

CANADA / JUDGMENT

Li v. Liang

2021 BCSC 1856

COURT

Supreme Court of British Columbia

DECIDED

23 September 2021

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2021 BCSC 1856 Li v. Liang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Li v. Liang,

2021 BCSC 1856

Date: 20210923

Docket: E171485

Registry: Vancouver

Between:

Yuan Yuan Li also known as Yuanyuan Li or Michelle Li

Claimant

And

Xiao Min Liang also known as Xianmin Liang or Alan Liang, La Suo Liang, Li Ying Niu, also known as Liying Niu, Xiao Yan Liang, also known as Xiaoyan Liang or Monica Liang and Ju Stone Investment Co. Ltd.

Respondents

- and -

Docket: S1812143

Registry: Vancouver

Between:

Xiaoyan Liang

Plaintiff

And

Yuanyuan Li, Unit Touch International Enterprises Inc. and Unit Touch International Enterprises (2018) Inc.

Defendants

Before: Master Vos

Reasons for Judgment

In Chambers

(Hearing proceeded via MS Teams)

Counsel for the Claimant, Yuan Yuan Li, in Action No. E171485:

M.L.A. Lundell, Q.C.

Counsel for the Respondents, La Suo Liang, Li Ying Niu, Xiao Yan Liang and Ju Stone investment Co. Ltd. in Action No. E171485:

H.B. Chiu

No appearance on behalf of the Respondent, Xiao Min Liang in Action No. E171485.

Counsel for the Plaintiff, Xiaoyan Liang in Action No. S1812143:

J.R. Pollard

Counsel for the Defendants, Yuanyuan Li, Unit Touch International Enterprises Inc. and Unit Touch International Enterprises (2018) Inc. in Action No. S1812143:

J.K. Bienvenu

Place and Date of Hearing:

Vancouver, B.C.

September 17, 2021

Place and Date of Judgment:

Vancouver, B.C.

September 23, 2021

[1] THE COURT: The claimant in this family law case (the "Family Action") applies for an order that would consolidate that action with the civil case set out above (the "Civil Action"), or, alternatively, for an order that would require the two actions to be tried at the same time. If one of those orders is not granted, she applies, in the further alternative, for an order that

would direct the two actions to be heard sequentially, before the same trial judge. The respondent, Xiao Min Liang also known as Xianmin Liang or Alan Liang ("Alan Liang") takes no position with respect to the applications and did not participate in the hearing. The other respondents oppose the orders sought by the claimant.

- [2] The plaintiff in the Civil Action opposes the orders sought by the claimant. The defendants in the Civil Action consent to the orders sought by the claimant.

Background

- [3] As indicated in the style of cause for the Family Action, some of the parties are known by alternate names. To avoid confusion, the names set out in these reasons are the names used in the notice of application.
- [4] The claimant in the Family Action, Michelle Li, and the respondent, Alan Liang, were in a relationship for about ten years. They began living together in a marriage-like relationship in December 2006, got married on December 25, 2007, and separated in December 2016.
- [5] There are additional respondents to the Family Action. The respondent, La Suo Liang is Alan Liang's father. The respondent, Li Ying Niu also known as Liying Niu, is Alan Liang's mother. The respondent, Xiao Yan Liang also known as Xiaoyan Liang or Monica Liang ("Monica Liang") is Alan Liang's sister. The respondent, Ju Stone Investment Co. Ltd. ("Ju Stone") is a BC company. Alan Liang is the sole shareholder, director and officer of Ju Stone.
- [6] The notice of family claim was filed on June 8, 2017. A response to family claim was filed by Alan Liang on July 18, 2017. Alan Liang's parents, Monica Liang and Ju Stone filed a response to family claim on December 5, 2017 and a counterclaim on December 17, 2018. Michelle Li filed a response to the counterclaim on January 14, 2019. The judicial case conference for the Family Action proceeded on April 12, 2018.
- [7] To date, a notice of trial has not been filed to secure a trial date for the Family Action, but counsel indicated they are in the process of trying to schedule the trial for a three-week hearing starting on March 20, 2023.
- [8] The plaintiff in the Civil Action is Monica Liang, one of the respondents in the Family Action. The defendants to the Civil Action are Yuanyuan Li, the claimant in the Family Action (Michelle Li), Unit Touch International Inc. ("Unit Touch") and Unit Touch International Enterprises (2018) Inc. ("Unit Touch (2018)"). Unit Touch is a BC company. Since April 2013 Michelle Li held 70% of the shares and Alan Liang and Monica Liang each held 15% of the shares in this company. Unit Touch (2018) is a BC company. Michelle Li is the sole director and officer of Unit Touch (2018).
- [9] The notice of civil claim was filed on November 13, 2018. The response to civil claim was filed on January 11, 2019.
- [10] The trial of the Civil Action is scheduled for a four-day hearing starting on October 12, 2021.

The Legal Framework

- [11] The application seeks to have a civil action consolidated with or tried at the same time as a family law case. It must be considered under Rule 22-5(8) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 (the "Rules"). That rule applies to proceedings, which include a Supreme Court civil action and any other suit, cause or matter. It provides:
- (8) Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.
- [12] The matters the court is to consider on an application pursuant to Rule 22-5(8) are set out in cases that considered the previous rule (Rule 5(8)), which was identical to the present rule. In *Merritt v. Imasco Enterprises Inc.*, [1992] B.C.J. No. 160, Master Kirkpatrick (as she then was) wrote:
- [19] I accept that the foundation of an application under R. 5(8) is, indeed, disclosed by the pleadings. The examination of the pleadings will answer the first question to be addressed: do common claims, disputes and relationships exist between the parties? But the next question which one must ask is: are they "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense"? *Webster v. Webster* (1979), 12 B.C.L.R. 172 at 182, 10 R.F.L. (2d) 148, 101 D.L.R. (3d) 248 (C.A.). That second question cannot, in my respectful view, be determined solely by reference to the pleadings. Reference must also be made to matters disclosed outside the pleadings:
- (1) Will the order sought create a saving in pre-trial procedures, (in particular, pre-trial conferences)?
 - (2) Will there be a real reduction in the number of trial days taken up by trials being heard at the same time?
 - (3) What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?
 - (4) Will there be a real saving in experts' time and witness fees?
- [13] In *Beazley v. Insurance Corp. of British Columbia*, 2004 BCSC 1091, at paras. 12-13, Madam Justice Kirkpatrick, then a Judge of the Supreme Court of British Columbia, added the following three factors to the four factors set out in *Merritt*:
- (5) Is one of the actions at a more advanced stage than the other? . . .
 - (6) Will the order result in a delay of the trial of one of the actions and, if so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which a combined trial might otherwise have?

- (7) Is there a substantial risk that separate trials will result in inconsistent findings on identical issues?
- [14] In both Merritt (at para. 19) and Beazley (at para. 12) the Court indicated that the factors listed above are not intended to be an exhaustive list, but are to be regarded as some matters to be considered before making an order under the rule. The order should make sense in the overall circumstances of the litigation.

Analysis

- [15] The analysis must begin with a consideration of whether the two actions involve common claims, disputes and relationships between the parties.
- [16] The parties involved in the Civil Action, Monica Liang, Michelle Li and the shareholders in the defendant companies, are all parties to the Family Action. Counsel for Michelle Li submits that the subject matter of the Civil Action is one small part of the matters in issue in the Family Action and should therefore be heard at the same time as the other issues in the Family Action.
- [17] Counsel for Monica Liang in the Civil Action argues that there are no common claims or disputes in the two actions. In Part 4 of his application response he submits:
15. There are no common claims or disputes between the Civil Action and the Family Action. In the Civil Action, Monica Alleges that she provided Michelle with a \$300,000 Loan for the Business, which was to be run by Unit Touch. In an affidavit filed in the Family Action, Michelle has admitted that Monica provided a \$300,000 Loan to Unit Touch; her defence to the Civil Action is that the Loan was repaid in full by funds that were transferred from Unit Touch's bank account into the Joint Account. None of the issues in the Family Action need to be resolved in order for the court to decide on the issues in the Civil Action.
- [18] As indicated in Merritt, the question of whether common claims, disputes and relationships exist between the parties is to be answered on an examination of the pleadings.
- [19] The current pleading on behalf of the plaintiff in the Civil Action is a further amended notice of civil claim filed August 26, 2019. In Part 1 of that pleading, the plaintiff, Monica Liang, alleges that she agreed to loan \$300,000 to Michelle Li to fund capital requirements for a business Michelle Li intended to operate in the Oakridge Mall in Vancouver. The pleading alleges Monica Laing provided the loan in three payments: on or about June 17, 2013 she provided \$150,000 by cheque payable to Unit Touch; on or about July 9, 2013 she transferred \$100,000 to a bank account Michelle Li held jointly with Alan Liang; and on or about August 23, 2013 she provided \$50,000 by cheque payable to Unit Touch. The pleading alleges Michelle Li made a partial repayment of the loan on or about December 7, 2015, by way of a cheque from Unit Touch in the amount of \$100,000. The relief sought by Monica Liang is judgment in debt against Michelle Li in the amount of \$200,000. In the alternative, Monica Liang seeks judgment in the amount of \$100,000 against Michelle Li and \$100,000

against Unit Touch, or judgment in the amount of \$200,000 against Unit Touch.

- [20] The current pleading on behalf of the defendants to the Civil Action is the further amended response to civil claim filed September 9, 2019. The relief sought by the plaintiff is opposed. The legal basis for the opposition to the relief sought is that the defendants say they did not request a loan of \$300,000, as alleged by Monica Liang, and contend they did not receive the benefit of the funds. In a section of the pleading entitled "Defendants' Version of Facts", the defendants allege that Monica Liang had a power of attorney for Michelle Li, which provided her with access to a joint bank account held by Michelle Li and Alan Liang; that Monica Liang deposited \$300,000 into the joint bank account on or about July 9, 2013; and that within days of those funds being deposited into the joint bank account they were transferred out to either or both of Alan Liang or Monica Liang. In that section of the pleading the defendants acknowledge that Monica Liang provided funds to them for the business.
- [21] On these pleadings, the issues to be determined in the Civil Action are as follows. Was there an agreement between the plaintiff and the defendants? If there was an agreement, were funds advanced to the defendants pursuant to the terms of the alleged loan? If funds were advanced, did the defendants pay back all or part of the loaned funds? If the funds were not fully paid back, which defendant(s) are liable to repay funds to the plaintiff? These are relatively straightforward issues.
- [22] The loan of funds the respondent, Monica Liang, alleges she provided to Michelle Li or Unit Touch is not specifically mentioned in the pleadings for the Family Action, but the pleadings indicate division of family property and debt is in issue.
- [23] Michelle Li argues the determination of whether Monica Liang deposited \$300,000 into the joint bank account held by Alan Liang and Michelle Li, and whether those funds were later stripped out of the account by Alan Liang and/or Monica Liang, should be determined in the Family Action, as it would be part of the investigation into the financial affairs of the parties. However, the issues in the Civil Action are very narrowly cast and relate to a discrete set of transactions. Once those issues are decided, they would no longer be live issues in the Family Action. In addition, there is no real danger that the determination of those transactions would adversely affect a wider examination of the parties' financial affairs or the determination of family property and debt in the Family Action.
- [24] On the pleadings, the two actions do not have common claims or disputes that would require them to be consolidated or tried at the same time.
- [25] As indicated in Merritt, the next question to be addressed is whether the two actions are so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense. The following seven factors are to be considered.

- 1) Will the order sought create a saving in pre-trial procedures (i.e. if pre-trial procedures could be combined for both actions)?

[26] No. The Civil Action is set to proceed to trial on October 12, 2021. Pre-trial proceedings for that action have been completed.
- 2) Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?

[27] There may be a minor saving in overall trial time if the two actions are heard at the same time, but it would not be significant. The overlapping evidence primarily would be the testimony the parties would provide about their relationship. However, the main evidence in the Civil Action would be about whether there was a loan and whether it was paid back. Once those issues are decided, that testimony would not have to be repeated in the trial of the Family Action.
- 3) Will a party be seriously inconvenienced by being required to attend a combined trial in which that party may have only marginal interest?

[28] No. The people involved in the Civil Action are also parties to the Family Action.
- 4) Will there be a real saving in experts' time and witness fees?

[29] No. Counsel advised there will be no expert evidence in the Civil Action.
- 5) Is one of the actions at a more advanced stage than the other?

[30] Yes. The Civil Action is set to proceed to trial less than a month from now. The trial of the Family Action is long off.
- 6) Would an order requiring the two actions to be heard at the same time delay the trial of one of the actions? If so, does any prejudice which a party may suffer as a result of the delay outweigh the potential benefits which a combined trial might otherwise have?

[31] The Civil Action is on track to proceed to trial on October 12, 2021. The trial management conference for that trial took place on August 25, 2021. There is no chance that the Family Action could proceed on October 12, 2021 and no chance a combined trial could be completed in the four days reserved for the Civil Action. An order requiring the two actions to be heard at the same time would therefore delay the trial of the Civil Action, likely until 2023.

[32] A delay of the trial of the Civil Action would be prejudicial to the plaintiff in that action, Monica Liang. The defendants to the Civil Action applied to adjourn the hearing of that trial from the October 12, 2021 date. The adjournment application was heard on September 9, 2021 and was dismissed. In the reasons for judgment with respect to the adjournment application, Master Muir noted that the trial of the Civil Action had been adjourned once previously and said:

- [17] I agree that the plaintiff has raised a significant concern that there will be non-compensable prejudice should this matter be adjourned again. That prejudice is the apparent dissipation of the assets of the defendant companies. In my view, that prejudice overwhelms the question of documents which may or may not be able to be obtained and a length of trial that may or may not be able to be resolved. . . .
- [33] The prejudice to the plaintiff in the Civil Action discussed by Master Muir would arise if an order were made to combine the two trials, as the trial of the Civil Action would be delayed. On the factors outlined above, the only potential benefit a combined trial might provide is a minor saving in overall trial time. The prejudice to the plaintiff in the Civil Action would outweigh the benefit from the minor reduction in overall trial time.
- 7) Is there a substantial risk that separate trials would result in inconsistent findings on identical issues?
- [34] No. The issues in the Civil Action are substantially discrete from matters in issue in the Family Action.
- [35] The findings on the factors that must be considered on this application indicate that the applications should not be granted. On the pleadings, the two actions do not have common claims or disputes that would require them to be consolidated or tried at the same time. The two actions are not so interwoven as to make separate trials undesirable. In addition, an order requiring the two actions to be heard at the same time would prejudice the plaintiff in the Civil Action to an extent that would outweigh any potential benefit that might result from a combined trial. As indicated by Master Muir, if the trial of the Civil Action is delayed, the plaintiff to that action may lose the ability to recover on a judgment she may obtain, because of the apparent dissipation of assets from the companies that are defendants to that action. An order that would require a combined trial of the two actions would not make sense in the overall circumstances of the litigation as it would draw a distinct debt collection action into protracted, contentious family law litigation.
- [36] The application for an order that would consolidate the two actions or, alternatively, require that the two actions be tried at the same time is dismissed. The application presented in the further alternative, seeking an order that would direct the two actions to be heard sequentially, before the same trial judge, is of the same practical effect as an order that would require the two actions to be heard at the same time, because in both scenarios it would be within the discretion of the trial judge to determine how the trials would proceed. It also is dismissed.

Result

- [37] The applications presented at Part 1 of the claimant's notice of application filed May 3, 2021 are dismissed.

[38] The plaintiff in the Civil Action, Monica Liang, was successful on the application. She is entitled to costs of the application as costs in the cause as against the defendants to the Civil Action, pursuant to Rule 14-1(12). In the Family Action, the parties will bear their own costs with respect to the application.

"Master Vos"

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