

CANADA / JUDGMENT

Li v. Global Chinese Press Inc.

2013 BCSC 700

COURT

Supreme Court of British Columbia

DECIDED

26 February 2013

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2013 BCSC 700 Li v. Global Chinese Press Inc. IN THE SUPREME COURT OF BRITISH COLUMBIA
Citation: Li v. Global Chinese Press Inc., 2013 BCSC 700 Date: 20130226 Docket: S126640 Registry:
Vancouver Between: Bolun Li Petitioner And Global Chinese Press Inc. Respondent Before: The
Honourable Mr. Justice Greyell Oral Reasons for Judgment In Chambers Counsel for Petitioner:
D. C.F. Cowper Counsel for Respondent: L. J.D. Wong Place and Date of Trial/Hearing: Vancouver,
B.C. February 26, 2013 Place and Date of Judgment: Vancouver, B.C. February 26, 2013

- [1] THE COURT: This is an application by the petitioner for the appointment of an auditor of Global Chinese Press Inc., the respondent, to provide audited financial reports for the years 2006, 2009, 2010 and 2011; that the respondent pay the auditor's accounts for the preparation of such reports, and for liberty to the auditor to seek directions from the court as may be necessary.
- [2] The application is brought pursuant to ss. 145(1), 155, 158, 162 and 163, 167(1), 169 to 170 and s. 248 of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, (CBCA). The petitioner says, and I so find, that he is and has been since 2006, a shareholder of the respondent, holding 50 percent of the respondent's shares and as well as being one of two directors.
- [3] The respondent responds to the application by making a number of arguments. First the respondent says Mr. Li is not the true shareholder of the respondent company or at least there was a substantial question as to whether he or the respondent were shareholders until recently. He makes reference to a decision by a Chinese court which was attached as Exhibit E to Ms. Zhang's affidavit. Ms. Zhang is the other director and 50 percent shareholder of the respondent.
- [4] I am unable to place any reliance on the decision of the Chinese court in these proceedings. While I have a certified translation of the decision before me I do not know what evidence the Chinese court considered. I do have the respondent's corporate records which show Mr. Li to have been a shareholder and director of the respondent. Those are records filed by the respondent in its information return to Industry Canada filed for 2011. I also have Mr. Li's evidence he is and was a shareholder.

- [5] The defendant says that Mr. Li does not live in Canada; that he resides in China; that he does not come to Canada; he does not attend shareholders meetings or directors meetings. While that submission may be accurate to 2009, there is evidence before me on this application that commencing in or about the fall of 2009, Mr. Li took an active interest in his investment in this company.
- [6] Mr. Wong for the respondent has urged the court to stay any order that may be made arising from this application in order to allow the respondent an opportunity to appeal an order made yesterday by Master Bouck concerning the status of certain aspects of the pleadings in this matter.
- [7] I decline to stay the terms of this order, as the usual practice is that a court order will be acted on until it is overturned unless there are good reasons to stay the operation of that order. In this case I conclude a stay should not be granted, for reasons that will follow.
- [8] The applicant says the obligation on the respondent to provide audited reports annually is a requirement placed on every corporation registered under the CBCA and that there are no exceptions.
- [9] The respondent says the court has a discretion whether to order an audit and that the court should exercise its discretion in favour of not ordering such audit given the history of Mr. Li's non-involvement in the company and, more particularly, given the expense of involving the preparation of audited reports for the number of years sought by the applicant.
- [10] The respondent has referred to a number of cases which I find to be distinguishable, as all of which, with the exception of one, are brought under the oppression remedies section of the B.C. Business Corporations Act, S.B.C. 2002,
- c. 57. Under the oppression remedy sections of that Act, the court clearly has a discretion whether or not to order a remedy.
- [11] I find in this case the respondent had an obligation to produce to the shareholders comparative financial statements and the report of the auditor, at minimum, under s. 155 of the CBCA.
- [12] In *Merrill v. AFAB Security*, [2007] O.J. No. 1133, Justice Smith at para. 21 in considering the provisions of the Act said this: As a result I find that a shareholder's right to receive financial statements and an auditor's report is a mandatory right as prescribed by the provisions of the CBCA.
- [13] The provisions contained in the CBCA, and in particular, s. 155 requiring a corporation incorporated under the Act to issue annual audited statements are mandatory. The purpose of the section is to ensure accountability by a corporation to its shareholders.

- [14] In my view there is no real prejudice in this case to the respondents in making the order requested by the applicants. Had the respondents been complying with their statutory obligations, they would have had to incur the cost of the auditor for preparing the reports that I am about to order. Such cost is simply a cost of doing business as a corporation registered under the Act.
- [15] For these reasons, I order the respondent to produce audited reports for the years 2009, 2010, 2011 and 2012.
- [16] I order the respondent to pay for those auditor's accounts. The auditor may apply for directions.
- [17] The respondent will direct its management and employees to fully cooperate with the auditor and answer any questions the auditor may have and provide the auditor with full access to all its records.
- [18] I will leave the choice of auditor to counsel. If counsel are unable to agree within a period of time we are about to discuss, the court will appoint an auditor. For reasons discussed with counsel, I will not be involved in that process.
- [19] Counsel, what is an appropriate period of time? I am thinking of a shorter period rather than a longer period.
- [20] MR. WONG: I think the standard is about three weeks. There is a lot of information that needs to run by the auditor.
- [21] THE COURT: This is for the appointment of the auditor. Simply agreeing on a name.
- [22] MR. WONG: Yes, but the company also wants to find someone that is more affordable and there is an affordability issue when you are picking an auditor who is not just the most expensive auditor but someone that is reasonable.
- [23] MR. COWPER: My Lord, perhaps two weeks.
- [24] THE COURT: I am going to fix two weeks. I think that should be more than ample if the parties address their attention to this matter.
- [25] The petitioner will have his costs of this application.
- [26] Counsel, is there anything further?
- [27] MR. COWPER: My Lord, the costs of yesterday's application were said to follow. Master Bouck's order was that the costs of the application would follow the outcome of this petition, and I presume that that's part of this, but a significant portion of the pleadings brought by the petitioner/respondent were essentially allegations of fraud as against a third party, and they were struck yesterday as being unnecessary and irrelevant, and it is my understanding that as a general rule there should be a costs sanction to discourage people from making unnecessary allegations of fraud. Since that was raised at great length by my friend in

today's submissions, I would seek an enhanced costs order as a result.

- [28] MR. WONG: My Lord, we actually did not address the issue of costs in our respective submissions, and I do want to make some submissions on the issue of costs with respect to this petition. If costs can take into account the equitable issue with respect to Mr. Li not asking for an audited financial statement and the fact that he never actually put in anything in writing that said he would be willing to pay for the audit, and if he had done so, we would have likely avoided this litigation. And it is my respectful submission that the company is in financial difficulties. We know the company is \$70,000 in the red with respect to the credit line and asking the company to pay costs in addition to the audit will make this whole thing very difficult to afford.
- [29] THE COURT: The law is quite clear that a party's impecuniosity is not relevant to the issue of costs. Mr. Cowper, are you suggesting the respondent's conduct amounts to the reprehensible level?
- [30] MR. COWPER: My Lord, where an allegation of fraud is made either unnecessarily or unsuccessfully it is -- generally special costs against the party that makes that unnecessary or superfluous allegation of fraud are made as part of the court's general policy to discourage people from attacking each other rather than addressing the issues in dispute, and in this particular case, My Lord, I would say that the company has done its best to shift the focus from the real issues to a question of the character of the petitioner and whatever may or may not have happened in China, and I think a costs sanction should follow, My Lord.
- [31] THE COURT: Well, to answer my question, are you suggesting that the conduct alleged should be penalized as reprehensible? Are you asking for special costs or some form of enhanced costs?
- [32] MR. COWPER: Yes, My Lord, I am asking for special costs.
- [33] THE COURT: I do not consider this case to rise to that level. Costs will be at the normal level. Thank you.
- [34] MR. WONG: My Lord, with respect to the 2012 audit.
- [35] THE COURT: Yes.
- [36] MR. WONG: In 2012 there were attempts made to have a shareholders meeting, to have the parties come to the table and resolve these issues, and for the court to order the 2012 audit, it may not be necessary in terms of the parties may be able to agree on something with respect to 2012.
- [37] THE COURT: Well, I am going to let that fall where it may. If the parties can agree to something, that is for the parties to agree to. If they cannot agree, my order will stand.
- [38] MR. COWPER: Thank you, My Lord.

[39] THE COURT: Thank you. "Greyell J."

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