

CANADA / JUDGMENT

Lee v. Jin

2025 BCSC 686

COURT

Supreme Court of British Columbia

DECIDED

24 March 2025

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2025 BCSC 686 Lee v. Jin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lee v. Jin,

2025 BCSC 686

Date: 20250324

Docket: E231890

Registry: Vancouver

Between:

Jun Soo Lee

Claimant

And:

Hee Jung Jin

Respondent

Before: Associate Judge Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

K. Richardson

Counsel for the Respondent:

M. Ossudallah

Place and Date of Hearing:

Vancouver, B.C.

March 6 & 7, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 24, 2025

Introduction

[1] THE COURT: This is a high-conflict family action. Before me are cross-applications. By application filed September 6, 2024, the claimant applies for:

- a) An interim order that the respondent transfer to the claimant pursuant to s. 91(2)(b)(ii) of the Family Law Act, S.B.C. 2011 c, 25 ("FLA").
 - i. 100 percent of shares of Sushico Japanese Restaurant Chilliwack Ltd. ("CW Sushico"); or
 - ii. Alternatively, 20 percent of the shares in 0971545 BC Ltd. doing business as Sushico Japanese Restaurant in Langley ("Langley Sushico") and 50 percent of the shares in CW Sushico:
- b) An order that the respondent deposit in the bank account of CW Sushico:
 - i. \$10,000, representing proceeds of a BC Government Circuit Breaker Business Relief Grant she obtained on behalf of the company; and
 - ii. \$37,300, representing funds the respondent withdrew from the CW Sushico account between December 7-9, 2020, without the claimant's consent.
- c) Special costs and damages.

[2] By application filed November 21, 2024, the respondent applies for orders that:

- a) The claimant return the sum of \$235,000 to CW Sushico's account; or
- b) Alternatively, the claimant post the sum of \$235,000 with respondent's counsel "in trust" pending further agreement of the parties or a court order.

[3] Each side opposes the relief sought by the other.

Background

[4] The parties are both originally from South Korea. They married on November 10, 1998 and separated on May 16, 2018. They have one child, Annis Lee, born May 23, 2002, age 22.

- [5] During the marriage, they owned and operated several restaurant businesses. At the time they separated they had two: Langley Sushico and CW Sushico. The parties held shares in Langley Sushico at 20% claimant and 80% respondent. The claimant says he always believed it was 50-50 and did not learn otherwise until around the time of separation. They held shares in CW Sushico 50% claimant and 50% respondent. The Langley location was older and more established financially. The Chilliwack location was relatively new and less established.
- [6] It appears that neither of the parties consulted legal counsel around the time they separated. There is considerable confusion and disagreement regarding what, if any, arrangements the parties agreed to following separation.
- [7] The claimant says when they separated, the respondent demanded that he vacate their family home located at 20573 68A Avenue, Langley, BC (the "Langley Residence") where she and their daughter continued to reside, and that when he left, she would give him \$50,000. The claimant also says he was agreeable to operating CW Sushico, the newer business which was losing money at the time, because he wanted to move out of the Langley Residence due to the stressful atmosphere there. The respondent ended up paying him \$100,000. He does not say why exactly the payment increased or what exactly it was for. He says the respondent decided she would operate Langley Sushico, which was more profitable. This was not an agreement the parties made, but rather an arrangement which the respondent imposed upon him.
- [8] The respondent says the \$100,000 was actually a loan or investment in CW Sushico by her sister, Hee Jung Jin, or possibly her uncle Hyung Tae Kim. The claimant disputes this.
- [9] Legal title to the Langley Residence is registered with the claimant having a 1/100 interest and the respondent having a 99/100 interest. It is the respondent's position that they both hold their interest in that property in trust for her uncle, Mr. Kim. The claimant disputes this.
- [10] Mr. Kim has started a separate action against the parties in New Westminster Registry Action No. S235761, Kim v. Lee and Jin. He claims he is the beneficial owner of the Langley Residence and also claims for repayment of various amounts, which include, without limitation, the alleged \$100,000 loan which the respondent's sister made to the claimant to assist in carrying on business at CW Sushico. He says the sister has assigned her claim to him for enforcement purposes.

Alleged Oral Agreement

- [11] The respondent says that on the date of separation, May 16, 2018, the parties made an oral agreement (the "Oral Agreement") with the following terms:
- a) The parties would not disclose their divorce to the other people until Annis becomes an adult;

- b) The respondent would retain the Langley Residence, and the claimant would transfer his interest in it to her;
- c) The claimant would leave the Langley Residence, and Annis and the respondent would reside it in;
- d) The claimant would operate CW Sushico;
- e) The respondent would operate Langley Sushico; and
- f) The claimant would pay back the \$100,000 borrowed from the respondent's sister.

- [12] With regard to item a), the respondent says the Korean community is small, and divorce is viewed negatively. She wanted to ensure they did not disclose their divorce to anyone until Annis was an adult. With regard to item e), she says they agreed she would operate Langley Sushico, as she had operated it since its incorporation. With regard to item d), CW Sushico was newly incorporated at the time, so she provided financial assistance to the company. In or about July 2018, she borrowed the \$100,000 from her sister and provided it to the claimant to assist with operation of that company. The claimant disputes all of that.
- [13] On June 21, 2018, the parties filed for a divorce through the Prince George registry of this court, in an effort to maintain their privacy. The claimant says the respondent prepared the notice of joint family claim and demanded he sign it. He says he did so without first thoroughly reading it and without having obtained independent legal advice. In particular, he does not agree with the date of separation indicated in the document, which was June 1, 2015. He says this was roughly the date on which the parties purchased the Langley Residence. His position is they had separate bedrooms, but continued to reside together as a couple, had sexual relations, operated their businesses together, had joint finances and went on vacations together until May 16, 2018.
- [14] On August 13, 2019, a desk order was pronounced which provided that the parties were divorced effective 31 days after the date of the order.

Power of Attorney

- [15] The respondent says the claimant agreed to execute a power of attorney appointing her as his attorney. Its purpose was to ensure the parties each kept their promises made in the Oral Agreement. The claimant denies this and says he provided the power of attorney in order to help the respondent deal with the Langley Residence while he was away visiting South Korea for an extended period.
- [16] The parties initially attended before a notary public who drafted the power of attorney to have it executed. However, the notary advised the claimant not to sign it, indicating he did not believe the claimant understood the document.

- [17] On July 6, 2018, the parties both met with lawyer Bryce Byung Chan Kim ("Lawyer Kim") to execute it. Lawyer Kim speaks Korean and had previously acted for the parties during the marriage in relation to the sale of another restaurant business they owned. They were both present during the meeting with him.
- [18] The respondent says that Lawyer Kim explained the meaning and effect of the power of attorney to the claimant, advised him in Korean that he was signing over all authority to the respondent, and asked the claimant whether he agreed to do that. She says the claimant indicated he understood and agreed.
- [19] The claimant says the respondent presented them to Lawyer Kim as though they were still a married couple. She failed to inform him the parties had separated and were in the process of divorcing. The respondent also remained present throughout the meeting with Lawyer Kim, meaning he did not receive proper independent legal advice regarding the implications of giving the respondent power of attorney.
- [20] The respondent says that when the claimant executed the power of attorney, he promised her that if he breached any of the terms of the Oral Agreement, she could use it to protect her assets. The claimant disputes this.
- [21] On July 11, 2018, the respondent sent the claimant a draft written agreement entitled "Separation and Divorce Agreement", which she says set out the terms of the Oral Agreement. Both English and Korean versions were in evidence. The claimant refused to sign it.
- [22] The respondent notes that the claimant has not paid her any child support since the parties' divorce. She did not seek to enforce child support because the parties were relying on terms of the Oral Agreement. I note that the oral terms she specified did not actually address the issue of child support.
- [23] The respondent says that after their divorce was completed, she continued to stay involved with operating CW Sushico because it was newly incorporated. She had managed it before summer of 2018. The claimant took over managing it in summer 2018. She says she did not know how he operated the company during this time, but when she found it had not been doing it well, she became extremely concerned.

Alleged Breach of Oral Agreement

- [24] The respondent says that in or about December 2019, she heard from an unidentified CW Sushico staff member that the claimant had disclosed the parties' divorce to previous employees. She considered this to be a breach of the Oral Agreement. She says she and Annis both suffered emotionally as a result of people talking about the divorce.

- [25] The respondent says in April or May 2020, she found out she has lost her ability to access the CW Sushico account. She suspected the claimant was responsible. She did not want to cause any further conflict, so she did not mention anything to the claimant.
- [26] The respondent complains that despite refusing to sign the written agreement, the claimant kept asking her to transfer her shares in CW Sushico into his name and to take his name off the Langley Residence. From June 30, 2020 to November 12, 2020, the parties exchanged text messages in which the claimant continuously requested that she carry out the terms of the Oral Agreement and warning he would get a lawyer and an accountant if she did not do so within one month. She was very concerned that her interests would not be protected, and in particular that he would retain CW Sushico and not honour the balance of the terms of the Oral Agreement. She was also concerned that additional people would find out about their divorce.
- [27] The respondent says due to the claimant's alleged breaches of the Oral Agreement and the threatening text messages she sent her:
- a) On October 1, 2020, she used the power of attorney to remove the claimant as a director of Langley Sushico; and
 - b) On October 31, 2020, she used the power of attorney to remove the claimant as a director of CW Sushico and to transfer the claimant's 20% of Langley Sushico shares and his 50% of CW Sushico shares to herself. This left her with 100% of the shares of both companies and sole control over both.
- [28] The respondent says she feared the claimant would further breach the terms of the Oral Agreement. She argues he had previously forged her signature and she was concerned he would "get his way somehow". She decided to "use the power of attorney to protect herself, her daughter, and her extended family from the harm that would result from the claimant's breaches." The respondent did not notify the claimant regarding how she had used the power of attorney. He eventually learned of this through other means.
- [29] On November 12, 2020:
- a) Claimant's counsel served a revocation of power of attorney on the respondent's lawyer; and
 - b) The respondent learned the claimant had filed a notice of family claim and registered a certificate of pending litigation on title to the Langley Residence.
- [30] The respondent says on December 7, 2020, after reviewing the activity on CW Sushico's bank account, she realized the claimant had withdrawn a total of \$235,000 between April 1, 2020 and December 11, 2020. When she confronted the claimant about this, he said he had withdrawn funds so he could pay cash wages to CW Sushico employees. The respondent says this created a significant risk for the parties' businesses. She had advised him multiple times that he should not pay cash wages or illegally hire anyone who did not have status to work in Canada. On December 7, 2020, she blocked the claimant from accessing or using the CW

Sushico account.

Claimant's Concerns

- [31] The claimant says that since separation, he has been operating CW Sushico and the respondent Langley Sushico. They continued to share access to business bank accounts of each company with each other. Other than a few transactions by consent in 2018, the respondent did not withdraw or transfer funds from CW Sushico's account and he did not withdraw or transfer from the Langley Sushico account.
- [32] On December 7, 2020, he discovered suspicious withdrawals from the CW Sushico account, including a \$15,000 transfer into a TD Canada Trust account ending *659, a transfer of \$15,000 to the Langley Sushico account and a \$6,000 transfer into the Langley Sushico account after card sales were collected and deposited to the CW Sushico account over the weekend. I understand this to suggest the respondent had diverted CW Sushico card payment receipts from CW to Langley. On December 9, 2020, the respondent transferred another \$1,300 into her personal chequing account, which put CW Sushico's account into overdraft of (\$14,918.56). These transactions put CW Sushico into a position where it could not pay its normal operating expenses.

History of Proceedings

- [33] On November 5, 2020, the claimant filed his notice of family claim.
- [34] December 9, 2020, the claimant filed an application seeking a without notice asset restraining order against the respondent. He also sought a Judicial Case Conference ("JCC") exemption and short leave to have his application for an order that the respondent return \$36,000 she had transferred out of CW Sushico's account heard on December 17, 2020.
- [35] On December 11, 2020:
- a) The respondent filed her response to family claim; and
 - b) The claimant was granted a without-notice s. 91(1) FLA order from Master Keighley restraining the respondent from disposing of any property at issue and from transferring or withdrawing funds from the CW Sushico account.
- [36] By letter dated December 14, 2020, respondent's counsel informed claimant's counsel the respondent had transferred about \$36,000 from the CW Sushico account because the claimant had previously withdrawn about \$235,000 from the same account.
- [37] On December 17, 2020, a consent order was made, including:
- a) The respondent shall return the original power of attorney to either party's counsel's office by December 18, 2020, via registered mail; and

- b) The order of Master Keighley dated December 11, 2020 was varied such that it became a mutual asset restraining order, which expressly excluded daily living expenses, day-to-day operation of businesses, and funding for the litigation.
- [38] The respondent did send the original power of attorney to claimant's counsel.
- [39] The claimant complains that despite these orders, the respondent continued to take steps which frustrated his management of CW Sushico, including:
- a) Withdrawing funds from the CW Sushico account after he lost access to it after the December 11, 2020 order;
 - b) Connecting her personal computer to the CW Sushico Point of Sale system on or about December 30, 2020, without notice to the claimant or his consent;
 - c) Diverting card sales receipts from CW Sushico to an undisclosed account on April 9, 2021, without the claimant's prior knowledge or consent;
 - d) Applying for the BC Circuit Breaker Business Relief Grant in summer 2021 on behalf of CW Sushico and failing to deposit the \$10,000 grant received into the company's account;
 - e) Failing to cooperate with preparation of financial statements and corporate tax returns for CW Sushico for 2022 and 2023 year ends until the deadlines, which on at least one occasion caused their accountant to threaten to quit; and
 - f) Making corporate documents for CW Sushico unavailable to the claimant and his counsel for inspection or copying.
- [40] On December 14, 2020, the claimant filed an application for an order restoring his shareholding in CW Sushico. On December 17, 2020, the parties entered a consent order of Master Cameron, which resolved most issues raised in the application, but the share restoration issue was not addressed. Current claimant's counsel has been attempting to schedule this issue for hearing since March 8, 2024.
- [41] On January 11, 2021, the respondent filed her counterclaim. It confirmed that the parties had separated May 16, 2018.
- [42] Consent orders were entered into on January 13, 2021 before Master Cameron, February 26, 2021 before Justice Shergill and July 18, 2023, which transferred the action from New Westminster Registry to Vancouver Registry.
- [43] On August 29, 2022, the claimant filed an application seeking return of the \$10,000 BC Grant proceeds to CW Sushico, however, this was not heard.

- [44] On September 12, 2023, Associate Judge Hughes granted a consent JCC Order. This included that the parties would jointly retain a business valuator for the two companies and to review company financial records from January 2020 to the date of the order to verify whether parties had used any company funds or COVID-19 subsidies for personal use, with the scope of the review possibly extending back as far as 2017.
- [45] On August 22, 2024, the respondent retained new counsel, Mr. Ossudallah, and asked for an adjournment of an application which had been set for September 27, 2024.
- [46] On September 5, 2024, the respondent advised she was seeking to adjourn the 10-day trial set for February 24, 2025. The notice of trial had been filed back in August 2023.
- [47] On September 27, 2024, the parties entered into a consent order of Justice Kirchner, which included giving the claimant sole authority to instruct the accountant to prepare year-end financial reports and corporate tax returns for CW Sushico. The respondent was given sole authority to instruct the accountant to prepare the same for Langley Sushico. There was also an order the respondent provide an amended list of documents and respond to a request for certain particulars.
- [48] On October 31, 2024, Associate Judge Keim granted an order adjourning the February 24, 2025 trial, providing that the new trial date was to be reset by November 8, 2024 and that the new date was peremptory on the respondent.
- [49] On December 9, 2024, Associate Judge Vos granted a consent order regarding minute books for the two companies.
- [50] On December 11, 2024, the claimant filed a notice of trial returnable April 13, 2026, for 14 days.
- [51] On January 13, 2025, I granted an order that several financial institutions produce various bank account statements dating back to 2017.

Interim Transfer of Shares

- [52] The claimant relies on two bases for his request for an interim order that the respondent transfer either 100% of the shares of CW Sushico to him, or alternatively return his original 50% of the shares in that company and 20% of the shares in Langley Sushico back to him. Firstly, he relies on s. 91(2) of the FLA:

Temporary orders respecting protection of property

- (2) The Supreme Court may make one or more of the following orders:
- (a) for the possession, delivery, safekeeping and preservation of property;
 - (b) for the purpose of protecting the applicant's interest in property from being defeated or adversely affected,

- (i) prohibiting the other spouse from disposing of, transferring, converting, or exchanging into another form, property in which the applicant may have an interest, or
- (ii) vesting all or a portion of property in, or in trust for, the applicant.

[53] Secondly, he argues that the because the respondent unilaterally and improperly took his shares via an egregious misuse of the power of attorney in bad faith and in breach of the trust, the interim share transfers he seeks are necessary and appropriate in order to protect the shares and by extension CW Sushico. He also points to an attorney's duties set out in s. 19 of the Power of Attorney Act, R.S.B.C. 1996, c. 370:

Duties of attorney

19 (1) An attorney must

- (a) act honestly and in good faith,
 - (b) exercise the care, diligence and skill of a reasonably prudent person,
 - (c) act within the authority given in the enduring power of attorney and under any enactment, and
 - (d) keep prescribed records and produce the prescribed records for inspection and copying at the request of the adult.
- (2) When managing and making decisions about the adult's financial affairs, an attorney must act in the adult's best interests, taking into account the adult's current wishes, known beliefs and values, and any directions to the attorney set out in the enduring power of attorney.
- (3) An attorney must do all of the following:
- (a) to the extent reasonable, give priority when managing the adult's financial affairs to meeting the personal care and health care needs of the adult;
 - (b) unless the enduring power of attorney states otherwise, invest the adult's property only in accordance with the Trustee Act;
 - (c) to the extent reasonable, foster the independence of the adult and encourage the adult's involvement in any decision-making that affects the adult;
 - (d) not dispose of property that the attorney knows is subject to a specific testamentary gift in the adult's will, except if the disposition is necessary to comply with the attorney's duties;
 - (e) to the extent reasonable, keep the adult's personal effects at the disposal of the adult.
- (4) An attorney must keep the adult's property separate from the attorney's own property.
- (5) Unless the enduring power of attorney states otherwise, subsection (4) does not apply to property that
- (a) is jointly owned by the adult and the attorney as joint tenants or otherwise, or

- (b) has been substituted for, or derived from, property described in paragraph (a).
- [54] The claimant relies on *Wang v. Wang*, 2020 BCCA 15 at paras. 30-32, where the court considered firstly whether a power of attorney creates a fiduciary duty, concluding in that case that it did. It went on to consider remedy where there had been a breach of fiduciary duty and discusses the prophylactic remedy of disgorgement at paras. 55-56. Claimant's counsel argues that this is an appropriate case to require disgorgement, essentially of the shares the respondent misappropriated and presumably the CW Sushico funds she transferred out of the company's business account.
- [55] He also argues that the respondent has a history of taking steps which attempt to circumvent the interim property restraining order protection. This includes her having created the new CW Sushico bank account and diverting company funds to it without disclosing this to the claimant. At one point, she was also diverting proceeds from the CW Sushico card transactions to Langley Sushico or to her personal account. She has also been reluctant to produce company minute books. He essentially says that the respondent is not trustworthy and is not honouring the spirit or letter of the property restraining orders. She has been uncooperative with their mutual accountant with regard to preparation of company year-end statements and corporate tax returns, to the point where the company accountant had threatened to quit.
- [56] The respondent argues that the relief the claimant is seeking is unnecessary and inappropriate at this stage of the proceeding. The court has already granted a consent mutual s. 91(1) FLA restraining order, which prevents the respondent from dealing with the shares of either company. The parties have also agreed to other interim orders which have re-established the claimant's access to CW Sushico's bank account and control of its day-to-day operations. The issues the claimant raises on this application should be addressed at trial.

Analysis - Transfer of Shares

- [57] It is important to keep in mind that s. 91(2) of the FLA is intended to provide for temporary orders respecting protection of property. It is also relevant that there is already a mutual interim s. 91(1) FLA property restraining order in place. The question is thus whether there is evidence indicating that the existing order is somehow inadequate to protect and preserve the disputed shares in the two companies, CW Sushico and Langley Sushico.
- [58] My concern with the claimant's application is that it appears the primary relief he is seeking, namely transfer of 100% of the shares of CW Sushico to him, is essentially the final relief he is seeking in relation to that company. He wants to end up with the CW Sushico for himself and for the respondent to have Langley Sushico, amongst other relief. At no time in the past has he held 100% of the shares of CW Sushico in his name. Having the shares would give him sole interim control over the company. The alternative relief which he seeks is a return to what the parties' shareholdings were before the respondent unilaterally transferred the

claimant's shares in both companies to herself.

- [59] In *Bedard v. Bedard*, 2022 BCSC 1977, the court considered a respondent's (Anna) interim application for an order referring all of the claimant's (Ron) shares in a company to her, to be held in trust for their mutual benefit. That case sets out the following regarding s. 91(2) of the FLA at paras. 41-43:
- [41] The only explanation Anna has given as to why the Court should grant such an order is that it would allow Anna to remove Ron as president and CEO, and take away his ability to assert himself as the "owner" and person in charge of the Company. In other words, Anna candidly states that if Ron's shares are transferred to her in trust, she will use the corporate authority they provide to fire Ron from his management position at the Company.
- [42] In my view, s. 91(2) of the FLA does not permit the Court to issue the order Anna is seeking for the purpose Anna says she will use it for. In particular, s. 91(2)(b)(ii) only allows the Court to vest property in trust for "the applicant" "for the purpose of protecting the applicant's interest in property from being defeated or adversely affected." It does not allow the Court to vest property with one spouse so that they may then use the property in a manner that they may subjectively feel is for the "mutual benefit of the parties", particularly when that proposed use will obviously be viewed as non-beneficial by the other spouse. This is clearly the case here where it is manifest that both parties are interested in the Company being successfully managed, but each feels uniquely qualified to do so to the exclusion of the other.
- [43] Furthermore, even if Anna had framed her request for relief properly in accordance with the wording of s. 91(2)(b)(ii) of the FLA, I can see no need for Ron's shares to be placed in trust for the benefit of Anna when her interest in this property can be adequately protected through the s. 91(1) FLA protection order that I am granting with the parties' consent. Accordingly, Anna's request for a s. 91(2) FLA trust order is denied.
- [60] The same reasoning applies to the claimant's share transfer requests in this case. There is already a mutual s. 91(1) FLA property restraining order in place which prevents the respondent from any further unilateral dealings with both CW Sushico and Langley Sushico shares. The parties already have orders or arrangements in place which re-establish the claimant's access to the CW Sushico account, and which allow him to do everything necessary to continue operating the business until trial. Issues have arisen in the past, but it appears these have since been resolved, at least temporarily until trial. The claimant has not been able to point me to any specific current concerns which had not been adequately addressed by the existing interim arrangements. His professed concern was that the respondent might breach or seek to circumvent the existing orders arrangements, but there was no evidence supporting this concern.

- [61] At this hearing, I also raised with counsel a concern that ordering additional interim share transfers could have unintended tax consequences. Neither side had considered that issue prior to the hearing.
- [62] With regard to the claimant's argument that the respondent had breached fiduciary duties she owed to him as his attorney, and his request that I impose an interim disgorgement remedy on the respondent, that appears to be a request for final relief. The affidavit evidence regarding the circumstances and purposes for which the power of attorney was provided is conflicting in the material before me. I am not able to make the necessary findings of fact on conflicting evidence. This is an issue that will have to be addressed at trial. It is not something that is necessary or appropriate for purposes of interim protection of disputed property pending trial.
- [63] The claimant's application for interim transfer of shares is dismissed.

Return of Funds to CW Sushico/ Posting of Funds with Counsel

- [64] The claimant seeks an order that the respondent return to CW Sushico's account a total of \$47,300, which he says the respondent transferred to either Langley Sushico or herself. This consists of the \$10,000 proceeds from the BC Government Circuit Breaker Business Relief Grant and \$37,300 in funds transferred from CW Sushico's account between December 7-9, 2020. The claimant relies generically on Part 5 of the FLA.
- [65] The respondent in turn responds with an application that the claimant return the \$235,000 which he withdrew from CW Sushico's account post-separation, or that he post that amount with counsel in trust. She relies on s. 91(2) of the FLA and Rule 12-1(1) and (2) of the Supreme Court Family Rules, B.C. Reg. 169/2009.
- [66] The claimant tendered evidence regarding the transfers and withdrawals he is concerned with. It is not yet clear what became of those funds. Presumably further discovery will help uncover this. He acknowledged that the funds he is seeking are not currently needed for CW Sushico to continue its day-to-day operations pending trial.
- [67] With regard to the funds the respondent seeks, the claimant says that he withdrew the funds so he could pay the CW Sushico employees in cash, during the COVID-19 pandemic and thereafter. He suggests the respondent followed this same approach at Langley Sushico. The respondent does not appear to take issue with the claimant's explanation for how the funds were used. She does object to the risks that these practices create for CW Sushico's business and operations generally.
- [68] The parties indicated that one of the consent orders they agreed to was that Patti Daum be retained as a joint expert to prepare valuations of their two businesses and to carry out a forensic audit of certain transactions. I presume this includes transactions which are the subject of these cross-applications. At the time of hearing, the parties indicated Ms. Daum was still in the process of gathering documents and information necessary for her report.

There was no estimated time or arrival available for delivery of her report. The investigation of these cross-accounting issues are accordingly still in process. On the current state of the evidence, it is not at all clear that the claimant has misspent all or any part of the \$235,000. That is an issue that will have to await delivery of Ms. Daum's report and likely trial of the action.

[69] During the hearing, respondent's counsel acknowledged that her cross-application was essentially only brought as a "tit-for-tat" response to the claimant's application.

[70] I am not persuaded that this is an appropriate case in which to make an interim order that either side to return or post funds. That aspect of both applications is dismissed.

Conclusion

[71] The claimant's application for interim transfer of shares is dismissed.

[72] The claimant's application for an interim order that the respondent return \$47,300 to CW Sushico is dismissed.

[73] The respondent's application for an interim order that the claimant return \$235,000 to CW Sushico or post that sum with counsel is dismissed.

[74] Both parties have been unsuccessful and it is appropriate they each bear their own costs for these applications.

"Associate Judge Bilawich"

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