

CANADA / JUDGMENT

Jiang v. Oei

2020 BCSC 1587

COURT

Supreme Court of British Columbia

DECIDED

26 October 2020

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2020 BCSC 1587 Jiang v. Oei IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jiang v. Oei, 2020 BCSC 1587 Date: 20201026 Docket: S159351 Registry: Vancouver Between: Yicheng Jiang Plaintiff And Paul Oei, Loretta Lai, Canadian Manu Immigration & Financial Services Inc., Cascade Renewable Organic Fertilizer Corp., Organic Eco-Centre Corp., Joseph E. Peschisolido, Peschisolido Law Corporation dba Peschisolido & Company, and Yvonne Y. Hsu Defendants And Paul Oei, Loretta Lai, Desjardins Financial Securities Investments Inc./ Desjardins Securite Financiere Investissement Inc., Desjardins Financial Security Life Assurance of Canada/ Desjardins Securite Financiere Compagnie D'Assurance Vie; and Yicheng Jiang Third Parties And Paul Oei, Loretta Lai, Canadian Manu Immigration & Financial Services Inc., Joseph E. Peschisolido, and Peschisolido Law Corporation dba Peschisolido & Company Fourth Parties Before: The Honourable Madam Justice Jackson Oral Reasons for Judgment Counsel for the Plaintiff: N. Muirhead Counsel for the Defendants Joseph E. Peschisolido and Peschisolido Law Corporation dba Peschisolido & Company: J. Dives, Q.C. No other appearances Place and Date of Hearing: Vancouver, B.C. October 22, 2020 Place and Date of Judgment: Vancouver, B.C. October 26, 2020

- [1] The applicants Joseph E. Peschisolido and Peschisolido Law Corporation doing business as Peschisolido & Company, two of several defendants named in an investment fraud claim, seek an order that the plaintiff post security for their costs in the amount of \$85,000 within 30 days.
- [2] At the hearing, the applicants abandoned their application that the plaintiff's claims against them be stayed until the security is posted.

Legal framework

- [3] The Court's inherent jurisdiction includes the discretion to order the posting of security for costs: *Parmar v. Timothy J. Huntsman Law Corporation*, 2018 BCSC 1151 at para. 12. Discretionary jurisdiction must be exercised judicially, which requires consideration of all relevant factors and an assessment of the overall fairness to the parties: *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 273 at para. 17; *Parmar* at para. 12.

- [4] An order for security for costs is intended to protect a defendant from the likelihood it will be unable to recover its costs in the event of success in the litigation: *Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Company* (1993), 1993 CanLII 1669 (BCCA), 76 B.C.L.R. (2d) 231 at paras. 15 and 31 (cited to CanLII). However, that objective must be balanced against other competing objectives, and that balance is achieved by adopting an approach which does not stifle legitimate claims brought by natural persons from proceeding: *Huang* at para. 18; *Gichuru v. Pallai*, 2014 BCSC 2330 at para. 8.
- [5] The discretion to order security of costs against a natural person should be exercised cautiously, sparingly and only in limited, special circumstances, such as a weak claim, a failure to satisfy previous costs orders, or a refusal to obey a court order for the payment of child support: *Huang* at para. 21; *Han v. Cho*, 2008 BCSC 1229 at para. 27; *Gichuru* at para. 8.
- [6] The common approach to considering whether to order security of costs involves two stages. At the first stage, the question is whether the applicant has established, on a prima facie basis, it will be unable to recover costs in the event of success: *Equustek Solutions Inc. v. Jack*, 2013 BCSC 2135 at paras. 26-27. If that threshold is satisfied, the analysis proceeds to the second stage and an assessment of whether a legitimate claim would be stifled by ordering security for costs. This second question requires consideration of all of the relevant factors including a plaintiff's ability to post the security and the merits of their claim. Have the applicants established, on a prima facie basis, they will be unable to recover their costs from the plaintiff if they successfully defend the claim?
- [7] The fact that the plaintiff is not a resident of BC and is a citizen of China, a non-reciprocating state for the purposes of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78, are relevant considerations but alone have been viewed as insufficient to warrant an order for security for costs against a natural person: *Mong v. Giang*, 2017 BCSC 2185 at para. 11.
- [8] Similarly, although it appears there are Chinese judgments outstanding against the plaintiff, the scant evidence on that point is such that all I feel I can reasonably infer is that the plaintiff may not pay an award on the first demand: *Equustek* at para. 34.
- [9] The evidence before me reveals the plaintiff is the sole shareholder of a Saskatchewan based company which is the legal and beneficial owner of four, unencumbered pieces of real property located in Estevan, Saskatchewan, with a combined 2020 assessed value of almost \$1 million. The unchallenged evidence is that this Saskatchewan company has no significant debts except those owed to the plaintiff pursuant to a shareholder loan.
- [10] In addition, for much of the litigation the plaintiff has been represented by legal counsel, I infer at some financial cost.
- [11] Based on the evidence before me I am not satisfied the applicants have established on a prima facie basis they will be unable to recover their costs in the event their defence of the claim is successful.

[12] As a result of my conclusion, it is not necessary for me to address the second stage of the analysis and I decline to do so.

[13] The application is dismissed.

[14] Costs will be in the cause. "Jackson J."

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Prepared on 26 October 2026 · Esheria