

CANADA / JUDGMENT

Li v. Jin

2020 BCSC 1324

COURT

Supreme Court of British Columbia

DECIDED

9 September 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1324 Li v. Jin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Li v. Jin,

2020 BCSC 1324

Date: 20200909

Docket: S202100

Registry: Vancouver

Between:

Cai Yun Li

Plaintiff

And

Jian Jin, Zhihong Chu, Eagle Q Partners Inc., Westside Preparatory Society and Westside Preparatory Society D.B.A. The Westside Schools

Defendants

Before: The Honourable Mr. Justice A. Ross

Reasons for Judgment

Counsel for the Plaintiff:

D. Palaschuk

Counsel for the Defendant Westside Preparatory Society:

C. Rempel

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 24, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 9, 2020

Table of Contents

Background Facts. 3

The Position of Westside Preparatory Society. 7

The Plaintiff's Position. 8

Law.. 9

Relative Strength of the Parties' Cases. 14

Is the Defendant Suffering Hardship?. 17

Necessity. 17

Summary. 19

- [1] The defendant Westside Preparatory Society (the "Society"), which operates The Westside Schools, applies for an order setting aside two garnishing orders before judgement.
- [2] The Society says that the garnishing orders were obtained on an ex parte basis and the plaintiff failed to make full and frank disclosure of all material facts.
- [3] In the alternative, the Society applies, under s. 5(2) of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 [COEA], for an order releasing the garnisheed funds on the basis that it would be "just in all the circumstances."
- [4] I am informed that the Westside Schools recently changed management and that the two individual defendants are no longer involved in the business. The affiant on the Society's material is Mr. Graham Baldwin. He took over as president of the school in May 2020. To some extent, the Society relies on that leadership change as the basis for its application. The Society's submissions focus on their plan to move forward and continue operating the school.
- [5] I advised counsel at the close of the application that the Society's application to set aside the garnishing order, or alternatively, to release the funds, was denied and that I would provide written reasons.

[6] These are my written reasons.

Background Facts

- [7] This application arises from two prejudgment garnishing orders issued on February 25, 2020.
- [8] Since 2005, the Society has operated "The Westside Schools" (the "School"), which are comprised of three independent schools in downtown Vancouver. There are three age groups divided between: "Foundation Years" (kindergarten to grade 3), "Middle Years" (grades 4 to 7), and "Senior School", (grades 8 to 12). In the academic year 2019/2020, the school had approximately 375 registered students.
- [9] The School for each age group operates out of one of three campuses, each rented by the Society. During the school year, the School employs 61 full-time and part-time employees, comprised of the leadership team, teachers, and other staff. The approximate monthly payroll is \$490,000.
- [10] Until May 2020, the School was operated by the defendants Jian Jin and Zhihong Chu (collectively, "Jin and Chu"). Jin was the Chief Executive Officer and Chu the Chief Financial Officer of the Society. Jin and Chu were also the principles of the Defendant Eagle Q Partners Inc. ("Eagle Q"). Although that company's role is not entirely clear, it appears that Jin and Chu financed the operation of the School through payments from Eagle Q to the Society. As discussed below, the financial documentation indicates that the Society owes substantial sums to Eagle Q.
- [11] As discussed in more detail below, the School has run into financial difficulty. Among other debts, as of August 2020, the Society is indebted to Canada Revenue Agency ("CRA") for remittances on employee income of approximately \$1.8 million. The School negotiated a repayment plan with CRA under which it pays \$60,000 per month. The fact that the employee income tax remittances were not, in fact, remitted to CRA strongly suggests that the financial position of the Society is poor, or compromised, or both.
- [12] The Society was unable to meet its payroll obligations in June 2020. As a result, it laid off a number of employees at that time.
- [13] Mr. Baldwin's affidavits attempt to put forward a positive financial outlook for the School. However, in the action, the defendants have disclosed financial documentation. In responding to this application, the plaintiff appended some of that financial documentation:
- a) A "Profit and Loss statement" for "The Westside School" for the period July through October, 2019 indicated that the School lost \$1,607,826 over those four months.
 - b) A "Balance Sheet", as of October 31, 2019, shows that the School had negative retained earnings totalling (\$7,657,131). Included in that amount was a long-term loan from Eagle Q in the amount of \$4,054,092.

[14] The Society does not accept that its financial situation is properly described in the documents proffered by the plaintiff (but disclosed by the defendants). However, the Society did not proffer any financial documentation to undercut the plaintiff's documentation.

[15] Mr. Baldwin's first affidavit states:

Prior to my appointment as President and Director of the Society in early May, 2020, the Westside School under the purported and unauthorized authority of the former Chairman of the Board, Jian "Chris" Jin, operated in a manner that attracted significant alleged liabilities including the within proceedings

[16] Mr. Baldwin's affidavit did not, however, disclose that he was also the president of the School in prior years, and that he returned to that role in May 2020.

[17] The plaintiff is one of several people who have commenced actions against Eagle Q, the Society, Jin and Chu. Most of those actions relate to the defendants' default on loans.

[18] The plaintiff, Cai Yun Li ("Li"), has made three loans to the defendants over time.

[19] Li's first loan was in the amount of \$550,000, advanced in 2014. That loan was documented in an agreement dated May 29, 2014, as between the plaintiff as lender, and Westside Preparatory Society, Jin and Chu (the "First Loan Agreement"). According to its terms, it was to be a short term loan with an interest rate of 2% per month.

[20] As of May 29, 2016, \$350,000 of the \$550,000 had been repaid by the borrowers.

[21] The same parties came to an agreement for a second loan in the amount of \$200,000 as of May 29, 2016 (the "Second Loan Agreement"). The interest rate was reduced to 1% per month. There were other alterations to the terms in the Second Loan Agreement as compared to the First Loan Agreement.

[22] As discussed below, the defendants submit that a defence is established by the wording of the Second Loan Agreement. It described the borrowers as:

Westside Preparatory Society (The Westside School), a corporation organized and existing under the law of British Columbia, Canada, located at 788 Beatty Street, Vancouver, BC V6B 2M1, and Jian Jin as well as Zhihong Chu (the "Borrower").

[23] At the time the parties entered into the Second Loan Agreement, the plaintiff and Chu signed a handwritten notation to the First Loan Agreement stating (translated), "The total amount of five hundred and fifty thousand dollars has been repaid. This contract will automatically become null and void."

[24] In 2018, the plaintiff made a third loan of \$300,000 to the same parties. That loan was documented in an agreement dated January 10, 2018 (the "Third Loan Agreement"). Again, the interest rate was 1% per month along similar terms to the Second Loan Agreement.

[25] The Third Loan Agreement provides, in part (translated):

Subsequent to an adequate negotiation being conducted between Li, Caiyun (hereinafter referred to as the Lending Party) and Westside Preparatory Society (the Westside School), Jian Jin and Zhihong Chu (hereinafter referred to as the Borrowing Party), this contract is drawn up and signed for joint performances.

[26] The borrowers fell into arrears on the Second and Third Loan Agreements.

[27] The plaintiff commenced an action on the debt on February 24, 2020. On February 25, 2020, the plaintiff brought an application for, and obtained, garnishing orders before judgement. The amount of the debt set out in the notice of civil claim was \$500,000.

[28] One of the garnishing orders before judgement achieved its goal, and \$500,000 was paid to the benefit of the plaintiff from the bank account of the Society. According to the affidavit evidence, the bank account garnisheed by the plaintiff was specifically referenced in the Second Loan Agreement between the parties as an account held by the Society.

[29] The Society now applies to set aside that garnishing order.

The Position of Westside Preparatory Society

[30] As noted above, the defendants Jin and Chu are no longer involved in the operation of the Society or the School. This application is brought by the Society under new management.

[31] The Society submits that the plaintiff did not make full and frank disclosure in its application for the garnishing order. In particular, the Society alleges that the plaintiff failed to disclose:

- a) the existence of the 2014 loan or the First Loan Agreement;
- b) the fact that the defendants repaid \$350,000 on the First Loan Agreement;
- c) the Second Loan Agreement relates to \$200,000 that was not repaid from the First Loan Agreement (i.e., that no new moneys were advanced in consideration for the Second Loan Agreement);
- d) the plaintiff provided incorrect evidence in her affidavit in support of the garnishing order.

[32] In respect of the failure to disclose information regarding the First Loan Agreement, the Society submits that the plaintiff's claim for that \$200,000 was "likely time barred pursuant to the Limitations Act."

[33] The Society further says that the plaintiff's affidavit in support of the garnishing orders contains incorrect information. That affidavit states that, with respect to the Second Loan Agreement, "\$200,000 was paid by myself to Eagle Q Partners Inc." In this application, the plaintiff acknowledged that, in fact, the funds relating to the Second Loan Agreement were comprised of the funds advanced under the First Loan Agreement. Those funds were advanced to the Society, and not to Eagle Q.

- [34] The Society argues that an ex parte application seeking a garnishing order requires full and frank disclosure and the plaintiff did not meet that standard.
- [35] The defendants argue that the obligation on the applicant was to reveal all material facts that might, if known to the court, affect the outcome of the application.
- [36] On that basis, the defendant argues that the failure to disclose the material facts was significant enough that the garnishing order should be set aside. The Society argues that if full disclosure had been made, it might have affected the issuance of the garnishing order.
- [37] As noted, the Society's alternative argument seeks release of the funds on that basis of s. 5(2) of the COEA. I address that issue below.

The Plaintiff's Position

- [38] The plaintiff:
- a) says that the material filed in support of the garnishing order met the requirements of the COEA and test for ex parte applications of this nature;
 - b) submits that it was unnecessary to disclose the First Loan Agreement on the application for the garnishing order because it was replaced with the \$200,000 and the Second Loan Agreement, which contained new terms;
 - c) concedes that her February 24, 2020 affidavit incorrectly states that the \$200,000 was advanced to Eagle Q. Those funds were, in fact, advanced to the Society. However, that error was an honest mistake that does not change the basis for the order sought. The case law does not require perfect compliance. Further, the error provided evidence on the application that more favourable to the Society than the actual facts.
- [39] On that basis, the plaintiff submits that the garnishing order should not be overturned.

Law

- [40] There is no real dispute between the parties on the applicable law although they interpret the cases slightly differently. Not surprisingly, the plaintiff takes a stricter view of the disclosure obligations.
- [41] There are, in essence, two tests for an application for a garnishing order. First, the plaintiff's material must meet the requirements of the COEA. Second, the disclosure must meet with the requirements of ex parte applications of this nature.
- [42] The requirements of the COEA in respect of a garnishing order before judgment are set out at s. 3(2)(d), the relevant parts of which provide:
- (2) A judge or a registrar may, on an application made without notice to any person by
 - (a) a plaintiff in an action, or

on affidavit by himself or herself or his or her solicitor or some other person aware of the facts, stating,

- (d) if a judgment has not been recovered,
- (i) that an action is pending,
- (ii) the time of its commencement,
- (iii) the nature of the cause of action,
- (iv) the actual amount of the debt, claim or demand, and
- (v) that it is justly due and owing, after making all just discounts,

and stating in either case

- (e) that any other person, hereafter called the garnishee, is indebted or liable to the defendant, judgment debtor or person liable to satisfy the judgment or order, and is in the jurisdiction of the court, and
- (f) with reasonable certainty, the place of residence of the garnishee,

order that all debts due from the garnishee to the defendant, judgment debtor or person liable to satisfy the judgment or order, as the case may be, is attached to the extent necessary to answer the judgment recovered or to be recovered, or the order made, as the case may be.

[43] The Society does not suggest that the plaintiff failed to meet the requirements of the COEA. Instead, the Society focusses its argument on the plaintiff's alleged failure to meet her obligation to make full and frank disclosure.

[44] In defining the obligation of a plaintiff, both parties rely on the decision in *Politeknik Metal San ve Tic A.Ş. v. AAE Holdings Ltd.*, 2015 BCCA 31 [Politeknik] where the Court of Appeal discussed the requirements:

[30] One of the alternate arguments made by the defendants is that the garnishing order was properly set aside because the plaintiff did not make full and frank disclosure of all material facts when it obtained the order. I agree with the defendants that, in addition to defects in the supporting affidavit as to the matters set out in s. 3(2)(d) of the COEA, a garnishing order obtained without notice to the defendants should not be sustained if the facts set out in the supporting affidavit as to the cause of action against a defendant (or in a notice of civil claim attached to the affidavit) are misleading or otherwise fail to disclose all material facts with respect to the cause of action.

- [31] In *Environmental Packaging Technologies, Ltd. v. Rudjuk*, 2012 BCCA 342, this Court held that the principle of full and frank disclosure applicable to ex parte applications generally is not ousted by the COEA and applies equally to the issuance of garnishing orders. The Court accepted the analysis of this issue by Voith J. in *Key Insurance Services*, including his reliance on the decision of Mr. Justice Groberman in *Clark v. Third Storey Holdings Ltd.*, 2003 BCSC 1358, where he wrote:
- [17] As is usual, the garnishing order in this case was issued by the registrar on an ex parte basis and without a hearing. The issuance of a garnishing order is a judicial or quasi-judicial function of the registrar, and where the registrar is asked to make such an order on an ex parte basis, it is my view that the duty of disclosure imposed on the plaintiff is a very high one, notwithstanding that the form of affidavit is statutorily prescribed.
- [33] Thus, the plaintiff in this case was required to make full and frank disclosure of all material facts related to the cause of action asserted against the defendants. A material fact is one that may have affected the outcome of the application: see *Evans v. Umbrella Capital LLC*, 2004 BCCA 149 at para. 33.
- [45] The Society directed me to the decision in *Ghassemvand v. Premium Weatherstripping Inc.*, 2015 BCSC 2060 as an example of a case where a garnishing order was set aside due to the plaintiff's failure to make full and frank disclosure. In that case, the plaintiff obtained a garnishing order on the basis that it had advanced funds to the defendant and the funds were due and owing. However, the plaintiff did not disclose that the funds were advanced pursuant to a shareholder agreement that had a specific, and peculiar, "Capital Call Provision". Master McDiarmid wrote:
- [23] I find that the failure to disclose the capital call provisions constitutes a failure to disclose material facts, facts material to the issue of whether the advances are debts, and the issue of whether they are justly due and payable.
- [46] Although the plaintiff accepts the law as described by the Society, she focusses on the general principles enunciated in *Politeknik*. She submits that those principles do not require perfect compliance and only require disclosure of relevant and material information. She distills the principles from *Politeknik* as follows:
- a) Perfect compliance is not necessary as long as there is no confusion or uncertainty:
- [23] As a result of the unique and extraordinary nature of garnishing orders, the law has developed the requirement that there must be meticulous or strict compliance with the statutory prerequisites for the issuance of a garnishing order. This requirement does not equate to perfect compliance, and defects in the materials for a garnishing order will not be fatal as long as there is no confusion or uncertainty as to the basis upon which the order was issued: see *Golder Associates Ltd. v. North Coast Wind Energy Corp.*, 2010 BCCA 263 at para. 24.

b) The disclosure required is that which is relevant and material (at para. 32):

[32] In *Environmental Packaging*, Mr. Justice Chiasson, on behalf of the Court, reasoned as follows:

[51] For the most part, I accept the very comprehensive analysis of Voith J., but with this caveat: the required disclosure must be that which is relevant and material to the prescribed contents of the affidavit. An application for a garnishing order is not free-standing; it is authorized by statute and the statute prescribes the criteria for obtaining the relief. A registrar or judge is entitled to have for consideration all material that is relevant and material to these criteria. The tendered material may be narrower in scope than would be required to obtain an *ex parte* injunction. The standard I have identified respects the legislative intent as expressed in ss. 7 and 8, that is, that satisfaction of the prescribed criteria is sufficient, with the gloss that the full context of the criteria must be presented to the registrar or judge.

[Emphasis added.]

c) A material fact is one that may have affected the outcome of the application (at para. 33):

[33] Thus, the plaintiff in this case was required to make full and frank disclosure of all material facts related to the cause of action asserted against the defendants. A material fact is one that may have affected the outcome of the application: see *Evans v. Umbrella Capital LLC*, 2004 BCCA 149 at para. 33.

d) There is discretion not to set aside the garnishing order if there was innocent non-disclosure (at para. 39):

[39] This Court has held that an *ex parte* order may be set aside where there has not been full and frank disclosure of relevant facts, although there is a discretion not to set it aside where the non-disclosure is innocent: see *Bank of Credit and Commerce International (Overseas) Ltd. v. Akbar*, 2001 BCCA 204 at paras. 23 and 43.

[47] With these principles in mind, I return to the position put forward by the defendant.

[48] First, the Society argues that the failure to disclose the First Loan Agreement constitutes a failure to make full disclosure. The Society says that, in fact, no money was advanced in respect of the Second Loan Agreement. Instead, the funds in issue were still the funds advanced on the First Loan Agreement. Hence, the Society argues that there was a limitation defence that may have been evident to the registrar. Thus, the existence of that possible limitation defence may have affected the granting of the order.

- [49] I do not accept the Society's submission on this point. It is clear to me that the Second Loan Agreement contains different terms than the First Loan Agreement. Most notably, the interest rate is cut in half. Although I make no decision on the issue, I fail to see how the registrar's decision on the garnishing order could have been affected by the existence of the First Loan Agreement.
- [50] On this issue, the Society argues that there was no consideration for the Second Loan Agreement. However, the consideration seems clear. The Society negotiated an extension of time to repay the original loan, and received more favourable terms. There is nothing unusual in that process. The documentation of the new terms would appear to put an end to the limitation argument. However, I make no finding on that issue because further evidence and arguments may arise before the trial.
- [51] I only comment that, based on the evidence before me, the existence of the First Loan Agreement would not have affected the issuance of the garnishing order.
- [52] Second, the Society argues that the statement in the plaintiff's first affidavit indicating that the funds were paid to Eagle Q was not correct. The Society says that the plaintiff's evidence has shifted in response to this application.
- [53] As noted, the plaintiff concedes that the original affidavit incorrectly indicates that the funds were advanced to Eagle Q. In her second affidavit, the plaintiff acknowledges that the funds were advanced to the Society.
- [54] I accept the plaintiff's evidence that this was an innocent mistake. I further accept that if the first affidavit had indicated that the funds were advanced to the Society, it would not have changed the position of the plaintiff on that application. In fact, that information would have been detrimental to the Society's position.
- [55] On that basis, I do not accept the Society's submission that the plaintiff failed to make full and frank disclosure of all relevant and material facts. Although there was a mistake on the plaintiff's first affidavit, it was an innocent mistake that did not affect the core of the plaintiff's application. I do not accept the Society's submission that the existence of the First Loan Agreement was relevant or material.
- [56] I now move on to consider the Society's second argument, based on s. 5(2) of the COEA.

Just in All the Circumstances

- [57] The Society's alternate argument is that the garnishing order should be set aside on an equitable basis under the COEA.
- [58] Section 5(2) of COEA provides that a defendant subject to a prejudgment garnishing order may apply to have the garnisheed funds released and a court may make that order, if it is "just in all of the circumstances":

(2) If, under subsection (1), the registrar or judge considers it just in all the circumstances, he or she may make an order releasing all or part of the garnishment and if he or she does and a judgment has been entered, he or she must set the amounts and terms of payment of the judgment by instalments.

[59] The Society submits that there are three elements to consider when considering whether it is "just" to release the garnishment funds the court:

- a) the relative strength of the parties' cases (although, needless to say, the court should not determine any issues);
- b) whether the defendant is suffering under any hardship; and
- c) whether the garnishing order is necessary.

[60] I deal with each element below.

Relative Strength of the Parties' Cases

[61] As noted, I do not purport to determine any issues under this heading. However, I note that the plaintiff's claim is against the defendants in debt. The loans were documented in the Second and Third Loan Agreements. On its face, the plaintiff's claim would be considered strong by any court.

[62] The Society submits that it does not have to establish that exceptional circumstances exist in order to succeed in having the garnisheed funds released. On the basis of the arguments set out below, the Society submits that the plaintiff's case is weak, or at the very least, the relative strength of the case strongly favours the Society.

[63] The Society submits that the plaintiff's claim in debt is weak because the Society has numerous meritorious defences, including:

- a) the limitation defence (discussed above);
- b) the fact that there are two versions, one in Chinese and one in English, of both the Second Loan Agreement and the Third Loan Agreement; and
- c) the argument (described above at paras. 22 and 25) that the Society is not a borrower on the Loan Agreements.

[64] I set out above my consideration of the limitation defence. At this point, I do not consider it to be a strong defence. It does not balance against the strength of the debt claim. However, I make no determination on that issue. Further evidence may develop.

- [65] Similarly, although there were two versions (in different languages) of the Second and Third Loan Agreements, and although there may be differences between the terms of the translated agreements and the English agreements, it appears to me that the essential terms of the different versions are the same. It is clear that the plaintiff was advancing funds to the borrowers and that there was an obligation to repay the funds on the terms prescribed. The Society does not deny that the loans were in default when the action was commenced.
- [66] I acknowledge that the Society will argue that, based on the wording of the Loan Agreements, that the initial paragraphs appear to separate the Society from Jin and Chu: see paras. 22 and 25 above. That separation forms the basis of the Society's argument that it was not a "borrower" in those Agreements. However, I note that the words that separate the Society from Jin and Chu, consist of the information that identifies the Society. Further, counsel had no rational explanation for the inclusion of the Society in the Loan Agreements if the Society was not, as he argues, a party to those Agreements. At this point, that defence does not appear strong.
- [67] The Society made further, alternative, submissions in support of its argument the "strength" of the case favoured the Society.
- [68] The Society submits that it has a defence because there is no evidence that it received the funds from the second and third loans. The plaintiff dispelled that argument with banking statements (disclosed by the Society in the action) showing the flow of the loaned funds to the Society.
- [69] The Society further argues that it has a defence based on a document created by the defendant Eagle Q. Eagle Q provided a T5 Income Tax slip to the plaintiff in 2018, indicating that Eagle Q paid interest income to the plaintiff on the two loans. I do not find that this document to be of any assistance to the Society. As noted above, the "new management" seeks to distance itself from Jin and Chu. However, the fact that Jin and Chu, through Eagle Q, may have created a document indicating that Eagle Q paid interest on a loan does not establish a basis for a defence that the Society was not a borrower under the loan agreements.
- [70] The Society will further argue that Jin and Chu were not authorized to sign loan agreements on behalf of the School or the Society. However, that argument appears to fly in the face of Mr. Baldwin's other submission: that he recently took over the operations of the School and the Society from Jin and Chu. I find no evidence to support the argument that Jin and Chu lacked the apparent or actual authority to enter into the Loan Agreements.
- [71] Having reviewed the Society's submissions, I am unable to find that the "relative strength" argument favours the Society.

Is the Defendant Suffering Hardship?

- [72] The Society submits that, as a result of the garnishing orders, it has been unable to meet its June 15, 2020 payroll obligations and is overdue four months on its lease. Further, the Society is not meeting its minimum monthly obligations to pay \$60,000 to CRA. That information was set out in Mr. Baldwin's affidavit dated July 22, 2020.
- [73] The Society's notice of application was filed on July 24, 2020. This application proceeded on August 24, 2020. At the hearing, I was informed by counsel that the School had virtually no chance of opening for the 2020-2021 school year if it did not have access to the garnisheed funds. Counsel was careful not to represent that obtaining access to the funds would mean that the School could operate for the coming year.
- [74] The plaintiff notes that the Society attempted to walk a fine line with this evidence. As discussed below, the "necessity" of the garnishing order is determined, in large part, on whether the defendant is solvent and the risk of a dry judgment.
- [75] The plaintiff notes that the School is a "for profit" business. It should not receive different treatment on the basis that it is a school. The plaintiff submits that it is clear from the financial documents (discussed above) that the School is in terrible financial shape and the return of the garnisheed funds will not improve its viability.
- [76] As noted, if the financial documents are correct, the School is losing approximately \$400,000 per month and has existing debts of more than \$7,000,000. Hence, the hardship created by this garnishing order has to be measured against the other hardships facing the Society. I find the hardship caused by the garnishing order to be minimal in the overall circumstances.

Necessity

- [77] On the issue of "necessity", the plaintiff submits that the law is clear. A garnishing order will be found to be necessary if there is a risk that if the funds are released to the Society, the plaintiff will end up with a dry judgment.
- [78] In support of her submission, the plaintiff offered evidence of several other actions commenced against Eagle Q, the Society, Jin and Chu. Those actions seek recovery of loans in principle amounts exceeding \$2,000,000 that are outstanding.
- [79] The plaintiff submits that there is strong evidence to suggest that she will face a dry judgment if the garnisheed funds are returned.
- [80] In response, the Society submits that:

if the School can operate in the short-term and ensure a September school year, the Westside School will receive further tuition payments and government grants to operate into the future. The President of the School, Mr. Baldwin, attest that the School will be in a position to pay, or seek financing, any future judgment to the Plaintiff.

- [81] To be frank, this submission, and the evidence supporting it, do not inspire any confidence that the School will survive. The Society disputes the financial documents adduced by the plaintiff on the basis that they were prepared by Jin and Chu. However, the Society produced no financial documentation to counter the strong impression that the survival of the School was in significant peril.
- [82] The plaintiff's position is that the "necessity" element should always trump the "hardship" element. In circumstances where the defendant displays hardship, the court looks for evidence that the defendant is, at least, "solvent".
- [83] I have set out above my consideration of the relative impact of the garnishing order on the Society's financial position. Based on the evidence before me, it is clear that the Society was not solvent at the time of the application. Hence, there is a substantial risk of a dry judgment.
- [84] Having considered the three elements set out above, I am unable to find that it would be "just in the circumstances" to release the garnisheed funds back to the Society.

Summary

- [85] On the basis set out above, the Society's application to set aside the garnishing order, or release the funds, is denied.
- [86] The plaintiff is entitled to the costs of this application, in the cause.

"A. Ross J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/13/2020BCSC1324.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/li-v-jin-2020>

Prepared on 24 October 2026 · Esheria