

CANADA / JUDGMENT

Genesis Manna Holdings Ltd. v. Chiang

2025 BCSC 2725

COURT

Supreme Court of British Columbia

DECIDED

28 April 2025

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2025 BCSC 2725 Genesis Manna Holdings Ltd. v. Chiang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Genesis Manna Holdings Ltd. v. Chiang,

2025 BCSC 2725

Date: 20250428

Docket: S252903

Registry: Vancouver

Between:

Genesis Manna Holdings Ltd., Manna Industrial Fund (Value-Add) GP Corp., Manna Industrial Fund (Value-Add) Limited Partnership, Manna Industrial Real Estate Management Corp., Manna Industrial 50 Precidio Corp., Manna Industrial Brampton LP, and Yuanhong Wei (also known as Nancy Wei)

Plaintiffs

And

Fa-Kai Chiang (also known as Michael Chiang), Allion Holdings Ltd., T Café Coffee Bar Ltd., 1532890 B.C. Ltd., Xiuxia Gao, 1534949 B.C. Ltd.,

and Shu Wang

Defendants

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

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M. Vesely

Place and Date of Hearing:

Vancouver, B.C.

April 28, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 28, 2025

[1] THE COURT: This application has been brought on a fairly urgent basis to address an earlier order granted by Justice Kirchner on April 15, 2025. The essence of the application before Justice Kirchner and the relief that he granted was in the form of a mandatory injunction (the "Kirchner Order"). On April 17, 2025, that injunctive relief was amended.

The Applications

[2] The applications before me today are twofold:

- a) Firstly, the defendants 1532890 BC Ltd. ("153") and Xiuxia Gao apply to set aside the Kirchner Order nunc pro tunc. That application is supported by other defendants, Fa-Kai Chiang (also known as Michael Chiang) and Allion Holdings Ltd. ("Allion"); and

- b) Secondly, the plaintiffs bring a competing application to extend the injunctive relief granted in the Kirchner Order and transform it into a permanent injunction.

The Evidence

- [3] There is a considerable amount of material before me. I commend the parties for having distilled that evidence for my consideration today, however, I will only be addressing with what I consider to be the more important facts in this matter.
- [4] The events that give rise to this matter begin with a partnership. That partnership known as "Genesis Manna", which was controlled by Yuanhong Wei (also known as Nancy Wei) and Mr. Chiang and Allion. The partners began with a 50/50 split interest in the partnership to develop certain properties in BC and Ontario. They ultimately did so through a complex web of two limited partnerships (LPs) and their related general partnership (GP) companies.
- [5] The present holdings of the corporate group at this time are a property in Richmond (the "Commerce Property") and two properties in Kelowna (collectively, the "BC Properties"); and finally, property in Brampton, Ontario (the "Brampton Property").
- [6] I also understand that there are two separate investor groups: about 32 investors involved in the Brampton Property; and about 240 investors involved in the BC Properties.
- [7] In the middle of this organization chart are three companies:
- a) Firstly, Manna Industrial Fund (Value-add) GP Corp. ("Manna GP"), which is the GP of Manna Industrial Fund (Value-add) LP ("Manna LP"), which owns BC Properties;
 - b) Secondly, Manna Industrial 50 Precidio Corp. ("Manna Precidio"), which is the GP of Manna Industrial Brampton LP, which is the owner of the Brampton Property; and
 - c) Thirdly, Manna Industrial Real Estate Management Corp. ("Manna Management").
- [8] As a result of this partnership, Allion and Ms. Wei, through her holding company, Genesis Manna Holdings Ltd. ("Genesis Holdings") were 50% shareholders of what I would call the two GPs and Manna Management.
- [9] In January 2024, Allion agreed to sell its shares in GPs and Manna Management to Genesis Holdings. The purchase price was about \$3.8 million, which included the shares in Manna GP, one common share in Manna Precidio and various Class A and Class B shares in Manna Management. The purchase price was payable in three different instalments: firstly, an amount on closing of about \$1.29 million; and, secondly, \$1 million due in February 2024 and was ultimately paid as the first deposit in March 2024. The difficulty arose with respect to the third payment, being \$1.5 million, which was due on September 4, 2024.

- [10] That transaction closed, and Genesis Holdings became the shareholder of all of the shares in the GPs and Manna Management, including the ones that have previously been held by Allion. However, the transaction included significant protections to ensure payment to Allion of the amounts still due, being a promissory note, general security agreement and a share pledge of the shares held by Genesis Holdings. As I understand it, if Genesis Holdings defaulted in payment of the amounts due, Allion was then in a position to act on its security.
- [11] In the meantime, and prior to the third payment coming due in September 2024, Manna's financial position was not going well. There were investor difficulties and a petition was filed in this Court by various investors. There were also matters before the BC Securities Commission by another company related to Genesis Holdings, being Genesis Wealth Management Corporation (the latter company acted as the exclusive agent for Manna LP to solicit investments).
- [12] As a result of these financial difficulties, on July 25, 2024, Allion made a demand for payment. Allion did not of course allege that the third payment was due; rather, Allion took the position that there were various defaults pursuant to the security documentation. Allion alleges that Manna LP and Manna GP had ceased to carry on business in the ordinary course as a result of these financial difficulties and had acted in a manner to reduce the value of the collateral under its security. Finally, Allion alleged that the debtors had failed to inform it of events that could be expected to have a material adverse effect on Allion's security.
- [13] There were later events taking place by which Manna's financial fortunes were not improving. It entered into forbearance agreements with National Bank, who has security on the Kelowna property. There were various transactions within the Brampton LP which were concerning to Allion. There was, of course, a failure to pay the third payment on September 4, 2024. Finally, there were further forbearance agreements with the second mortgagee on the Kelowna property, being IMC Limited Partnership.
- [14] Allion appropriately waited out the 60-day cure period to receive the third payment (to November 4, 2024). Payment did not materialize and, as a result, Allion, not unexpectedly, took action under its security. On November 18, 2024, Allion sent a notice of proposal for a voluntary foreclosure under s. 61 of the Personal Property Security Act, R.S.B.C. 1996, c. 359 [PPSA]. Genesis Holdings responded with an objection.
- [15] Later, there was a forbearance agreement with Prospera with respect to the Commerce Property.
- [16] Finally, on January 2, 2025, in light of Genesis Holdings' objection to the voluntary foreclosure, Allion sent to Genesis Holdings a letter giving a notice of disposition in accordance with s. 59(6) of the PPSA, maintaining its allegations of default. In particular, Allion pointed out that the third payment had not been made and stated that, if the third installment (then outstanding at approximately \$1.66 million) was not made, Allion would proceed to sell the collateral under its security.

- [17] As Allion's counsel has accurately noted, selling private shares, particularly in circumstances such as this, is not a simple matter. Putting a value on these shares can be quite challenging without appropriate information from the various corporate entities within the group. None of that information was forthcoming from Ms. Wei. In addition, she continued to maintain that the notice of disposition was invalid and that the disposition must be realized in a commercially reasonable manner. On the latter point, there is no dispute that s. 68(2) of the PPSA requires that a secured party act in good faith and in a commercially reasonable manner if it disposes of assets under its security.
- [18] On March 3, 2025, Prospera commenced foreclosure proceedings with respect to the Commerce Property.
- [19] As a result of the non-payment or non-curing of the defaults noted by Allion, on March 10, 2025, Mr. Chiang on behalf of Allion entered into a transaction with Ms. Gao and her company, by which Ms. Gao, through 153, purchased the shares in Manna GP and Manna Precidio for \$1.88 million. Genesis Holdings continued to be the shareholder of Manna Management, although those shares have now been seized.
- [20] Allion's counsel sets out various reasons why the share price was reasonable in the circumstances. He notes in particular that it only represented an amount which was \$400,000 less than the value ascribed by the parties to those shares in an earlier transaction.
- [21] On April 9, 2025, the purchase of the shares by 153 closed. And as one would expect, Ms. Gao/153 then took steps to assume control of the management of Manna GP and Manna Precidio. The share transfer was registered and 153 took action to replace the previous persons who were officers and directors of the two GPs.
- [22] At one point, Ms. Wei became aware of Ms. Gao's efforts to gain control of the bank accounts maintained by the two GPs.

This Action Begins

- [23] A short time later, on April 15, 2025, this action commenced. In the notice of civil claim ("NOCC"), Ms. Wei and Genesis Holdings recite the various real estate transactions that took place. There are also claims that Mr. Chiang was in breach of various fiduciary duties and that he engaged in a litany of misconduct, all of which is alleged to have caused harm to the Manna entities.
- [24] With respect to the share transaction, the NOCC includes an allegation that the defendants-- Ms. Gao and 153 and Mr. Chiang and Allion--conspired to set up shell companies to seize control of what is described as "the enterprise" and abscond with millions in sale proceeds. There is a claim that, unbeknownst to Genesis Holdings, Allion "in bad faith" sold the shares in a non-arm's length and commercially unreasonable sale to 153 and that Ms. Wei was ousted as a director and officer. There is also a reference that Ms. Gao and 153 having entered into a loan agreement in the amount of \$6.8 million with a person by the name of

Shu Wang that is related to the Ontario property.

[25] As a result of all of this, the plaintiffs claim damages for breach of fiduciary duty, breach of duty of care, negligent misrepresentation, breach of trust, gross negligence and willful misconduct. They seek an order that the defendants disgorge any benefit and they seek an accounting, and entitlement to trace. Finally, the plaintiffs seek an interim and permanent injunctive relief.

[26] This all led to what counsel have described as a very hurried application before Kirchner J., which I understand came very late in the Court's sitting day. The evidence before the Court, as I understand it, included Ms. Wei's Affidavits #1 and #2.

[27] On April 15, 2025, Justice Kirchner granted the following relief:

- a) He enjoined and restrained, on an interim basis, the defendants from purporting to act on behalf of or have any authority in respect of the Manna GP, Manna LP, Manna Management and Manna Precidio;
- b) He ordered that any shares held by Mr. Chiang, Allion, Ms. Gao, and 153 and/or Shu Wang and her company shall forthwith be transferred to Genesis Holdings; and
- c) He ordered that Ms. Wei be immediately restored as officer, director, president and secretary of the Manna Entities;
- d) He ordered that, on or before May 1, 2025, the plaintiffs must apply for a permanent injunction or an extension of his interim order;
- e) He ordered that the plaintiffs were to provide an undertaking to abide by any order that the court may make as to damages arising from the interim order (which was not done); and
- f) Finally, in the usual manner, he ordered that any party could apply to vary or set aside the Order.

[28] Despite the Kirchner Order, no transfer of the shares back to Genesis Holdings took place and Ms. Wei was not restored as an officer and director of the Manna Entities.

[29] On April 17, 2025, Justice Baker varied the Kirchner Order to provide that none of those things in that Order were required to be done without the prior consent of Ms. Gao and 153 (the "Baker Order").

[30] I am told that Ms. Wei had not made any request to do anything further. I agree with counsel that essentially has resulted in a deadlock between the parties.

Discussion

[31] Again, the main application is brought to set aside the Kirchner Order and the injunction provisions nunc pro tunc.

- [32] The parties have referred to the well-known injunction test, being *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117. That test is whether there is a serious issue to be tried, whether there would be irreparable harm suffered as a result, and the balance of convenience. However, with respect to the substance of the relief granted in the injunction, I agree with counsel that, in fact, the first part of the test is not a serious question to be tried; rather, it is whether the plaintiffs have established a strong *prima facie* case in light of the fact that the plaintiffs were seeking a mandatory injunction: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5.
- [33] I will not address in great detail Ms. Gao/153's notice of application by which they seek to set aside the *Kirchner* Order. In sum, Ms. Gao takes the position that the plaintiffs did not meet the stricter test for a mandatory injunction, as opposed to a prohibitory injunction; she says that the *Kirchner* Order significantly altered the status quo and shifted all the prejudice to the defendants. Ms. Gao alleges that there was a failure to disclose material facts. She says that Genesis Holdings has not demonstrated its ability to redeem the shares by paying its debts, despite being afforded ample opportunity to do so. This last point is a reasonable inference arising from the facts based on the failure to pay the \$1.5 million back on September 4, 2024 and that no offer of payment has since been made.
- [34] I will address the first part of the test: have the plaintiffs demonstrated a strong *prima facie* case?
- [35] I agree with the submissions of both Ms. Gao and 153 and Mr. Chiang and Allion that a strong *prima facie* case has not been demonstrated on the basis of the evidence. In particular, as Ms. Gao argues in her notice of application, the evidence in support of the allegations of conspiracy can only be described as "thin". It certainly does not meet the high test that is required to justify what I believe is the extraordinary relief that was granted by *Kirchner J.*
- [36] The impetus behind this so-called urgency arose from Ms. Gao seeking to take control of the bank accounts and the fact that a sale of the Brampton Property was closing. Counsel for the plaintiffs places considerable emphasis on a \$6.8 million mortgage that was registered just prior to the sale of the Brampton Property. I agree that the circumstances regarding that transaction are murky. However, in terms of urgency, it appears that the property sale closed, but no payment on that mortgage was made and that the monies are currently held in an Ontario lawyer's trust account. No doubt, further discussion must be held in terms of what is going to be the appropriate disposition of those funds - whether it goes to the Brampton investors or whether it comes back into the other parts of the organization to deal with matters.
- [37] Accordingly, I agree with Ms. Gao and Mr. Chiang's counsel that in no way can it be said that the strong *prima facie* case has been proven to justify the extraordinary relief that has been sought.

- [38] On the irreparable harm point, the plaintiffs allege that proper notice given under the PPSA was not given and, even if it was, there was an improvident sale. The NOCC seeks damages in that respect. As such, if damages are sought if those allegations are proven, I cannot see that injunctive relief was required.
- [39] In addition, there is a matter of the status quo. As I said, this relief is extraordinary in that it completely altered the status quo of the parties in the sense that there had been a completed sale to Ms. Gao by Allion. The protests of Ms. Wei and the other plaintiffs about being surprised about this transaction are, in my view, questionable. It was clear that a realization proceeding was underway, given that Allion and its counsel had given full notice that this was what was going to happen.
- [40] The plaintiffs' counsel has referred me to sections of the PPSA that provide that this Court has supervisory jurisdiction to ensure that a provident sales take place.
- [41] In my view, if the plaintiffs had concerns that an improvident sale was about to occur, it was within their power to bring an application to enjoin Allion from completing a sale. That did not happen. In the meantime, there was a completed sale which gave rise to significant commercial transactions. I acknowledge that the \$1.8 million has not been paid, but there is a promissory note which apparently is due at the end of this month and it was only delayed as a result of this injunction.
- [42] Accordingly, I conclude that the relief granted in the Kirchner Order represented a radical shift in the status quo that was not justified in the circumstances.
- [43] The plaintiffs' counsel argues that Ms. Wei should be left in charge to handle the disposition of the funds now held or to be held, in place of Ms. Gao. As I understood his submissions, he principally relies on the \$6.8 million mortgage. I do not consider this a compelling argument to justify dislodging Ms. Gao at the present time. At present, she is the one at the helm of these companies, and she will be the one to address the obviously difficult financial situation that is taking place with respect to the BC Properties and take a position in respect of the disposition of the Ontario funds. If there is no agreement in that respect, then I fully expect that that will have to be addressed in another process, perhaps a court process. I will not undertake to speculate what might happen there.
- [44] In addition, as Ms. Gao's counsel points out, this was really a non-surgical solution to what might have been more surgical relief sought by Ms. Wei to ensure that things are going to be handled properly with as little prejudice as possible, pending a determination of the issues on the merits. And as I indicated to counsel many times throughout this hearing, it was not Kirchner J.'s role to decide these issues on their merits, and it is not my role to do so at this time. These are issues yet to be decided.

- [45] However, I do not accept that Ms. Wei should, at this time, essentially get the result that she wants at the end of this proceeding, through the auspices of a mandatory injunction with the added result that Ms. Gao then effectively has to bear the burden of overturning that result when at all times the burden of proving this claim rests on the plaintiffs.
- [46] In all of the circumstances, I am satisfied that the Kirchner Order and the Baker Order should be set aside. I am also convinced that those Orders should be set aside nunc pro tunc. In my view, the Kitchner Order was not justified from the start, and I see no benefit in maintaining the Order over this 14-day period (to May 1, 2025 when a permanent injunction or extension is required) with all the complications that would arise in that respect.
- [47] The plaintiffs' application is dismissed.
- [48] The final matter is costs. Ms. Gao and 153 seek costs of this application and costs of the application before Justice Baker. As they did not attend on the initial application before Kirchner J., in my view, costs are more than justified. Counsel for Ms. Gao and 153 only seek costs on a party and party basis, not on a special costs basis. Mr. Chiang and Allion are also awarded their party and party costs of today and the attendance before Baker J. Those costs are payable in any event of the cause and payable forthwith after assessment.
- [49] CNSL M. SENNOTT: And one last point is that this proceeding was commenced with a second tier of corporations as plaintiffs for which my friend's client is not the director of, and therefore, they can't be plaintiffs. They should be removed as plaintiffs. It's Manna Industrial Fund (Value-Add) GP Corp and Manna Industrial 50 Precidio Corp.
- [50] THE COURT: Mr. Hulshof, do you have any submissions on that? You've also added in the limited partnership; right?
- [51] CNSL E. HULSHOF: Right. No. I think that's right, Justice.
- [52] THE COURT: Okay. So that would leave Genesis Manna Holdings Ltd., leave Manna Industrial Real Estate Management Corp. and Ms. Wei; correct?
- [53] CNSL E. HULSHOF: That's correct.
- [54] CNSL M. SENNOTT: I'm sorry, Justice. The Manna Industrial Brampton LP is also named as a plaintiff.
- [55] THE COURT: In conclusion, the plaintiffs to remain are Genesis Manna Holdings Ltd., Manna Industrial Real Estate Management Corp. and Ms. Wei. The plaintiffs that are removed are Manna Industrial Fund (Value-Add) GP Corp., Manna Industrial Fund (Value-Add) Limited Partnership, Manna Industrial 50 Precidio Corp. and Manna Industrial Brampton LP.

"Fitzpatrick J."

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