms. Li's mother, Meiping Hang, is the director and majority shareholder of Zhensu. Ms. Li's evidence is that her mother resides in China with no connection to Canada.

[17] Bernina Trading Jiangsu Co., Ltd. was incorporated in China in 2022. Ms. Li's father, Xing Li, is the director and majority shareholder. He also resides in China.

[18] The following chart from counsel for Mr. Frost summarizes these details:

Date

Company

Jurisdiction

Shareholders

Directors

2018

ALNA

BC

Darryll 55%

Elsie 45%

Darryll

Elsie

2019

Zhensu

PRC

Elsie's mother, Ms. Hang

Elsie's mother

2021

Meilleur

BC

Darryll 50%

Elsie 50%

Darryll

Elsie

2021

Montecito

HK

Darryll 50%

Elsie's mother, Ms. Hang 50%

Darryll

Elsie

2022

Bernina

PRC

Elsie's father, Mr. Li

Elsie's father

Background

- [19] Mr. Frost and Ms. Li met in 2015. He was the CEO of Central City Brewers & Distillers Ltd. ("CCBD") and she joined the company as finance manager and later became CFO. CCBD is a draft brewery, craft distillery, and co-packager of beverages.
- [20] Mr. Frost's evidence is that they worked closely together and developed a mutual trust and confidence. In 2018, he asked her to join him in the new business of purchasing aluminum cans and lids in China for sale in North America and beyond. She agreed and together they formed ALNA.
- [21] Mr. Frost's evidence is that Ms. Li ran ALNA's day-to-day operations, while he ran CCBD. By 2021, ALNA was doing well. Because its suppliers were in China, they decided to expand operations and seek customers in Asia. ALNA opened an office in China and hired employees.
- [22] Mr. Frost's evidence is that it was Ms. Li's idea to add the additional companies to ALNA's business for tax and trade reasons. For Bernina and Zhensu ("China Companies"), she told him that, although they belonged to ALNA, for reasons of tax and trade restrictions, it was better if the legal owners were Chinese and so her parents were made the shareholders.
- [23] Mr. Frost's evidence is that Ms. Li managed the operations of ALNA and the China Companies together, and her parents were not involved. Ms. Li denies this and says the companies were her father's idea and her parents ran them from the outset without her involvement.

- [24] From 2021-2023, Ms. Li caused ALNA to transfer almost US\$9 million to the defendant companies. Mr. Frost's evidence is that he understood much of this was start-up capital for the China Companies. Ms. Li acknowledges the transfers but denies it was start-up capital. During these years, the China Companies' financial and business information was shared with ALNA.
- [25] In June 2023, the parties had a key discussion the specifics of which are contested and important for Limitation Act purposes. Ms. Li's evidence is that she told Mr. Frost the China Companies belonged to her parents and not ALNA. Mr. Frost's evidence is that she told him only that she wished to negotiate separating their business interests, and it was not until the end of August that she spoke of the China Companies not belonging to ALNA.
- [26] The parties' litigation began in August 2023, when Mr. Frost sued Ms. Li for repayment of a loan and Ms. Li counterclaimed for oppression regarding the running of CCBd.
- [27] On August 28, 2023, Ms. Li terminated the flow of financial information from the China Companies to ALNA. At the time, Bernina held almost US\$10 million in cash. On October 11, 2023, employees of the China Companies ceased cooperating with ALNA. A week later, Ms. Li told the ALNA employees that Bernina was a separate company owned by her father, and that the China team would no longer be working with ALNA.
- [28] Mr. Frost quickly took over day-to-day management of ALNA and excluded Ms. Li from operations, though she remained a director. A monitor was appointed in April 2024 to oversee ALNA's expenditures.

Litigation

- [29] By summer 2024, the parties were embroiled in five lawsuits in this court. There are now six proceedings, summarized in a table prepared by counsel for Mr. Frost, attached hereto as Appendix A.
- [30] The proposed defendants in the derivative action have entered into a tolling agreement with ALNA for limitation periods from August 28, 2025 forward.

Should Mr. Frost's Claim Be Struck?

- [31] Action No. S240426 was commenced by ALNA and Mr. Frost in January 2024. ALNA was quickly removed as a plaintiff because, Mr. Frost and Ms. Li being its only directors, there was no resolution approving its lawsuit. Thus, only Mr. Frost's personal claims remained.
- [32] The ANoCC pleads that ALNA was formed based on the trust and confidence between the parties from their previous business history. It pleads these material facts:

- Mr. Frost had complete trust in Ms. Li from her role as CFO at CCBd.
- In 2018, they had a partner-like business relationship and so agreed to carry on the sale of aluminum cans and lids in common for profit, using ALNA as their corporate vehicle.

· Mr. Frost provided the start-up capital for ALNA. Ms. Li, who spoke Mandarin, was to manage the business. She was made the CEO and Mr. Frost reasonably expected her to run the business honestly and lawfully.

· By 2021, ALNA had grown rapidly and had annual net pre-tax income of almost \$10 million.

· She told Mr. Frost that, to facilitate ALNA's overall business, she would register the China Companies in her parents' name, but this would not affect ALNA's beneficial ownership of those businesses. She then moved ALNA's money and business opportunities into the defendant companies, who earned significant revenues.

· The money she misappropriated from ALNA was:

- i. US\$4.5 million to Meilleur, and then from Meilleur to Bernina. Ms. Li recorded the transfers on the books of ALNA as a deposit, and of Meilleur as a debt owing to ALNA.

(Ms. Li submits that this US\$4.5 million was paid to Bernina under a written supply agreement, between Meilleur and Bernina, by which Bernina was to supply aluminum cans and lids to ALNA through Meilleur. Her position is that \$800,000 of product has been provided, leaving US\$3.7million on deposit for Meilleur with Bernina for future delivery of aluminum. She says Meilleur and ALNA are free to draw on this deposit by ordering aluminum from Bernina, and no defence of illegality or limitation periods apply. She further submits it is unfeasible to collapse the contract and return ALNA's money because of monetary and currency restrictions in China. Mr. Frost denies the validity of the supply agreement and says it is a sham entered into by Ms. Li contrary to her fiduciary duty to ALNA.)

- ii. US\$840,229.86 from ALNA to her father: (i) US\$365,194.86 on July 7, 2022; (ii) US\$178,063.00 on October 24, 2022; and (iii) US\$296,972.00 on March 1, 2023.

(Ms. Li says these payments have already been accounted for as a distribution to her in the parties' prior sharing of ALNA's profits.)

- iii. US\$3,000,000 to Montecito by ALNA's supplier in April 2023.

(On August 7, 2025, Ms. Li was ordered to cooperate in causing Montecito to repay this to ALNA so ALNA could pay its tax debt, which has now occurred.)

· Initially, Ms. Li presented financial statements showing both ALNA's results and those of the corporate defendants and managed the group like a single economic enterprise.

· In 2023, however, she took the position that the China Companies belong wholly to her parents and were not beneficially owned by ALNA. She terminated Mr. Frost and ALNA's access to information from the China Companies and ordered their China employees, who formerly worked as a team with ALNA's Canadian employees, to stop cooperating and coordinating with ALNA.

· Her parents and the China Companies which they owned and controlled were knowing participants and beneficiaries of the misappropriation of ALNA's money and business.

[33] The ANoCC alleges that Ms Li owed fiduciary duties to Mr. Frost as a partner and shareholder of ALNA. He pleads that her misrepresentations, cash and business diversions, and tax fraud breached these duties and his reasonable expectations, and she is liable in breach of fiduciary duty, conspiracy, unjust enrichment and oppression.

[34] As against the other defendants, the ANoCC alleges complicity with, and benefits from, the unlawful acts of Ms. Li, specifically:

- Knowing receipt of the benefits of breach of fiduciary duty
- Knowing assistance in breach of fiduciary duty
- Unlawful means conspiracy
- Unjust enrichment
- Participation in oppression under s. 227 of the Business Corporations Act.

Legal Test

[35] Rule 9-5(1)(a) of the Supreme Court Civil Rules permits the court to strike a pleading if it discloses no reasonable claim.

[36] The procedure is summarized in Jiashan County Agri-Commerce Joint Small-Sum Co. Ltd. v. Cao, 2025 BCCA 141:

[24] On an application under Rule 9-5(1)(a), no evidence is admissible. The question is whether, assuming the facts pleaded are true, it is plain and obvious that the pleading discloses no reasonable cause of action or defence. Pleadings are to be read generously, and the Court is to consider the pleadings as they stand and as they might reasonably be amended. As the chambers judge also noted, a pleading will not be struck simply because the claim or defence advanced is novel. Novel but arguable claims should be permitted to proceed to trial.

[Citations omitted.]

Analysis

[37] The defendants submit that the ANoCC pleads wrongs done to, and losses suffered by, ALNA alone and not Mr. Frost.

[38] While acknowledging the authority supporting Mr. Frost's arguable case in oppression, they take a stronger line against his claims in breach of fiduciary duty.

[39] Regarding oppression, in *Yen v. Ghahramani*, 2023 BCCA 403, the Court said found an arguable case for a shareholder alleging misappropriation of assets from a closely-held company:

[71] In my view, there are sufficient Canadian authorities that essentially blur the line between oppression and derivative actions in cases involving the misappropriation of assets of closely-held corporations, that it is no longer correct to say these assertions would be 'bound to fail', at least in a case like this.

[Citations omitted.]

[40] In my view, it follows from *Yen* that Mr. Frost's oppression claims against Ms. Li, for alleged losses caused to ALNA are not bound to fail.

[41] On fiduciary duty, the defendants point to two well-established legal principles which they say undermine Mr. Frost's personal claims against them:

- When a corporation suffers a loss, the cause of action belongs to the corporation itself, and not to its shareholders who are distinct legal persons. Just as a shareholder cannot be sued for its wrongs neither can they sue for the wrongs done to it. For a shareholder to have their own right of action, the defendant must have breached a distinct obligation owed to them and suffered a direct injury independent from that of the company. This is a bedrock principle of corporate law, often referred to as the rule in *Foss v. Harbottle* (*Brunette v. Legault Joly Thiffault, S.E.N.C.R.L.*, 2018 SCC 55, paras. 25-29).

- Directors of corporations owe their fiduciary obligations to the corporations and not to its shareholders (*BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 66).

[42] In my view, despite these well-established legal principles, Mr. Frost's fiduciary claims are not bound to fail.

[43] I say this because of cases holding that a director may owe a fiduciary duty to shareholders, in relation to the company and its assets, in the limited circumstances of a special relationship of trust and dependency where the director takes unfair advantage for personal gain (*Dusik v. Newton* (1985), 62 B.C.L.R. 1, 1985 CanLII 406 (C.A.); *Valastiak v. Valastiak*, 2010 BCCA 71, paras. 48-48; *Canex Investment Corporation v. 0799701 B.C. Ltd.*, 2020 BCCA 231; *Roussy v. Savage*, 2019 BCSC 1669, paras. 296-297.)

[44] In *Dusik*, such a special relationship was found in a two-shareholder company built by the two parties together.

[45] In *Valastiak*, a husband and wife put their money into a restaurant business held by a company. The husband was the sole director and shareholder, holding 50% of the shares in trust for his wife. When the parties separated, he spent the company's money personally and ran the business into the ground. The Court found he misappropriated the company's assets while acting in a fiduciary capacity to his wife as a beneficial shareholder. Chief Justice Finch said this:

[51] In my view, these cases provide sufficient authority to hold that in the circumstances of this case - in a corporation with only two shareholders who were in a special relationship of trust and dependency and in which Mr. Valastiak was the sole director - Mr. Valastiak, as director, owed Ms. Oakley, as shareholder, fiduciary obligations. As a result, when Mr. Valastiak was acting as the director of the corporation he was "acting in a fiduciary capacity" in relation to Ms. Oakley in relation to the corporation and its assets.

[Emphasis added.]

[46] A similar conclusion was reached in *Canex Investment*, paras. 101-102. The plaintiffs were minority shareholders of a real estate development company. The defendants, who were the directors and majority shareholders, used another company to manipulate the development company's financial records to reduce the plaintiffs' investment, and to charge excessive management fees and other costs. The Court upheld the finding of a breach of fiduciary duty by the director, for reallocating corporate money into her family's company accounts and her failure to keep the company's financial records honestly and in good faith.

[47] In my view, based on these cases, Mr. Frost's pleadings allege the type of special relationship and unfair advantage where such a claim can arguably succeed:

- Mr. Frost had trust and confidence in Ms. Li from their prior business relationship, such that when they started ALNA's business they were akin to partners.
- Mr. Frost provided all the start-up capital for ALNA.
- Ms. Li managed the business and Mr. Frost was passive and somewhat dependent. She set up the China Companies, telling Mr. Frost their legal ownership was to facilitate ALNA's overall business, but that ALNA was the true beneficial owner.
- Ms. Li then diverted significant amounts of ALNA's money and its beneficial ownership of the China Companies to the defendants.

[48] I would add that three of the key rationales for the rule in *Foss v. Harbottle* appear not to apply in this case. First, the risk of double recovery is alleviated by all claims being managed and heard by one case management judge. Second, case management also reduces the prejudice of multiple proceedings. Third, in a two-shareholder company, there is not the risk of one shareholder's recovery being at the expense of the others who have suffered the same loss in value to their shares.

- [49] The defendants further argue that, even if Mr. Frost has alleged the type of special relationship and wrongdoing that can create a personal cause of action for breach of fiduciary duty, he is still bound to fail because he lacks any loss independent from that of ALNA. His losses are only the diminished value of his ALNA shares.
- [50] In my view, the cases referred to above treat the fiduciary duty in question as applying to the company and its assets, and therefore no direct independent loss is required (Valastiak, para. 51, quoted above). In Valastiak, for example, the breaching director was found to owe the innocent shareholder \$30,000 for misappropriation of company assets in breach of fiduciary duty, which was measured in terms of the diminishment of the value of her shares in the company.
- [51] The defendants provided no specific argument or authority suggesting that, even if Mr. Frost could arguably claim against Ms. Li in oppression and fiduciary duty, he could not extend these claims as against them for alleged complicity and benefits, and I see no reason in principle why that would not be so. For the oppression remedy, s. 227(3) allows for any remedial orders considered appropriate to remedy the matters complained, including express authority to set aside a transaction to which the company is a party and ordering a third party to pay compensation. This remedial power has been used to impose constructive trusts over third parties (*Waxman v. Waxman*, 2004 CanLII 39040, [2004] O.J. No. 1765 (C.A.) paras. 571-589).
- [52] Finally, the defendants made the procedural argument that Mr. Frost's oppression claim should be struck because the Rules of Court require it to be brought by petition, which cannot be ignored simply for convenience (*Mason v. Mansion House Estates Ltd.*, 2021 BCSC 2465).
- [53] No issue can be taken with the general principle that one should not circumvent the legislative requirement of an oppression proceeding being commenced by petition. In these circumstances, however, nothing is to be gained by requiring Mr. Frost to draft a new oppression petition. The oppression claims are interwoven with those for breach of fiduciary duty, and both appear to involve multiple trial issues. As case management judge, it is clear to me that the six lawsuits are already complex and costly. In these circumstances, it is contrary to the interests of justice to require the additional step of recommencing the oppression proceedings by petition (*Leung v. 568263 BC Ltd.*, 2000 BCSC 577, paras. 21-24; *McKenzie v. Hannibal*, 2012 BCSC 1547, para. 58).
- [54] The application to strike Mr. Frost's claims is therefore dismissed.

Should Derivative Leave Be Granted?

- [55] As mentioned above, Mr. Frost's proposed claims by ALNA against Ms. Li and her family members and their companies are for: (i) misappropriation of money and businesses; (ii) tax fraud; and (iii) obstruction of prosecution of these claims in January 2024.

- [56] As a shareholder of ALNA, Mr. Frost is entitled to apply for derivative leave under BCA s. 232.
- [57] Ms. Li accepts that reasonable efforts were made to cause ALNA's directors to prosecute the proposed action and that all relevant parties have received notice. Thus, the three issues for determination are whether the claims: (i) are brought in good faith; (ii) serve ALNA's best interests; and (iii) raise residual reasons for refusing leave.
- [58] Regarding good faith, Mr. Frost must establish, by evidence and on a balance of probabilities, that his primary purpose is to benefit the company. True belief in the merits of the proposed action is some evidence of good faith, but not necessarily determinative (2538520 Ontario Ltd. v. Eastern Platinum Limited, 2020 BCCA 313, paras. 29-32, 53-54, 67).
- [59] Regarding ALNA's best interests, the focus is primarily the merits of the action and whether Mr. Frost has shown an arguable case with evidence to support a reasonable prospect of success. Other factors include the potential value of the relief in relation to the cost and effort to pursue it (Eastern Platinum, paras. 34-38).
- [60] On the merits, the court "should do more than skim the surface of the pleadings and should consider the evidence but ought not to dive so deeply into the merits as to try the case". Disputed facts are not to be resolved at this stage. The task is a limited weighing of the evidence to determine if Mr. Frost has presented "some evidence" in support of his allegations and they are not bound to fail (Eastern Platinum; Hougen Co. Ltd. v. Su, 2023 BCSC 1743).
- [61] Regarding residual considerations, s. 233(1) provides residual discretion whether to grant leave even if the other statutory requirements are met. Frequently this involves an assessment of the factors as a whole, as opposed to separately (Eastern Platinum, paras. 39-42).

Claim #1: Misappropriation of the China Companies

- [62] Mr. Frost alleges that Ms. Li misappropriated ALNA's beneficial ownership of the China Companies by falsely claiming her parents' beneficial ownership.
- [63] Ms. Li says leave should be denied because the claim: (a) is not in ALNA's best interests because it would be illegal for ALNA to own the China Companies; (b) is bound to fail under the Limitation Act; and (c) relies on alleged sham arrangements, illegal business transactions, and seeks proceeds of crime, and so the Court's residual discretion should not be exercised in its favour.

[64] On the facts, Ms. Li says that, in 2022, it was her father's idea to begin selling products from China to Russia because of the sanctions against doing so in Canada and other countries. She submits documentary evidence to show that, since June 2022, Mr. Frost knew of the Canadian sanctions against selling aluminium products to Russia and understood that ALNA could not be involved in that business. Nevertheless, as recently as 2024, he tried to have ALNA sell aluminum products directly to a Russian customer until she put a stop to it.

Some Evidence for the Claim?

[65] In my view, Mr. Frost has submitted more than the requisite "some evidence" to support a reasonable prospect of success. The extent of his evidence in support satisfies me that the claim is brought in good faith to benefit ALNA.

[66] His evidence that, until late 2023, Ms. Li was running the China Companies as part of ALNA includes:

- Documentary evidence that the Bernina employees in China initially entered into independent contractor agreements with ALNA and continued to use ALNA email addresses until Ms. Li separated off the China Companies.
- Ms. Li provided Mr. Frost with the China Companies' bank records.
- Emails from ALNA employees and the China employees, referring to the "Canada Team" and the "China Team".
- Yan Qin, ALNA's internal accountant, deposes that he prepared financial reporting packages that included the financial information for ALNA and the China Companies, and their accounting records all shared the same software.
- Tony Lin, ALNA's operations manager, deposes that he understood the "China Team" was part of ALNA and that the team was created because it was easier for personnel in China to deal with Chinese suppliers. While Canada focussed on sales, the "China Team" focussed on suppliers and support for sales logistics and day-to-day operations in China. Mr. Lin's evidence also contradicts Ms. Li's denial of involvement with the China Companies, by deposing that his experience was that both teams worked as a unified group under her direction.
- Mr. Frost deposes to no dealings with Ms. Li's parents regarding the China Companies, and there appears to be no evidence of such involvement in the enormous documentary record filed for this application.
- Ms. Li obtained no evidence from her parents to support her version of events, despite the parents' counsel attending the application.

Not in ALNA's Best Interests Because of Illegality?

[67] In my view, it is in ALNA's best interests to pursue this claim despite the potential illegality issues.

- [68] Ms. Li says the claim is not in ALNA's best interests because it is founded on the theory that her parents' ownership of the China Companies was a sham, created so ALNA could profit from illegal sales of aluminum products to Russia. She submits that Mr. Frost could take the good faith position that such a claim was in ALNA's best interests only if he had legal advice that the claim did not involve illegality or that the potential benefits outweighed the risks.
- [69] Mr. Frost responds, firstly, that much of the China Companies' misappropriated business did not involve sanctioned products. Second, to the extent it did, this does not prevent ALNA from seeking equitable compensation from Ms. Li and her family, as opposed to a share of the profits from any illegal sales. Third, ALNA's beneficial ownership of the China Companies did not violate the sanctions.
- [70] Since May 2022, all Canadian companies and individuals have been prohibited from supplying aluminum products to Russia pursuant to the Special Economic Measures (Russia) Regulations, SOR/2014-58, under the Special Economic Measures Act, S.C. 1992, c. 17. It is an indictable offence to wilfully contravene such a regulation (Act, s. 8). Ms. Li also points to ss. 354 and 462.31 of the Criminal Code, R.S.C. 1985, c. C-46, for offences relating to the possession of the proceeds of crime.
- [71] Both sides submitted complex submissions on this issue, authored by leading international trade lawyers. In my view, on the current record there appears to be a strong initial case that ALNA is prohibited from ownership of foreign companies that sell sanctioned goods to "any person in Russia".
- [72] In my view, pursuing the claim is nevertheless in ALNA's best interests for the following reasons.
- [73] First is the arguable strength of ALNA's claim to beneficial ownership of the China Companies based on the evidence summarized above.
- [74] Second, the opportunities and profits in issue may be substantial. Document production having not yet occurred, ALNA's visibility into that is limited to the US\$10 million in Bernina's bank account in August 2023 and its financial statement, for the seven-month period ending July 31, 2023, showing sales revenue of approximately US\$17 million.
- [75] Third, as discussed below, Claim #2 is also supported by material evidence and potentially worth approximately US\$4.6 million to ALNA. Pursuit of that claim involves the same subject matter regarding the China Companies but is less likely to be subject to the defence of illegality.
- [76] Fourth, the allegations of ALNA's ownership of the China Companies has already been aired in the public record.
- [77] Fifth, presumably ALNA will be denied any remedies contravening the law of illegality. In my view, it is therefore only speculative that there will be negative consequences to ALNA from such a proceeding.

- [78] Sixth, the China Companies appear to have earned significant profits in 2022-2025 from selling products which did not contravene the sanctions. ALNA's documents show that, in 2022 when Bernina was incorporated and funded by ALNA, it was pursuing the sale of aseptic products to Russia, the sale of which was not sanctioned until July 2025. These products, akin to juice boxes, were sourced from a Chinese beverage supply company named Lamipak. Bernina's financial statements show approximately US\$10 million of its \$17 million sales revenue coming from these products. As recently as March 2024, the first products shown on Bernina's website are Lamipak products. There is also evidence of sales to countries other than Russia, such as Kazakhstan, to which no sanctions apply.
- [79] Seventh, and related to the previous point, Mr. Frost may be able to establish his theory that Ms. Li originally wanted her parents as legal owners of the China Companies, not because ALNA's ownership would have been illegal in Canada, but because Chinese ownership was more straightforward for doing business between China and Russia in terms of tax and trade restrictions.
- [80] Eighth, if Mr. Frost does establish that Ms. Li was an unfaithful fiduciary, the illegality defence might not protect her or the other defendants from a disgorgement remedy. The illegality cases relied on by Ms. Li were for enforcement of illegal contracts, not breach of fiduciary duty or unjust enrichment. It appears there has been little Canadian consideration of the defence of illegality in unjust enrichment cases (*Kim v. Choi*, 2020 BCCA 98, para. 33).
- [81] I therefore find that Mr. Frost has demonstrated that pursuing this claim is in ALNA's best interests.

Bound to Fail Under the Limitation Act?

- [82] Ms. Li says the claim is also not in ALNA's best interests because the only reasonable conclusion on the evidence is that, on June 27, 2023, she told Mr. Frost that the China Companies were owned by her parents, not ALNA. The claim for misappropriation of the China Companies is therefore bound to fail because this conversation occurred more than two years before the tolling agreement of August 28, 2025.
- [83] Mr. Frost's contrary evidence is that the discussions from June through August 2023 were about separating and dividing their business. He says Ms. Li did not deny ALNA's ownership of the China Companies until after August 28, 2023, when she stopped sharing financial information, and she did not clearly articulate this position until October 2023. He says that, because the proposed claims involve fraud and breach of trust, the requisite discovery did not occur until he had actual, not constructive, knowledge of Ms. Li's position (*Limitation Act* s. 12; *Wilkinson v. Chartier*, 2025 BCCA 53, para. 54).
- [84] Ms. Li points to the following to support her evidence that she told Mr. Frost about the China Companies on June 27, 2023, after a CCBD board meeting:

- Mr. Frost's initial affidavit evidence was that it was in "the middle of 2023" when he and Ms. Li had this "shocking conversation" where she indicated her intention to misappropriate the China Companies from ALNA.

- The hostility in Mr. Frost's emails to Ms. Li after June 2023 are consistent with Ms. Li's version of events.

- In a judicial management conference on May 30, 2023, counsel for Mr. Frost said this:

And so that brings me to the second thing that I seek to do, which is the break between the parties came in June of '23. I am beginning to worry about limitation periods. I want to seek the court's leave to start an action and serve it and then sit on it - an action on behalf of ALNA, of course - and then sit on it until the question of who's the board of ALNA has been determined so that, no matter what happens, the limitation period is interrupted.

And I've told my friends - and I told them this only yesterday, and they may want to think about it - but I told them I hope they can consent to it, because it's purely procedural. And if they're not, then I seek - I'm thinking an hour might do it - to resolve that.

- Ms. Li says these are informal admissions against interest which are admissible as evidence against Mr. Frost on this issue.[1]

[85] Mr. Frost points to the following evidence in support of his position:

- Ms. Li's first affidavit, sworn in her oppression petition, does not suggest ownership of the China Companies arose in the June 2023 discussion:

16. In mid-June, 2023, I indicated to Frost there were major differences between us and how we each envisioned the future of ALNA, and that, as such, we should go our separate ways - i.e. speaking in broad terms, I should take over ownership and control of ALNA and he should take over ownership and control of CCBD.

17. Frost's response to my suggestion was one of shock.

- The subject matter of their written exchange after the June 2023 conversation is about dividing their business and does not refer to a dispute about ownership of the China Companies, and continues to refer to them as "related companies" or "subsidiaries".

- Counsel for Ms. Li's letter, July 11, 2023, indicates discussion of the "business divorce" but does not assert that the China Companies do not belong to ALNA. Until approximately October 2023, none of the correspondence between the parties or their lawyers mentioned this claim.

- The first mention in writing of Ms. Li's position was on September 2, 2023, where Mr. Frost wrote to Mr. Wu that Ms. Li was "now" saying Bernina belonged to her parents.

[86] In my view, ALNA's claims are not bound to fail under the Limitation Act, and that defence does not make pursuing the claim contrary to ALNA's best interests.

- [87] Determining when Mr. Frost first heard of Ms. Li's position about beneficial ownership of the China Companies involves a credibility conflict, for which both sides can point to supporting circumstantial and documentary evidence as summarized above. On the current record, it appears this issue will require assessment of both parties' testimony, together with their evidence about full context and chronology of their relevant dealings.
- [88] Finally, I accept Mr. Frost's submission that some business diversion claims may have continued or emerged after August 27, 2023, and would not be at risk under the Limitation Act. Ms. Li remains a director of ALNA and the evidence suggests that the China Companies continue to carry on business. Ms. Li may have diverted opportunities after August 27, 2023, which should have been ALNA's.

Conclusion on Claim #1

- [89] Given my assessment of the evidence in support of ALNA's proposed claim and the defences raised by Ms. Li, in my view pursuing the claim is in good faith and in ALNA's best interests, and there are not overriding residual reasons for declining leave.
- [90] I therefore grant Mr. Frost leave to bring ALNA's proposed claims for misappropriation of the China Companies.

Claim #2: Misappropriation of ALNA's Money

- [91] In my view, for much the same reasons as for Claim #1, pursuit of this claim is in good faith and ALNA's best interests, and there are not residual reasons against derivative leave.
- [92] Mr. Frost has submitted material evidence in support of Claim #2 and its significant potential value. For the reasons given on Claim #1, the sanction and limitation defences do not outweigh these factors in support.
- [93] Claim #2 also has advantages over Claim #1, in that there are additional reasons why the illegality and limitation defences might not succeed.
- [94] On illegality, Ms. Li acknowledges a stronger case against the China Companies for Claim #2 than Claim #1. The former is for return of funds due to unjust enrichment, rather than potentially involving the return of proceeds of sales contrary to the Canadian sanctions. In other words, Claim #2 is more compensatory - in the sense of restoring the equitable status quo - rather than a profit or reward for alleged wrongdoing. (For the application of this approach in breach of fiduciary duty, see *Zhong v. Alan Hu Personal Real Estate Corporation*, 2025 BCSC 40, para. 111; *Kim v. Choi*, paras. 72-74; *Patel v. Mirza*, [2016] UKSC 42, paras. 99-101, 115, 120-121.)
- [95] On the Limitation Act, I agree with Mr. Frost that there is little or no evidence of when Mr. Frost knew, or should have known, of Ms. Li's position that Bernina would not be returning ALNA's investment.

[96] Finally, during the hearing, counsel for Ms. Li advised she is agreeable to winding up Montecito and repaying to ALNA any funds still held by Meilleur.

Claim #3: Tax Fraud

[97] Ms. Li did not oppose derivative leave for this claim. She acknowledged an arguable case on the evidence, particularly that of Mr. Qin alleging her responsibility for the impugned tax filings.

[98] The claim should be allowed to proceed. On the evidence, it is brought in good faith, serves ALNA's best interests, and there are not residual reasons to refuse leave.

[99] It is undisputed that ALNA's taxable income was understated, resulting in approximately \$3 million in interest charges plus associated professional fees, and that Ms. Li signed the filings in question. There is much evidence - including contemporaneous documents in Mr. Qin's affidavit - that Ms. Li was responsible for preparation of these filings. Mr. Frost's evidence is that Ms. Li, a chartered accountant, was responsible for ALNA's financial statements and tax returns. ALNA had no auditor or external accountant and so he did not begin to learn of ALNA's tax problems until late 2023.

[100] Ms. Li asserts that she will contest liability on the facts, argue that damages from the \$3 million of interest charges should be reduced by ALNA's profits from delayed payment of the \$14 million in taxes owing, and expects to third-party Messrs. Frost and Qin.

Claim #4: Obstruction of Prosecution

[101] Mr. Frost alleges that, in 2024, Ms. Li breached her fiduciary duty by thwarting his efforts to call director and shareholder meetings to authorize ALNA's prosecution of virtually the same claims for which he now seeks derivative leave.

[102] Her resistance included that: Mr. Frost was in a conflict of interest; his proposed independent director was unsuitable; and refusing to attend director and shareholder meetings to avoid the necessary quorum. Mr. Frost says ALNA's damages include the associated legal costs and delay.

[103] Ms. Li's says the claim is bound to fail primarily because she was successful in opposing Mr. Frost's attempts to elect an independent director and hold director and shareholder meetings to authorize the proceedings against her and her parents. That decision, indexed as 2025 BCSC 387, is currently under reserve in the Court of Appeal.

- [104] In my view, this claim is not bound to fail. Even if Ms. Li's steps in resistance were within her rights as a director of ALNA, a court might still find that she exercised those rights contrary to ALNA's best interests and to protect herself and her parents from ALNA's valid claims against her. As described above, Mr. Frost has provided evidence in support of such findings. I see no reason why it is not in ALNA's best interests to pursue this claim, nor any residual reasons against doing so.
- [105] The claim should be allowed to proceed. On the evidence, it is brought in good faith, serves ALNA's best interests, and there are not residual reasons to refuse leave.
- [106] The background facts to this claim are as follows.
- [107] In January 2024, Mr. Frost filed an Action on behalf of himself and ALNA, seeking much the same relief as in this case. On January 23, 2024, he delivered a Notice of Meeting of the Directors of ALNA, proposing a directors' meeting on January 26, 2024, to discuss ratifying the Action and disclosing ALNA's misstated tax filings to the Canada Revenue Agency. Ms. Li responded, through her lawyers, that she was unable to attend the meeting and so "there will be no quorum and no meeting may be held of business transacted thereat."
- [108] On January 25 and 30, 2024, Mr. Frost sought a general meeting of ALNA shareholders to consider increasing ALNA's directors from two to three by adding its solicitor, Murray Lott, to the board. On January 30, 2024, Mr. Frost discontinued the claim on behalf of ALNA because it had not been approved by ALNA directors. On February 14, 2024, Ms. Li took the position, through her lawyers, that Mr. Lott was an inappropriate candidate and that Mr. Frost, as the requisitioning shareholder, was conflicted from voting.
- [109] On February 23, 2024, Mr. Frost delivered a further notice seeking to call an ALNA shareholders' meeting on March 5, 2024, and on February 28, 2024, a notice of a directors' meeting for March 5 immediately after the shareholders' meeting.
- [110] On March 5, 2024, he attended these meetings but Ms. Li did not attend. In order to try to create quorum at the directors' meeting, Mr. Frost gave his wife, Lee Frost, a proxy for five shares of the Frost Family Trust's shares, with Mr. Frost representing the remaining 50 shares. They proceeded to elect Mr. Lott as chair of the board of directors and Mr. Frost as President and CEO. On March 7, 2025, the court declared these resolutions invalid and refused to order a meeting of ALNA's members. Mr. Frost appealed that decision, and the Court of Appeal is reserved on its decision.

Conclusion

- [111] In Action No. S240426, the application of the defendants, apart from Ms. Li, to strike Mr. Frost's claims against them is dismissed.
- [112] In Action No. S255831, Mr. Frost is granted leave to bring the derivative action for ALNA Packaging Co. Ltd., as attached to his Petition filed August 1, 2025.

[113] Subject to the parties advising in the next 30 days that they wish to speak to costs, Mr. Frost is awarded his costs in the cause, at Scale B, of the strike application from all defendants except Ms. Li, and of the derivative leave application from Ms. Li.

"Coval J."

Appendix A

[1] The parties made lengthy submissions about the admissibility of these statements, and counsel for Mr. Frost requested a finding about their admissibility so this potential conflict between counsel and client might be put to rest.

In my view, the statements are not admissible as evidence for the truth of their contents about the timing of the key discussion between the parties. In other words, they are not admissible for the truth of when Ms. Li first said to Mr. Frost that the China Companies belonged entirely to her parents. I say this because the statements are (at best) hearsay evidence about that issue, and also because the uncontradicted evidence from counsel is that they were made: (a) extemporaneously and without instructions; (b) in a scheduling conference and not in a context where they could be taken as an admission against interest by Mr. Frost; and (c) there is no evidence Ms. Li's team relied on them to its detriment.

Finally, Ms. Li's counsel provided no cases where similar statements were treated as admissible evidence against the client for the truth of their contents. Rather, her cases involved counsel's admissions made in pleadings, or in hearings when they were clearly intended to be relied upon by the court in deciding a substantive issue.

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