

CANADA / JUDGMENT

Li v. Wang

2023 BCSC 1268

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Supreme Court of British Columbia

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2023 BCSC 1268 Li v. Wang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Li v. Wang,

2023 BCSC 1268

Date: 20230724

Docket: E192609

Registry: Vancouver

Between:

Ran Li

Claimant

And

Xiao Min Wang also known Xiaomin Wang and

West Ask Investments Inc.

Respondents

And

Hongsheng Li and Chaoxia Peng

Respondents by Counterclaim

- and -

Docket: S1911410

Registry: Vancouver

Between:

Hongsheng Li and Chaoxia Peng

Plaintiffs

And

Xiao Min Wang also known as Xiaomin Wang and

West Ask Investments Inc.

Defendants

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

February 13-17, 21-24, 27-28, March 1-2, 6-10, and

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I. INTRODUCTION

[1] This is a family claim and a civil claim that were heard together on common evidence.

- [2] The primary parties to the family claim are the claimant, Ran (Fiona) Li ("Ms. Li"), and the respondent, Xiao Min (Shaun) Wang ("Mr. Wang"). Ms. Li and Mr. Wang are spouses who separated in 2019. There is one child of their marriage, who is now 12 years old (the "Child").
- [3] The primary parties to the civil claim are the plaintiffs, Hongsheng Li ("Mr. Li") and Chaoxia Peng ("Ms. Peng"), and the defendant, Mr. Wang. Mr. Li and Ms. Peng are the parents of Ms. Li. When appropriate, Mr. Li and Ms. Peng will be referenced together as the "Li Parents". When the term "Li Family" is used, it is a collective reference to Ms. Li and the Li Parents.
- [4] There is also a corporation, West Ask Investments Inc. ("West Ask"), that is a party to both claims.
- [5] The proceedings arise from the breakdown of a once close relationship between the Li Family and Mr. Wang. The four of them decided to emigrate from China to Canada, and to make certain investments which included the purchase of several residential and commercial properties in Greater Vancouver. The financial means to do so came from the Li Parents' business operations in China. However, practical assistance for these endeavours was provided by Mr. Wang, as he has a working knowledge of English while the Li Family does not. Indeed, many of their asset purchases were effected either by Mr. Wang personally or through West Ask, a company that he incorporated. This arrangement was largely satisfactory to the parties, until Ms. Li and Mr. Wang experienced difficulties in their marriage and decided to separate.
- [6] As a result of this development, it has now become necessary to disentangle Mr. Wang's finances from those of the Li Family. This is not a straightforward exercise. In particular, while Ms. Li, Mr. Wang, and/or West Ask were formally identified as the legal owners of certain property now in dispute, the Li Family says it was understood that most of these assets were to be held in trust for the benefit of the Li Parents. Mr. Wang disagrees. Further complicating matters are allegations made by the Li Family that Mr. Wang misappropriated certain property. On the other hand, Mr. Wang denies any wrongdoing and asserts that, as Ms. Li's spouse, he is lawfully entitled to his share of their family property.
- [7] The specific family property issues relate to:
1. real estate located in China;
 2. real estate located in the Greater Vancouver area;
 3. bank and investment accounts; and
 4. shareholdings in West Ask.
- [8] The property misappropriation issues relate to:
1. investment monies;
 2. West Ask assets;

3. jewellery; and
4. rental income.

- [9] Also in dispute is the question of how much child support Ms. Li should pay to Mr. Wang since the Child now resides solely with him.
- [10] After setting out the relevant background, each of these issues will be addressed in turn, along with two other matters: (1) parenting; and (2) divorce. A summary of all of the orders and declarations made is set out at the conclusion of these reasons.

II. FACTUAL BACKGROUND

- [11] Mr. Wang and Ms. Li were married on July 11, 2003 in Hefei, China.
- [12] The Li Parents were successful entrepreneurs who operated real estate and pawnbroking businesses in China. By all appearances, they were pleased to welcome Mr. Wang into the family as their son-in-law, and to help establish him professionally. They funded Mr. Wang's university business studies in New Zealand which he completed in 2005, as well as Mr. Wang's first business venture--an online foreign language training service--when he returned to China. It was not profitable and ceased operating after a few years.
- [13] Around that time, the Li Family and Mr. Wang decided to emigrate from China to Canada. Their plan involved having Ms. Li and Mr. Wang leave first, with the Li Parents following some time later. In March 2009, Ms. Li and Mr. Wang landed in British Columbia and settled in the Lower Mainland.
- [14] As neither Ms. Li nor Mr. Wang had jobs or any other independent means of supporting themselves when they arrived in Canada, the Li Parents took care of their personal expenses for them. This was done through money transfers from China, and by having credit cards issued for Ms. Li and Mr. Wang whose balances were paid by the Li Parents.
- [15] This arrangement and understanding whereby the Li Parents would provide such financial support continued until their relationship with Mr. Wang broke down. Ms. Li never worked at all, and there is no clear evidence that Mr. Wang generated any significant independent earnings through formal employment or business activities using his own capital. While Mr. Wang obtained his British Columbia realtor's licence, his commission income for transactions that did not involve the Li Family was apparently minimal. Mr. Wang also set up some corporations and had a number of corporate directorships. However, the evidence tendered about the business they conducted, their financial performance, and the income Mr. Wang derived from them was limited and vague.
- [16] On the other hand, considerable evidence was led with respect to real estate and other investments made by the Li Parents with the assistance of Mr. Wang.

- [17] On August 19, 2009, a house located at 4643 West 7th Avenue in Vancouver (the "West 7th House") was purchased. The logistics of the acquisition were primarily handled by Mr. Wang. The price was \$1,790,000, and mortgage financing was obtained for \$1,124,000. Funds for the balance of the purchase price, as well as for maintenance and mortgage expenses, were provided by the Li Parents. However, title to the property was registered solely in the name of Ms. Li. She and Mr. Wang began to reside in the West 7th House after it was bought, along with the Child following her birth in 2010.
- [18] On April 15, 2011, a second residential home was purchased in a similar manner. It is located at 4253 Rockbank Place in West Vancouver (the "Rockbank House"). The price was \$3,600,000, and mortgage financing was obtained for \$2,500,000. Unlike the situation for the West 7th House, title to the Rockbank House was registered in the names of both Ms. Li and Mr. Wang. Nevertheless, it was once again the Li Parents who provided the funds needed to purchase and maintain the property. After its acquisition, Ms. Li, Mr. Wang, and the Child moved to the Rockbank House. The West 7th House was then rented out.
- [19] In or around 2012, the Li Parents decided that they wanted to invest their funds in some Canadian commercial real estate as well. This was also done with the assistance of Mr. Wang. He identified a number of presale office units available in a building located at 4000 No. 3 Road in Richmond, known as "Aberdeen Square". It was agreed that the purchases would be made through West Ask, a company that Mr. Wang had incorporated in 2010. On August 6, 2013, five commercial office units at Aberdeen Square were bought by West Ask for a total of \$2,270,269. The specific units and their individual purchase prices were:
- Unit #1030: \$594,327
 - Unit #1275: \$459,795
 - Unit #2300: \$289,900
 - Unit #2315: \$492,347
 - Unit #2360: \$433,900
- [20] It was also decided that four of the units would be rented out, while one would be used by Mr. Wang as his office. A sixth unit, #5240, was later purchased in August 2015 for \$338,000. It, too, was used to generate rental income. Unlike the five West Ask units, however, title to Unit #5240 was registered in the name of Ms. Li.
- [21] In or around 2014, the Li Parents immigrated to Canada. Initially, all three generations of the family lived together in the Rockbank House, but after a couple of years, Mr. Wang, Ms. Li, and the Child moved back to the West 7th House. The Li Parents stayed in the Rockbank House until 2017, when they purchased and moved to another house on Chancellor Boulevard in Vancouver (the "Chancellor House"), located close to the West 7th House. Title to the Chancellor House is registered in the name of the Li Parents and its ownership is not in dispute. Attempts were made to sell the Rockbank House, but no acceptable offers were

received.

- [22] The Li Parents and Mr. Wang also discussed other investment opportunities together, two of which are now relevant to this litigation. The first relates to \$1.4 million worth of funds invested in AXKA Group Inc. ("AXKA"), a company incorporated by Mr. Wang in 2014. The second relates to \$2 million worth of investments made in two mutual funds--Walton FLA Seaton Oaks LP ("Seaton Oaks") and Prime Texan Real Estate Trust ("Prime Texan")--through West Ask in 2016.
- [23] On February 15, 2018, an incident occurred which placed a significant strain on the relationship between the Li Family and Mr. Wang. It was triggered by a squabble at a family gathering regarding the parenting of the Child, who was then seven years old. It resulted in Mr. Wang leaving the West 7th House and cutting off communication with the Li Family for a period of several months. In the summer of 2018, Mr. Wang took up residence in the Rockbank House while Ms. Li and the Child continued to live apart from him at the West 7th House.
- [24] In September 2018, Mr. Wang used his authority as a director of West Ask to make another transaction that is in issue in this litigation. Specifically, he arranged for the sale of West Ask's Aberdeen Square Unit #2300 to a third party for \$280,000, but kept the proceeds for his personal use. Also at issue is Mr. Wang's December 2017 transfer of \$65,000 worth of West Ask's money to AXKA. Neither of these transactions were approved by the Li Parents.
- [25] Spurred by these developments, the Li Parents filed a civil claim against Mr. Wang in this Court on September 27, 2018. Ms. Li also filed a family claim against Mr. Wang on October 16, 2018.
- [26] In December 2018, however, a reconciliation took place between Ms. Li and Mr. Wang. It was facilitated partly by Mr. Wang's mother, Xianxia Wang ("Ms. Wang"), and entailed some discussion regarding the ownership and status of family assets. Mr. Wang then resumed living in the West 7th House with Ms. Li and the Child. Furthermore, the two litigation claims were discontinued in March 2019.
- [27] Unfortunately, the reconciliation did not last long. During the summer of 2019, Ms. Li and Mr. Wang went on a holiday to Asia with their friends, Bohan (Angel) Peng ("Angel Peng"; no relation to Ms. Peng, Ms. Li's mother defined above) and Jiang Chao. During their trip, Ms. Li and Mr. Wang fought again, with each one suspecting the other of infidelity. They then decided to separate for a second and final time.
- [28] Upon returning to Canada in August 2019, Ms. Li and Mr. Wang directed further accusations at each other. Mr. Wang said that Ms. Li had cleared out most of their possessions from the West 7th House without his consent. Ms. Li said that Mr. Wang had taken Ms. Peng's expensive Tiffany jewellery that was being kept in a bank safe deposit box. The latter allegation is also an issue in this case.

- [29] Mr. Wang then moved back to the Rockbank House, where he still lives presently. Ms. Li and the Child moved to the Chancellor House to reside with the Li Parents. As for the West 7th House, it was once again rented out after its title was transferred from Ms. Li to the Li Parents.

III. PROCEDURAL BACKGROUND

- [30] Ms. Li filed the present family claim against Mr. Wang on September 27, 2019. The Li Parents' civil claim against Mr. Wang followed on October 9, 2019. An order providing that the two actions be tried together was issued at a judicial case conference on September 3, 2020 (the "JCC Order").
- [31] Parenting time in respect of the Child has been the subject of some interim litigation between the parties. Ms. Li initially obtained an order granting her sole custody on a without notice basis on September 27, 2019. Subsequent orders were issued to the general effect that the Child is to reside primarily with Ms. Li, while Mr. Wang is to have some parenting time as well. For example, the JCC Order gave Mr. Wang interim access to the Child on alternate Saturdays. This was later modified by a January 19, 2021 order issued by Justice MacNaughton that provides for shared parenting time on a week-on/week-off basis. That said, the parties now agree that the Child's relationship with her parents has evolved such that the Child presently wishes to reside exclusively with Mr. Wang, which she does at the Rockbank House. Ms. Li has reluctantly accepted this state of affairs, and has not been insisting on enforcement of MacNaughton J.'s interim parenting order.
- [32] At the trial of this matter that took place in February and March 2023, I heard testimony from five persons over eighteen days. The four individual parties--Mr. Li, Ms. Peng, Ms. Li, and Mr. Wang--were the primary witnesses. Brief testimony was also provided by Angel Peng. The balance of the evidence consisted of a significant volume of documents, as well as read-ins from the examination for discovery of Mr. Wang.
- [33] After the parties closed their cases, written arguments were filed by their respective counsel. Oral submissions were presented on April 5 and 6, 2023. Counsel also provided draft orders setting out the precise relief their clients are seeking from the Court.

IV. WITNESS CREDIBILITY

- [34] The accepted principles for assessing witness credibility are well established. Thorough summaries of these principles can be found in such decisions as *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739 at paras. 87-93, and *Allen v. Figueira*, 2020 BCSC 1864 at paras. 91-94. Also worth noting are the words of Justice Griffin, then of this Court, in *Fu v. Zhu*, 2018 BCSC 9 at paras. 39-42, in which she discussed the proper approach to considering interpreted testimony from witnesses of varying cultural backgrounds:

- [39] Some caution had to be exercised in assessing credibility because the witnesses were from another country and culture and did not speak English. Often cultural and linguistic differences can affect the demeanour of witnesses in ways not necessarily understood by the trier of fact. For this reason, I was hesitant to conclude that a witness was evasive, in case what appeared to be evasiveness could be due to language or cultural differences.
- [40] I have approached the evidence aware that nuances might be lost in translation, both in terms of the translation of the question to the witness and in the answer. Word choice and word order in a sentence might be an interpreter's preference and I have been careful not to form judgment based on the wording of a single answer. Rather, I have considered the whole tenor of the evidence in coming to conclusions as to the facts. In my view it would be a mistake to take a single passage from a witness's evidence as a conclusive admission against interest, given the nuances that might be lost in translation.
- [41] As well, I have kept in mind that motives and conduct that might seem improbable to a person raised in a Canadian culture might not be improbable in another cultural context. The very structure of the transactions at issue in this case was unusual in the Canadian context, as it involved large sums of money changing hands over several years, without any written agreements in place or any common accounting practices. I have been mindful that different cultural contexts can affect the court's perspective as to inherent probabilities or improbabilities.
- [42] On the other hand, certain characteristics probably cross all cultures, and that includes the instinct and ability to be self-serving in one's memory so as to advance one's own interests, especially when it comes to matters of money.
- [35] This passage is highlighted because, with the exception of Angel Peng who gave her evidence in English, all of the other witnesses testified in Mandarin Chinese with the assistance of an interpreter. For Ms. Li and the Li Parents, this was to be expected since they do not speak English. Mr. Wang also testified in Mandarin even though it is apparent that he is functionally fluent in English given his New Zealand university education and the fact that he obtained his British Columbia realtor's licence. That said, I respect and draw no inferences from Mr. Wang's choice to testify in the language he is most comfortable using. However, this includes not inferring that Mr. Wang might have difficulties understanding spoken or written English, as is the case for the Li Family.
- [36] Mr. Li testified first. He spoke comprehensively about his professional background as a cadre and an entrepreneur in China, his experience immigrating to and settling in Canada, and the structure of the Li Family's finances. In doing so, he listened carefully to questions from counsel, paused thoughtfully before responding, and provided answers that were clear and forthright. He readily admitted the gaps in his knowledge and would correct answers when, upon reflection, he felt this to be necessary. He was not evasive, argumentative, or combative, even while under cross-examination by counsel for Mr. Wang. In sum, I found Mr. Li to be a generally credible and reliable witness.

- [37] The second witness, Ms. Peng, was asked by counsel to cover largely the same topics as those discussed by her husband, Mr. Li. I found her testimony to be similarly genuine and transparent. It revealed that while Ms. Peng was actively involved in the Li Family's financial affairs, her knowledge of its specifics was less complete than that of her husband. That said, I found that the information she did provide in relation to the property issues in dispute was consistent with the testimony of Mr. Li and the documentation and, therefore, trustworthy.
- [38] Ms. Li testified third. Like the Li Parents, she was thoughtful and generally composed as she gave her evidence, even during cross-examination. This was not an easy task as that evidence related primarily to her challenging personal relationships with Mr. Wang and with the Child, rather than to finances and investments. This was understandable since Ms. Li's knowledge of the latter was limited as a result of her complete reliance on the Li Parents and Mr. Wang to manage her financial affairs. Accordingly, while I felt that Ms. Li was credible, her evidence with respect to some of the contentious financial issues was of less assistance to the Court than that of the Li Parents.
- [39] Mr. Wang was the fourth witness. The scope of the questioning he was subjected to was broad. It required him to discuss and recall details regarding his personal and professional background and experience, financial transactions he was involved in, and his relationships with the Li Parents, Ms. Li, and the Child. While Mr. Wang's testimony-in-chief was provided confidently and clearly, there was a marked difference in his approach to answering questions from counsel for the Li Family and West Ask. Mr. Wang was then often evasive and unclear, and occasionally impatient and argumentative. There were a number of troubling inconsistencies between his sworn evidence at trial and that which he gave on examination for discovery. Also concerning were discrepancies between Mr. Wang's sworn disclosure on his Form F8 financial statement and his trial testimony. Ultimately, I was not confident that Mr. Wang was consistently providing the Court with truthful answers, unless it was corroborated by reliable documentary evidence. Accordingly, when Mr. Wang's testimonial evidence was in conflict with that of the Li Family, I generally preferred and accepted the latter.
- [40] The last witness was Angel Peng. She was called by counsel for Mr. Wang. Much of her evidence consisted of hearsay regarding the Li Family. I also had some credibility concerns with her testimony. They stemmed from the vague and contradictory explanations Angel Peng provided regarding her professional and personal relationship with Mr. Wang. They suggest that Angel Peng and Mr. Wang have recently been engaged in several collective business enterprises, as well as a living arrangement whereby Angel Peng's family resides at the Rockbank House with Mr. Wang and the Child. However, Angel Peng was unable or unwilling to give a cogent explanation of the financial terms of these apparent agreements with Mr. Wang. Furthermore, the information she did provide was not entirely consistent with Mr. Wang's testimony. In sum, I did not find Angel Peng's evidence to be of any assistance in adjudicating the issues in dispute.

V. FAMILY PROPERTY ISSUES

Family Property Division Law Principles

- [41] The legal framework applicable to the division of family property and family debt is set out in Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [42] Section 81 of the FLA provides that upon separation, the spouses are each presumptively entitled to an undivided half interest in all family property. The spouses are also responsible for half of all family debt.
- [43] Section 84 of the FLA defines family property to include property owned by at least one spouse on the date of separation, and property acquired after separation if it is derived from property owned by a spouse at the date of separation.
- [44] Section 85 of the FLA describes categories of excluded property which, if proven, remain the sole property of the spouse who claims the exclusion. These categories include property acquired by a spouse before the relationship began, gifts and inheritances received from others, and the proceeds of life insurance policies. However, s. 84(2)(g) of the FLA provides that if there has been an increase in the value of excluded property during the spouses' relationship, that appreciation is considered to be family property.
- [45] Section 86 of the FLA defines family debt as all financial obligations incurred by a spouse during the relationship or after the date of separation, if incurred for the purpose of maintaining family property.
- [46] Section 87 of the FLA provides that the value of family property must be based on its fair market value at the time of trial, subject to court order or agreement.
- [47] Finally, s. 95 of the FLA empowers the Court to reapportion family property and family debt if the Court finds that an equal division would be significantly unfair.

Issue 1: Real Estate Located in China

1. The Property in Issue

- [48] The first set of assets that is alleged to be family property consists of a number of commercial real estate units in Hefei, China. They are located in a complex referenced by the parties as "Jin An Garden". They are in dispute because Ms. Li is apparently their registered owner and Mr. Wang seeks a compensatory order in respect of his alleged financial interest in them.

- [49] The documentary evidence tendered in respect of this real estate is very limited. It consists of little more than a few rental agreements. Ms. Li is listed on these documents as the lessor of the individual units. The lessees appear to be tenants who operate small commercial businesses. No properly translated documents were entered into evidence regarding the units' actual ownership, the dates when their title was transferred, the price paid for them, or their current value.
- [50] According to the Li Family's oral testimony, however, these assets are part of a larger collection of Chinese real estate that was acquired by Mr. Li. In consultation with Ms. Peng, Mr. Li decided to randomly assign the nominal ownership registration of each specific property unit to a particular Li Family member--either Mr. Li himself, Ms. Peng, or Ms. Li. This was done out of concern that registering all of the properties under a single name would make them more vulnerable to changes in government policy that could adversely impact their ownership rights.
- [51] Rental income generated by the Jin An Garden units is collected in accounts registered in the name of Ms. Peng that are managed by Mr. Li. Rent collection has been effected by employees and relatives of the Li Parents, including Ms. Peng's brother and, for a time, Mr. Wang's mother (i.e., Ms. Wang). However, this latter arrangement ceased when Mr. Li came to suspect that Ms. Wang was misappropriating rental income and other funds. Mr. Li brought civil litigation proceedings against Ms. Wang before the Chinese People's Court, which found in his favour on July 22, 2021. That judgment against Ms. Wang was affirmed by the Chinese Intermediate People's Court on December 15, 2021.
- [52] As for Ms. Li, she had no actual involvement in the acquisition, management, or decision-making regarding Jin An Garden or any other properties in China. Ms. Li also did not receive any rental income directly from the properties. The same can be said for Mr. Wang. That said, it appears that this income was one of several sources of funds used by the Li Parents to pay for Ms. Li and Mr. Wang's personal living expenses during their relationship.

2. The Parties' Positions

- [53] The Li Family submits that the Court should exercise its discretion under s. 106(4) of the FLA to not make any orders in respect of the Jin An Garden real estate units. This is because they are extraprovincial property and it would be more appropriate for any dispute regarding their ownership to be determined by the courts in China. The Li Family notes in particular the fact that the Chinese courts have already dealt with litigation between Mr. Li and Mr. Wang's mother in relation to rental income derived from this property. The Chinese courts made certain findings in respect of the real estate, including one to the effect that the rental units should not be considered to be joint family assets of Ms. Li and Mr. Wang. Accordingly, there is a risk of inconsistent decisions if this Court were to adjudicate the parties' claims in respect of this property.

- [54] In the event the Court disagrees and assumes jurisdiction, the Li Family submits that the Jin An Garden real estate units are not family property for the purposes of the FLA. While they are notionally registered in Ms. Li's name, she actually holds them in trust for the Li Parents.
- [55] If the Li Family's trust argument is rejected, they argue, in the alternative, that the real estate was gifted to Ms. Li from the Li Parents. It is therefore excluded property pursuant to s. 85 of the FLA. While the increase in its value during Ms. Li and Mr. Wang's relationship would be considered to be family property, no evidence was led to show that there was such an increase. In the further alternative, if the Court accepts that some or all of the value of the Jin An Garden units are family property, the Li Family asks the Court to exercise its s. 95 FLA authority and reapportion it completely to Ms. Li. This plea is based on the fact that neither Ms. Li nor Mr. Wang paid anything to acquire or maintain the units.
- [56] Mr. Wang, on the other hand, submits that this is a case in which the Court should assert its s. 106 FLA jurisdiction over the disputed property even though it is located in China. He says in particular that it would be inconvenient to require the parties to have their dispute resolved by a Chinese court since both Mr. Wang and Ms. Li habitually reside in British Columbia.
- [57] Should the Court agree with Mr. Wang and assume jurisdiction, he takes the position that the Jin An Garden units are family property since title to them is registered in Ms. Li's name. Mr. Wang takes issue with the notion that Ms. Li holds them in trust for the Li Parents. He also says it was always understood that the rental income derived from the units would be used to pay for Ms. Li and Mr. Wang's personal expenses.
- [58] The specific order Mr. Wang seeks in respect of the Jin An Garden units is that they be declared to be family property, and that there be a substitution of family property and/or debt in British Columbia for Mr. Wang's rights in this extraprovincial property pursuant to s. 109(2)(a)(i) of the FLA. Mr. Wang acknowledges that a valuation of the Jin An Garden units will have to be done as there is presently no evidentiary basis for calculating such a compensatory substitution before the Court.

3. Analysis

- [59] As a threshold issue, I must decide whether to decline jurisdiction with respect to Mr. Wang's claim that the Jin An Garden real estate units located in Hefei, China are family property for the purposes of the FLA. The Court's discretionary authority to do so is set out at ss. 106(4) to (6) of the FLA as follows:

106(4) Despite subsection (2), a court may decline to make an order under this Part if the court, having regard to the interests of the spouses and the ends of justice, considers that it is more appropriate for jurisdiction to be exercised outside British Columbia.

106(5) In determining whether to decline jurisdiction under subsection (4), the court must consider all of the following:

[]

- (b) the relative convenience and expense for the spouses and their witnesses;
- (c) if section 108 [choice of law rules] applies, the law to be applied to issues in the proceeding;
- (d) the desirability of avoiding multiple proceedings or conflicting decisions in different courts or tribunals;
- (e) the extent to which an order respecting property or debt
- (i) made in another jurisdiction would be enforceable in British Columbia, and
- (ii) made in British Columbia would be enforceable in another jurisdiction;
- (f) the fair and efficient working of the Canadian legal system as a whole;
- (g) any other circumstances the court considers relevant.

106(6) A determination of authority under subsection (2) or of whether to decline jurisdiction under subsection (4) is to be made solely by reference to this section.

[60] Having considered the factors set out at s. 106(5) of the FLA, and having regard to the interests of Ms. Li and Mr. Wang, and the ends of justice, I find that it would be more appropriate for the parties' dispute in respect of their legal interests in the Jin An Garden units to be decided by a court in China with the requisite jurisdiction.

[61] I have reached this conclusion largely because of the unusual nature of the family claim made in respect of the extraprovincial property in this case. It does not simply involve the interests of the claimant and respondent spouses (i.e., Ms. Li and Mr. Wang). It also impacts the Li Parents who say they are the beneficial owners of the property, having acquired, managed, and maintained it. Given Ms. Li's financial interdependence with the Li Parents, this is the case even though Mr. Wang is only requesting a compensatory order and not one that would require a transfer of title to the property in China.

[62] Furthermore, the Li Parents' assertion of a beneficial ownership interest in the Chinese real estate appears to have merit. Without deciding the issue, I note that the testimonial evidence before the Court strongly suggests that the Li Family always considered Ms. Li's registered title to the Jin An Garden units as simply a notional one. Their position is further supported by a November 22, 2004 Chinese language document titled "Declaration Regarding the Ownership of Family Properties" that was signed by Mr. Li, Ms. Peng, and Ms. Li. This document--which makes no reference to Mr. Wang even though he had married Ms. Li over one year earlier--effectively states that while the properties were registered under individual names, they are jointly owned by the Li Family. It also contains a declaration that none of the three members of the Li Family has the right to dispose of any of the properties alone.

[63] In my view, therefore, adjudication of the four parties' interests in the Jin An Garden units should be determined by a Chinese court through the application of Chinese law to this property located on Chinese soil. Given the circumstances of this case and the limited evidentiary record before me, such adjudication would be more appropriate than having it performed by this Court through the application of British Columbia law.

[64] I am fortified in my conclusion by the fact that litigation proceedings that are related to the Jin An Garden Units have been brought and were decided by the People's Court and Intermediate People's Court of China. It is true that their focus was on misappropriated funds that are not disputed in the claims that are before this Court, as opposed to financial interests in the real estate itself. It is also true that the only named parties to the Chinese proceedings were Mr. Li and Ms. Wang. However, the Chinese judgments also make multiple references to Mr. Wang (who apparently provided his own evidence at trial), Ms. Peng, and Ms. Li. This indicates that the parties are familiar with and prepared to participate in civil litigation before the Chinese courts. Furthermore, it is apparent from the evidence before me that the parties continue to travel regularly to China and therefore I do not accept Mr. Wang's assertion that accessing the Chinese courts would be overly burdensome for them.

4. Conclusion

[65] I therefore decline to make any orders in respect of the Jin An Garden Units or any other real property located in China, further to my discretion under s. 106(4) of the FLA.

Issue 2: Real Estate Located in Greater Vancouver

1. The Property in Issue

[66] The second set of assets that is alleged to be family property consists of two houses and one commercial property located in the Greater Vancouver area. They are: (1) the West 7th House in Vancouver; (2) the Rockbank House in West Vancouver; and (3) Unit #5240 at Aberdeen Square in Richmond.

[67] As noted earlier, title to the West 7th House was registered solely in the name of Ms. Li when it was acquired in 2009. In or around August 2019, at the time Ms. Li and Mr. Wang were separating, title to the West 7th House was transferred to the Li Parents. This non-arm's length transfer was made for nominal consideration.

[68] Title to the Rockbank House has been in the names of both Ms. Li and Mr. Wang since its 2011 acquisition. The propriety of this joint registration is disputed. The three members of the Li Family assert that they intended and understood that the Rockbank House would be registered in the names of Ms. Li and Ms. Peng, and that Mr. Wang would not be on title. Mr. Wang, who arranged for the registration, claims that the Li Family accepted that he and Ms. Li would have joint title to the Rockbank House.

[69] Finally, Unit #5240 at Aberdeen Square is registered in Ms. Li's name alone.

2. The Parties' Positions

- [70] The Li Family submits that neither of the two houses is family property, notwithstanding how title was registered. This is because both residences were held in either express or resulting trust for the Li Parents.
- [71] If their trust submission is not accepted, the Li Family argues that the houses are then excluded property. While not clearly articulated by counsel for the Li Family in his closing submissions, it appears that the basis for this alternative argument is that the two houses were a gift from the Li Parents to Ms. Li. Accordingly, only the increase in their value since acquisition is family property. However, the Li Family also asks that the quantum of the increase be reapportioned 100% to Ms. Li since it would be significantly unfair for Mr. Wang to obtain any benefit from the properties' appreciation during the spouses' relationship.
- [72] The Li Family's position with respect to Unit #5240 at Aberdeen Square differs from that taken with respect to the two houses. In particular, they do not argue that Unit #5240 is held in trust for the Li Parents. Instead, they say that it was a gift from the Li Parents to Ms. Li, and therefore is excluded property. However, the Li Family also claims that the value of Unit #5240 has declined since acquisition and therefore there is no family property interest payable to Mr. Wang in respect of this particular piece of real estate.
- [73] Mr. Wang's position is that all three properties--the West 7th House, the Rockbank House, and Unit #5240 at Aberdeen Square--are family property subject to equalization.
- [74] Mr. Wang relies on the presumption of indefeasibility stemming from the fact that, upon acquisition, title to the properties was registered in the names of Ms. Li and, in the case of the Rockbank House, Mr. Wang as well. As for the 2019 transfer of the West 7th House to the Li Parents, Mr. Wang says that this was a fraudulent conveyance which is void and of no effect against him. Mr. Wang also does not accept that any of this real estate was ever held in trust for the Li Parents, or that they are excluded property.
- [75] In order to effect equalization of the family property, Mr. Wang seeks an order that title to the Rockbank House be transferred to him exclusively and that Ms. Li be ordered to pay off the balance owing on the mortgage. With respect to the West 7th House, Mr. Wang asks for an order that the Li Parents transfer it to him free of any encumbrance. Alternatively, Mr. Wang would like an order requiring Ms. Li to pay Mr. Wang \$5 million in compensation for his interest in the West 7th House. Mr. Wang does not request any specific order in respect of Unit #5240 Aberdeen Square beyond a declaration that it is family property. Counsel for Mr. Wang did not explain the basis for the particular wording of the orders he seeks in relation to each of the three properties.

3. Analysis

- [76] The starting point for analyzing the parties' claims in respect of the Greater Vancouver real estate is the presumption of indefeasible title bestowed upon the registered owner of real property by operation of s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250. Unless rebutted,

I must accept that the West 7th House was owned by Ms. Li from August 8, 2009 until September 3, 2019; that the Rockbank House has been jointly owned by Ms. Li and Mr. Wang since April 21, 2011; and that Unit #5240 of Aberdeen Square has been solely owned by Ms. Li since August 18, 2015. These dates reflect information drawn from the land title registration documents that were entered into evidence.

- [77] However, the presumption of indefeasible title can be rebutted if it is established that a registered owner holds the legal interest in the property in a resulting trust for another. The notion of a resulting trust is that it operates to return property to the person who gave it and is entitled to it beneficially, from someone else who has title to it: *Freeland v. Farrell*, 2022 BCCA 99 at paras. 42 to 44.
- [78] When there has been a gratuitous transfer of property, resulting trusts are generally presumed to arise, unless the nature of the relationship between the parties is such that the transfer is presumed to be a gift. The latter scenario is known as the presumption of advancement. It arises when the gratuitous transfer is between spouses, or between a parent and a minor child. On the other hand, a gratuitous transfer of property between a parent and an adult child is subject to the presumption of resulting trust: *Pecore v. Pecore*, 2007 SCC 17 at paras. 19 to 41.
- [79] Of course, these presumptions are not determinative. They function as a tool to guide the Court's analysis of the evidence, notably through their impact on the burden of proof. However, the Court's ultimate task is to ascertain the intention of the transferor. This was succinctly explained in *Freeland* at para. 47:

The presumption of a resulting trust can be rebutted. The onus is on the person who gave no value to establish that the person transferring the property intended a gift. If no gift was intended, a resulting trust is established and the person who gave no value holds the property in trust for the person who transferred the property. The actual intention of the person transferring the property at the time of the transfer governs. []

- [80] On my assessment of the evidence presented, I find that both the West 7th House and the Rockbank House are subject to resulting trusts in favour of the Li Parents. In particular, the properties were both purchased with funds derived entirely from the Li Parents' business earnings in China, and neither Ms. Li nor Mr. Wang contributed any of their own money to their acquisition. While title to this real estate was registered in the names of Ms. Li (for both houses) and Mr. Wang (for the Rockbank House only), the Li Parents actually effected what amounted to a gratuitous transfer to which the presumption of resulting trust applies. In my view, Mr. Wang has not met his burden to rebut this presumption, either by showing that the Li Parents intended to gift the houses to him or to Ms. Li, or otherwise.
- [81] I make this finding based on the testimony of Mr. Li, Ms. Peng, and Ms. Li, all of whom clearly indicated that it was always the Li Parents' intention to maintain beneficial ownership of the two houses, as opposed to gifting them to Ms. Li and Mr. Wang. I accept their explanation that the Li Parents understood that Ms. Li should be on title as she had the

requisite Canadian immigration status at the time the houses were acquired. Indeed, it is telling that the Chancellor House was registered in the names of just the Li Parents, as it was the only one of the three houses that was acquired after the Li Parents had landed in Canada. With respect to the curious fact that Mr. Wang was registered as a joint owner of the Rockbank House (while this was not done for the West 7th House), I also find that Mr. Wang was solely responsible for this act, which he did contrary to the wishes of the Li Parents.

[82] Further support for my conclusion that the Li Parents were the beneficial owners of the houses is drawn from two documents that were entered into evidence.

[83] The first, titled "Explanation of Assets", is dated January 7, 2013 and is signed by Mr. Wang and Ms. Li. The certified translation of this Chinese language document reads, in part, as follows:

Ran Li and Xiaomin Wang hereby declare that all their real properties, investment projects, shares, etc. in Vancouver and China were paid for by Hongsheng Li and Chaoxia Peng. Hongsheng Li and Chaoxia Peng have full ownership of, the right to use and transfer, and all rights to, the above assets and the capital gains on these assets.

Real properties in Vancouver include:

- 1) 4643 West 7th Ave., Vancouver
- 2) 4253 Rockbank Pl, West Vancouver
- 3) Four units of Aberdeen Square as follows:

#2063 #2072 #1053 #1004

In addition, there are a number of assets in China, which are not listed one by one here. Notes: Subject to the full confirmation by Hongsheng Li and Chaoxia Peng.

Signature affixed by either party, Ran Li or Xiaomin Wang, to the Explanation means that one party has agreed to the ownership of the assets listed herein and the ownership of the assets acquired from the assets listed herein by whatever means.

[]

[84] The second, titled "Bare Trust Declaration and Agreement", is a draft unsigned document prepared in December 2018 by a lawyer in Vancouver. It was apparently created around the time Mr. Wang and Ms. Li were reconciling following their first separation. Its language provides that Mr. Wang and Ms. Li hold title to the Rockbank House as bare trustees for its beneficial owners, the Li Parents.

[85] At trial, Mr. Wang attempted to minimize the importance of these two documents. He said that the Explanation of Assets was simply a "comfort letter" that he drafted from a template he found on the internet to address Ms. Peng's concern that Mr. Wang or Ms. Li might evict the Li Parents from the Vancouver properties. Mr. Wang also denies having signed the Bare

Trust Declaration and Agreement, even though there is email correspondence from March 2019 in which Mr. Wang states to Mr. Li that he did sign the document and gave it to Ms. Li. According to the Li Family, however, the document was in fact signed by Mr. Wang as was personally witnessed by Ms. Li, but it then went missing after the summer of 2019 when Mr. Wang and Ms. Li returned from Asia and decided to separate conclusively. While I would have been reluctant to find that express trusts were created solely on the basis of the actual documents tendered, their existence provides corroboration for a finding that both houses are the subject of resulting trusts in favour of the Li Parents, as they always intended.

- [86] In sum, since neither Ms. Li nor Mr. Wang ever had actual ownership of either the West 7th House or the Rockbank House, they are not their family property.
- [87] Furthermore, I do not agree with Mr. Wang that the 2019 transfer of the West 7th House from Ms. Li to the Li Parents was a fraudulent conveyance. To the contrary, this was a legitimate transaction between Ms. Li and the Li Parents which formally recognized the Li Parents' legal ownership interest that they always had beneficially in respect of this property that they had paid for.
- [88] As for Unit #5240 at Aberdeen Square, the Li Family does not assert that it is subject to a resulting trust. Furthermore, the evidence indicates that it was purchased by the Li Parents with their funds and given as a gift to Ms. Li. Accordingly, it is excluded property pursuant to s. 85(1)(b.1) of the FLA. However, as per s. 84(2)(g)(ii) of the FLA, a determination must be made of whether there has been an increase in the value of this property since its acquisition. If so, the quantum of that increase is family property subject to division between Ms. Li and Mr. Wang.
- [89] The only documentary evidence tendered by the parties in respect of the value of the Unit #5240 was a land title transfer form dated August 14, 2015 and a 2022 BC Assessment record. The former indicates that the property was purchased in August 2015 for \$338,000. The latter indicates that its assessed value as of July 1, 2021 is \$413,900. Ms. Li's Form F8 Financial Statement made September 14, 2022 also indicates that the estimated value of Unit #5240 is \$413,900, less a strata lien in the amount of \$1,022.24. On the basis of this best evidence available, I find that there has been a \$74,877.76 increase in the value of Unit #5240. This amount does form part of Ms. Li and Mr. Wang's family property for the purposes of the FLA.

4. Conclusion and Disposition

- [90] I will therefore issue the following declarations and orders regarding the Greater Vancouver real estate.
- [91] With respect to the West 7th House, I will declare and order that:
- 1) title to the West 7th House is held by its registered owners, the Li Parents, free of any claim by Mr. Wang; and

- 2) the West 7th House it is not family property of Ms. Li and Mr. Wang for the purposes of the FLA.

[92] With respect to the Rockbank House, I will declare and order that:

- 1) the registered owners of the Rockbank House, Ms. Li and Mr. Wang, hold title in trust for the Li Parents;
- 2) the Rockbank House is not family property of Ms. Li and Mr. Wang for the purposes of the FLA; and
- 3) Ms. Li and Mr. Wang shall forthwith transfer to the Li Parents the title to the Rockbank House.

[93] I note parenthetically that the Li Parents have also requested an order that Mr. Wang vacate the Rockbank House within 90 days of the date of judgment. I am not prepared to do so at this time because Mr. Wang is presently residing with and caring for the Child in the Rockbank House. The issue of Mr. Wang and the Child's occupancy of the Rockbank House will be discussed further in these reasons under the rubric of "Parenting", below.

[94] Finally, with respect to Unit #5240 of Aberdeen Square, I will declare and order that:

- 1) title to Unit #5240 is held by its registered owner, Ms. Li, free of any claim by Mr. Wang;
- 2) Unit #5240 is not family property of Ms. Li or Mr. Wang for the purposes of the FLA; and
- 3) Ms. Li shall pay Mr. Wang the sum of \$37,438.88 representing Mr. Wang's equal share of the increase in value of Unit #5240 further to s. 84(2)(g) of the FLA.

Issue 3: Bank and Investment Accounts

1. The Property in Issue

[95] The third set of assets that is alleged to be family property consists of nine bank and investment accounts. Eight are with the Canadian Imperial Bank of Commerce ("CIBC") in Canada, and one is with Guo Yuan Securities in China. The table below sets out the accounts, the name of the account holders, and the value of each account as reported on Ms. Li's Form F8 financial statement dated September 14, 2022 and as outlined in the parties' Scott Schedules:

Account

Account Holder

Value

CIBC account ***989

Ms. Li & Mr. Wang

\$18,870.81

CIBC account ***283

Ms. Li & Mr. Li & Ms. Peng

\$19,213.44

CIBC savings account ***133

Ms. Li

\$33,538.23

CIBC account ***038

Ms. Li

\$5,679.84

CIBC account ***089

Ms. Li

\$75.70

CIBC imperial investment account

Ms. Li

\$13,966.88

CIBC imperial investment account RESP

Ms. Li

\$37,198.41

CIBC TFSA

Ms. Li

\$15.48

Guo Yuan Securities account

Ms. Li

\$682,820.00

2. The Parties' Positions

[96] The Li Family's position with respect to the CIBC bank accounts in Canada is set out by their counsel in his written submissions as follows:

The bank accounts in Ran Li's name are hers alone. There is no evidence Mr. Wang ever deposited anything into those accounts. They are at worst excluded property with no increase in value attributable to Mr. Wang but it is submitted they are all her sole property.

[97] With respect to the Guo Yuan Securities account in China, the Li Family's primary position is that the Court should treat it as extraprovincial property and decline to adjudicate the parties' interests therein pursuant to s. 106(4) of the FLA. Should the Court disagree and assume jurisdiction, however, the Li Family accepts that it is family property. Counsel for the Li Family's written submissions explain this position as follows:

[Ms. Li] and [the Li Parents] say that all property in China with the exception of [Ms. Li's] portion of the Guo Yuan Securities account is the property of [the Li Parents] as outlined in the Scott Schedule. [The Li Parents] earned all of the Li Family wealth over the years, first in business and then in acquiring and renting real property over time as China transitioned into a private ownership of property regime.

The Guo Yuan Securities account is [Ms. Li's] property because it was gifted to her by [the Li Parents]. She agrees it is family property and equally divisible with Mr. Wang.

[]

Mr. Wang did not contribute to the property in China (or Canada) in any way. The only reason the securities account is shareable is because Mr. Li gave it to [Ms. Li] and it contains money gifted to Mr. Wang by Mr. Li.

[98] Counsel for Mr. Wang made no express submissions with respect to this issue. However, in the "civil orders sought" portion of his written argument filed on behalf of Mr. Wang, counsel for Mr. Wang indicated that the accounts are all family property and should be equalized.

3. Analysis

[99] I will begin my analysis with a consideration of the Guo Yuan Securities account. As a preliminary matter, I can see no valid reason to refuse to exercise the Court's FLA jurisdiction in respect of this asset, even if it is arguably extraprovincial property. Unlike the situation for the Jin An Garden real estate, the Li Parents are not asserting any ownership rights in respect of this account. To the contrary, the Li Family concedes that the account is the family property of Ms. Li and Mr. Wang, and that it is equally divisible between them. In these circumstances, I am prepared to make property division orders under the FLA in respect of the Guo Yuan Securities account, as well as the CIBC accounts.

[100] Section 84(2)(d) of the FLA provides:

84(2) Without limiting subsection (1), family property includes the following:

[]

(d) money of a spouse in an account with a financial institution;

[101] The parties agreed that Ms. Li is a named holder of all of the accounts in issue. It is therefore apparent that all nine accounts are family property for the purposes of the FLA.

[102] Furthermore, as has just been noted, the Li Family concedes that the Guo Yuan Securities account is indeed the family property of Ms. Li and Mr. Wang, that it is equally divisible, and that it ought not to be reapportioned. They nevertheless argue that this is not the case for the CIBC accounts. The only basis for their assertion is that Mr. Wang did not deposit any money of his own into any of the eight CIBC accounts. However, the same can be said regarding the Guo Yuan Securities Account. I have difficulty discerning a logical basis for the Li Family's differing positions with regard to Ms. Li's account in China and her accounts in Canada.

[103] Be that as it may, I have considered the Li Family's alternative assertion that the CIBC accounts are "at worst" excluded property, keeping in mind that it is Ms. Li's burden to prove the exclusion: s. 85(2) FLA. However, the fact that one spouse has not personally contributed funds to a bank account held in the name of the other spouse is not a ground for treating the account as excluded property. I also do not accept that these accounts were investment depositories for gifts from the Li Parents intended solely for the benefit and use of Ms. Li. Instead, it is evident that the CIBC accounts were established as tools to manage funds for use by Ms. Li and Mr. Wang to cover personal expenses (including those related to the Child) during their relationship. I therefore conclude that Ms. Li has not met her burden to show that the CIBC accounts are excluded.

4. Conclusion and Disposition

[104] I will therefore issue the following declarations and orders:

- 1) all nine of the bank and investment accounts in issue are the family property of Ms. Li and Mr. Wang;
- 2) Ms. Li will be ordered to pay to Mr. Wang one half of the value of each account; and
- 3) Ms. Li and Mr. Wang shall arrange forthwith for their joint CIBC account bearing the last three digits 989 to be registered in Ms. Li's name alone.

Issue 4: West Ask Shareholdings

1. The Property in Issue

[105] The final assets that are alleged to be family property are certain shareholdings in West Ask, a private British Columbia company that was incorporated by Mr. Wang in 2010.

[106] As has already been explained, this corporation was used primarily as an investment vehicle for funds provided by the Li Parents. The most significant of these investments were the five commercial real estate properties at Aberdeen Square in Richmond that were purchased in 2012, of which four are still owned by West Ask presently. The company was

also used to make investments in the Seaton Oaks and Prime Texan mutual funds in 2016. In addition, there are two motor vehicles registered in the name of West Ask--a Range Rover and a Mercedes Benz--which were apparently used by Mr. Wang and Ms. Li for their personal transportation.

2. The Parties' Positions

[107] The Li Family and West Ask submit that the Li Parents are the only shareholders of West Ask, and that the Li Parents hold shares in the company in equal proportions. In the alternative, they submit that Ms. Li is the sole shareholder of West Ask, and that these shares and the assets of West Ask are subject to a resulting trust in favour of the Li Parents. In either case, the Li Family and West Ask urge the Court to conclude that neither West Ask's shares nor any of West Ask's assets are the family property of Mr. Wang and Ms. Li.

[108] Mr. Wang, on the other hand, submits that he is a shareholder of West Ask along with the three members of the Li Family, with their proportionate ownership being as follows:

- Ms. Li: 35%
- Mr. Li: 22.5%
- Ms. Peng: 22.5%
- Mr. Wang: 20%

[109] Accordingly, Mr. Wang says that he and Ms. Li collectively own 55% of West Ask's shares. He seeks an order declaring that this 55% shareholding in West Ask is Mr. Wang and Ms. Li's family property.

3. Analysis

[110] The Court's assessment of whether a particular asset is family property is done by reference to property owned as of the date the spouses separate: s. 84(1) FLA. Ms. Li claims that her separation from Mr. Wang occurred on July 30, 2019. Mr. Wang says it took place on September 22, 2019. In other words, while there is a disagreement on the exact date, the parties agree generally that Ms. Li and Mr. Wang separated during the summer of 2019. The determination of whether any or all of the shares of West Ask are the family property of Ms. Li and Mr. Wang will therefore depend on whether they owned West Ask shares at that time.

[111] Having reviewed the testimonial and documentary evidence, I find that by the summer of 2019, neither Ms. Li nor Mr. Wang had actual ownership of any West Ask shares. I make this finding for the following reasons.

- [112] According to the evidence, it was indeed Mr. Wang who incorporated West Ask on June 9, 2010. While no formal share certificates were ever issued, documents titled "incorporation agreement" and "register of shareholders" were created indicating that Ms. Li was then West Ask's sole shareholder, with 100 common shares to her name. They also indicated that Mr. Wang is West Ask's president and sole director. At that time, however, West Ask was not conducting any business, nor did it hold any assets.
- [113] That changed in 2012 when the Li Parents decided to purchase the Aberdeen Square commercial units. I accept Mr. Li's evidence that he followed Mr. Wang's advice to buy the properties through a corporation, and that he understood that a new company in which the Li Parents would hold all of the shares would be incorporated for this purpose. However, unbeknownst to the Li Parents at the time, Mr. Wang in fact used a pre-existing corporation--West Ask--for the acquisition of the Aberdeen Square commercial units and did not create documentation to show that the Li Parents were now the company's only shareholders. The Li Parents' ignorance of this state of affairs is understandable given their inability to read English, and their reliance upon Mr. Wang whom they trusted.
- [114] I also accept Mr. Li's evidence that once he came to understand a few years later that the Li Parents were not the sole shareholders of West Ask, he insisted that Mr. Wang rectify this. Mr. Wang did so by preparing a document for West Ask's corporate minute book indicating that Mr. Li and Ms. Peng each hold 50% of the shares of West Ask. Afterwards, Mr. Wang borrowed the minute book in or around 2017. When Mr. Li saw the minute book again in late 2018, after Mr. Wang's reappearance following his first separation from Ms. Li, the shareholding document had gone missing. Once again, Mr. Li attempted to rectify this by having a Vancouver lawyer prepare a share transfer document effectively indicating that all West Ask shares are held by the Li Parents. However, as was the case with the Bare Trust Declaration and Agreement discussed at paras. 84 and 85 above, this document was apparently signed by Mr. Wang and Ms. Li in or around March 2019, but then went missing a few months later when they returned from Asia in the context of their final separation.
- [115] Based on this evidence, I am satisfied, on a balance of probabilities, that Ms. Li and Mr. Wang had agreed to relinquish any shareholdings they may have had in West Ask in favour of the Li Parents by the time of their final separation in the summer of 2019. Therefore, at that point in time, West Ask's only shareholders were the Li Parents.
- [116] I have reached this conclusion notwithstanding the existence of a document apparently created by Mr. Wang in 2012 titled "Shareholder Information" on a Canada Revenue Agency form, which Mr. Wang relies upon in support of his claim. The document indicates that West Ask's shareholders and their respective shareholdings are: (1) Mr. Wang: 20%; (2) Ms. Li: 35%; (3) Mr. Li: 22.5%; and (4): Ms. Peng: 22.5%. However, I accept Mr. Li's evidence that he understood this document to simply reflect some proposed "salaries", as opposed to the actual distribution of West Ask shares, since that was how Mr. Wang translated it for him. In any event, the existence of this 2012 document has no impact on my finding that by the summer of 2019, it was understood by Mr. Wang and the Li Family that the only actual

shareholders of West Ask were Mr. Li and Ms. Peng, each of whom owned 50% of its shares.

[117] In sum, I find that neither Mr. Wang nor Ms. Li have any shares or other financial interest in West Ask that constitutes family property.

4. Conclusion and Disposition

[118] I will therefore issue the following declarations and orders:

- 1) the Li Parents own all shares in West Ask in equal proportions;
- 2) Ms. Li and Mr. Wang own no shares in West Ask and have no interest in West Ask's assets;
- 3) no West Ask shares or assets are the family property of Ms. Li and Mr. Wang for the purposes of the FLA; and
- 4) West Ask shall take the steps necessary to ensure that the requisite corporate records reflect the fact that the Li Parents own all shares in West Ask in equal proportions.

VI. PROPERTY MISAPPROPRIATION ISSUES

Issue 5: AXKA Investment Monies

1. The Property Misappropriation Issue

[119] The first misappropriation of property issue relates to \$1.4 million worth of funds invested by Mr. Wang in AXKA in 2015 and 2016.

[120] AXKA was incorporated by Mr. Wang in August 2014. Mr. Wang was a shareholder and a director of the company, although the size of his shareholding and the identity of the other shareholders and directors were never clearly explained. What Mr. Wang did explain was that AXKA once operated an e-commerce business similar to that of Groupon that was marketed to Chinese customers under the name "Xiha". However, that business was not successful.

[121] In any case, the funds in issue consist of two tranches of money that were effectively transferred from the Li Parents' bank accounts to AXKA by Mr. Wang. The first transfer occurred on August 19, 2015 in the amount of \$400,000. The second transfer occurred on March 4, 2016 in the amount of \$1,000,000.

2. The Parties' Positions

[122] The Li Parents submit that they agreed to advance \$400,000 to Mr. Wang in August 2015 so that he could invest it in AXKA. They say that this was a loan, and they now insist that it be repaid.

- [123] With respect to the \$1,000,000 that was advanced in March 2016, the Li Parents say that this was done by Mr. Wang without their consent, and that the money was, in effect, stolen. In other words, the Li Parents had only agreed to lend Mr. Wang \$400,000 for the purpose of investing in AXKA, and nothing more. The Li Parents therefore insist that the \$1,000,000 be returned to them as well.
- [124] Accordingly, the Li Parents seek a total judgment against Mr. Wang for \$1,400,000 plus interest in respect of the funds that he transferred to AXKA.
- [125] Mr. Wang's position is that the \$400,000 advanced by the Li Parents in August 2015 was an investment in AXKA, not a loan meant to be repaid. As for the \$1,000,000, Mr. Wang claims that it, too, was an investment. He says that it was made in the name of ML Global Ventures Corp. ("ML Global"), a company whose directors included the Li Parents. ML Global obtained shares in AXKA in exchange for the \$1,000,000. Mr. Wang says that the Li Parents were aware and approved of this investment as well.
- [126] As such, Mr. Wang takes the position that the Li Parents have no right to attempt to recover their failed investments in AXKA from him, and that they ought to have sued AXKA instead. Finally, Mr. Wang argues that this claim is time-barred by operation of the Limitation Act, S.B.C. 2012, c. 13.

3. Analysis

- [127] I note first that the AXKA investments were made prior to Mr. Wang and Ms. Li's first separation in February 2018, at a time when the relationship between the Li Parents and Mr. Wang was apparently still harmonious. The Li Parents trusted and relied upon Mr. Wang, and wanted to support him with his business endeavours. Mr. Wang knew this, having benefitted from the Li Parents' financial support ever since he married their daughter, Ms. Li. Consistent with this trust and reliance, Mr. Wang had signing authority in respect of at least one of the Li Parents' bank accounts.
- [128] When Mr. Wang approached the Li Parents in August 2015 with his proposal that they provide money to invest in AXKA, there is no dispute that they voluntarily agreed to do so in the amount of \$400,000. The question is whether this was a loan (as claimed by the Li Parents) or an investment (as claimed by Mr. Wang). This is primarily a factual issue requiring consideration of all of the surrounding circumstances--not simply an assessment of each party's subjective understanding of their agreement: *Ghassemvand v. Premium Weatherstripping Inc.*, 2016 BCSC 1900 at para. 28. Furthermore, as it is the Li Parents who are seeking a judgment in respect of this money, they bear the burden of proof.
- [129] Having examined the surrounding circumstances, I am not persuaded, on a balance of probabilities, that the \$400,000 advance was a loan. There is no evidence of any discussion about repayment terms, interest, or consequence of default, which are the essential elements of a loan transaction: *Curzon v. Curzon*, 2003 BCSC 1715 at para. 26. No promissory note was created in respect of the advance notwithstanding its significant

amount, even though the Li Parents have documented their rights in respect of other familial assets and transactions. Also, Mr. Li testified that he did not ask Mr. Wang for reimbursement until 2019, several years after AXKA's business had failed and at the time of the breakdown of the Li Family's relationship with Mr. Wang. This conduct is not consistent with that of a lender who expected to be repaid money provided for investment purposes regardless of how the investment performs. Accordingly, this aspect of the Li Parents' claim is dismissed.

- [130] I reach a different conclusion with respect to the \$1,000,000 that was transferred to AXKA in March 2016, however.
- [131] Mr. Li explained that the genesis of the transfer was Mr. Wang's plea for help to save his position as the Chief Executive Officer ("CEO") of AXKA. Mr. Wang told Mr. Li that AXKA's majority shareholder wanted Mr. Wang to be removed as CEO and this could only be prevented if Mr. Wang increased his shareholding in the company. Mr. Wang then proposed a scheme whereby the Li Parents would transfer \$1,000,000 into a newly incorporated company registered in the Li Parents' names. Mr. Wang would then indicate to AXKA's majority shareholder that the new company was willing to invest in AXKA to use as leverage for Mr. Wang's bid to stay on as CEO. Mr. Li agreed, but only on condition that the money not actually be transferred to AXKA without the consent of the Li Parents. Mr. Wang then proceeded to transfer the money to AXKA regardless.
- [132] Mr. Wang, on the other hand, testified that Mr. Li agreed that the \$1,000,000 be invested in AXKA through ML Global, a company that was formerly known as Dxstem Life Sciences Inc. Mr. Wang arranged for it to be renamed as ML Global and for the Li Parents to be appointed as its directors. Mr. Wang also relies on a document dated March 23, 2016 titled "Subscription for Shares" that was signed by Mr. Li in his capacity as a director of ML Global. It indicates that ML Global subscribes for 1,333,333 common shares in AXKA in exchange for \$1,000,000.
- [133] As for Mr. Li, he acknowledges that his signature is on the Subscription for Shares document, but notes that it is written in English and that he did not understand its implications. Mr. Li also denied having had any real knowledge of the ML Global company at the time.
- [134] On a balance of probabilities, I accept Mr. Li's version of events and find it is more credible than Mr. Wang's version. If the Li Parents had agreed in March 2016 that Mr. Wang could invest an additional \$1,000,000 of their funds in AXKA, as Mr. Wang asserts, it does not make sense for this to have been done indirectly through ML Global when it was done directly in August 2015. Instead, I find that the complex share purchase arrangement devised by Mr. Wang involving ML Global was a stratagem designed to create an appearance that the Li Parents approved the \$1,000,000 investment in AXKA notwithstanding the Li Parents' wishes to the contrary.

[135] Accordingly, I conclude that Mr. Wang misappropriated \$1,000,000 of the Li Parents' funds on March 4, 2016. Mr. Wang thereby committed the tort of conversion, which is defined as the wrongful taking of goods or money and exercising control over them in a manner that is inconstant with the title of the owner: *West Bros. Frame & Chair Ltd. v. Yazbek*, 2019 BCSC 1844 at para. 111. Furthermore, I will not entertain counsel for Mr. Wang's argument that this claim is time-barred since no Limitations Act defence was pleaded in Mr. Wang's response to civil claim: *Chouinard v. Army & Navy Dept. Store Ltd.*, 2008 BCCA 353 at para. 5.

4. Conclusion and Disposition

[136] Mr. Wang will therefore be ordered to pay damages to the Li Parents in the amount of \$1,000,000 plus pre-judgment interest calculated as of March 4, 2016.

Issue 6: West Ask Assets

1. The Property Misappropriation Issue

[137] The second misappropriation of property issue relates to transactions by Mr. Wang involving West Ask.

[138] This issue has been raised by West Ask in its counterclaim. West Ask challenges the propriety of:

- 1) a December 2017 transfer of \$65,000 worth of funds from West Ask to AXKA; and
- 2) the September 2018 sale of Aberdeen Square Unit #2300 owned by West Ask to a third party for \$280,000.

2. The Parties' Positions

[139] West Ask submits that neither of the impugned transactions were done for the benefit of the company, nor were they authorized by the Li Parents. Accordingly, West Ask claims damages from Mr. Wang for breach of fiduciary duty and conversion. The amount sought is \$386,100, representing the \$65,000 transferred to AXKA plus the value of Aberdeen Square Unit #2300 at the time of its conversion, which is said to be \$321,100. Punitive damages are also sought from Mr. Wang in the amount of \$10,000.

[140] Mr. Wang acknowledges that these transactions occurred. However, he says that he had the legal authority to make them on behalf of West Ask, and that they are therefore valid. Mr. Wang also denies that he breached any fiduciary duties that he may have owed to West Ask or its shareholders. Mr. Wang says that the \$65,000 was paid to AXKA for services rendered for the benefit of West Ask by AXKA employees. Mr. Wang also explained that he sold Aberdeen Square Unit #2300 during his first separation from Ms. Li because he had no other sources of income available to him at the time. He also says that the Li Parents effectively forgave him for his actions when he reconciled with Ms. Li in late 2018. As such, Mr. Wang says that no judgment should be entered against him personally in respect of the

West Ask transactions.

3. Analysis

- [141] I begin with an examination of the December 2017 transfer of funds from West Ask to AXKA. When confronted with documentary evidence of two signed cheques made payable to AXKA drawn on West Ask's bank account, Mr. Wang admitted that he had actually effected two separate transfers. The first was in the amount of \$50,000 and took place on December 15, 2017. The second was in the amount of \$15,000 and took place on December 22, 2017. Mr. Wang also said that he did not inform Mr. Li about the transfers, as he did not feel there was any need. When asked to confirm that the money was never paid back to West Ask, Mr. Wang did so and explained that such a repayment would have been unnecessary since AXKA was entitled to the money.
- [142] The corporate records of West Ask that were tendered into evidence indicate that Mr. Wang ceased being a director of West Ask on October 13, 2016, and that Mr. Li replaced him in this role on that date. Since Mr. Li's approval of the money transfers to AXKA was not sought or obtained, I find that Mr. Wang did not have the legal authority to effect them. I also do not accept Mr. Wang's vague justification for the transfers, particularly given his conflicting interest in AXKA as a shareholder and a director, his acknowledgment that AXKA was in financial difficulty at the time, and the evidence of his improper orchestration of a \$1,000,000 investment in AXKA using the Li Parents' funds discussed in the previous section of these reasons for judgment.
- [143] Furthermore, Mr. Wang did not explain what services AXKA's employees provided to West Ask, or their terms of remuneration, other than to say that West Ask's bookkeeper was also AXKA's bookkeeper. In addition, he provided no documentation to show the existence of a service contract that might somehow "entitle" AXKA to the \$65,000.
- [144] Accordingly, I agree with West Ask that Mr. Wang misappropriated \$65,000 worth of funds belonging to West Ask and wrongly paid these monies to AXKA--a company in which Mr. Wang was a stakeholder. As such, I find that Mr. Wang also committed the tort of conversion in respect of these funds. West Ask is therefore entitled to a damages award in the amount of \$65,000.
- [145] Turning to the September 2018 sale of Unit #2300 of Aberdeen Square, the legal context is different. This is because on March 26, 2018, Mr. Wang filed corporate notices removing Mr. Li and reinstating Mr. Wang as director of West Ask effective January 1, 2018. A subsequent notice removing Mr. Wang as director of West Ask was not filed until January 11, 2019. Accordingly, Mr. Wang did have the apparent authority to direct West Ask to sell Unit #2300 of Aberdeen Square in September 2018. I make this finding notwithstanding the Li Family's highly plausible assertion that Mr. Wang made himself the director of West Ask on March 26, 2018 without their knowledge or consent in the wake of the February 15, 2018 incident that triggered Mr. Wang and Ms. Li's first separation.

- [146] That said, as Mr. Wang was a director of West Ask, he therefore owed a fiduciary duty to the corporation: British Columbia Business Corporations Act, s. 142 [BCBCA] and BCE Inc. v. 1976 Debentureholders, 2008 SCC 69 at paras. 36 to 40. A succinct explanation of the nature of this duty is set out at BCE Inc. at paras. 37 and 38:
- [37] The fiduciary duty of the directors to the corporation originated in the common law. It is a duty to act in the best interests of the corporation. Often the interests of shareholders and stakeholders are co-extensive with the interests of the corporation. But if they conflict, the directors' duty is clear -- it is to the corporation: Peoples Department Stores [Inc. (Trustee of) v. Wise, 2004 SCC 68].
- [38] The fiduciary duty of the directors to the corporation is a broad, contextual concept. It is not confined to short-term profit or share value. Where the corporation is an ongoing concern, it looks to the long-term interests of the corporation. The content of this duty varies with the situation at hand. At a minimum, it requires the directors to ensure that the corporation meets its statutory obligations. But, depending on the context, there may also be other requirements. In any event, the fiduciary duty owed by directors is mandatory; directors must look to what is in the best interests of the corporation.
- [147] Also, s. 142(1)(a) of the BCBCA provides:
- 142(1) A director or officer of a company, when exercising the powers and performing the functions of a director or officer of the company, as the case may be, must
- (a) act honestly and in good faith with a view to the best interests of the company,
- []
- [148] I find that Mr. Wang's decision to have West Ask sell Unit #2300 of Aberdeen Square and to then subsequently convert the sale proceeds for his own personal use constitutes a clear breach of Mr. Wang's fiduciary duty to West Ask. It is self-evident that these actions were not in the best interests of West Ask, as they only provided a financial benefit that was enjoyed by Mr. Wang personally.
- [149] Indeed, Mr. Wang effectively testified that the reason he sold Unit #2300 in September 2018 was because he did not have any money or readily accessible sources of income at the time. He was apparently unconcerned with the impact that the sale and his taking of its proceeds would have on West Ask, and somehow felt entitled to do so since he considered that he still had a share of the company.
- [150] Mr. Wang's primary response to West Ask's claim is that, in the words of his counsel, Mr. Wang sold Unit #2300 "as a means to survive". I do not accept this exaggerated assertion. It is unsupported by the evidence and, in any case, there is no director's "defence of personal necessity" to a claim for a breach of fiduciary duty owed to a corporation.

[151] Mr. Wang's secondary response is that his actions in respect of Unit #2300 were forgiven by the Li Family, as evidenced by his December 2018 reconciliation with Ms. Li as well as the Li Family's discontinuance of their initial litigation proceedings against him in March 2019. However, Mr. Wang's counsel provided no authority in support of this argument, which appears to be contrary to at least the spirit, if not the letter, of s. 142(3) of the BCBCA which provides as follows:

142 (3) No provision in a contract, the memorandum or the articles relieves a director or officer from

- (a) the duty to act in accordance with this Act and the regulations, or
- (b) liability that by virtue of any enactment or rule of law or equity would otherwise attach to that director or officer in respect of any negligence, default, breach of duty or breach of trust of which the director or officer may be guilty in relation to the company.

[152] Furthermore, it is well established that mere forgiveness does not constitute a contract, and that debts cannot be released except where there is consideration or by deed: *Allen v. Bergen*, 1994 CanLII 645 (B.C.S.C.). I therefore can see no basis for finding that Ms. Li and Mr. Wang's brief and temporary reconciliation had the effect of extinguishing West Ask's right to obtain relief in respect of Mr. Wang's breach of the fiduciary duty he owed to that corporation in 2018. Mr. Wang's forgiveness argument is rejected.

[153] With respect to remedy, I agree with counsel for West Ask's proposal that damages for Mr. Wang's breach be calculated on the same basis as would be used for a conversion claim. That is to say, the normal measure of damages is the value of the chattel at the date of conversion, together with any consequential damage flowing from the conversion: *Columere Park Developments Ltd. v. Enviro Custom Homes Inc.*, 2010 BCSC 1248 at para. 33.

[154] However, I disagree with counsel for West Ask that the value of Unit #2300 on the date of the conversion should be based on the 2018 BC Assessment record that was tendered into evidence which estimates the property's value as of July 1, 2017 to be \$321,100. To the contrary, I accept that the fair market value of Unit #2300 on the September 17, 2018 date of the sale is the \$280,000 price that was in fact agreed to with the third party buyer, as this was an arm's length transaction. West Ask will therefore be awarded \$280,000 in damages payable by Mr. Wang in respect of his breach of fiduciary duty.

[155] Finally, I address West Ask's request for an award of punitive damages against Mr. Wang.

[156] West Ask submits that the nature of Mr. Wang's conduct warrants such an award in the amount of \$10,000. West Ask relies upon this court's decision in *Olive Hospitality Inc. et al. v. Wu*, 2006 BCSC 1554 [Olive Hospitality] in support of its position. That case involved a defendant director of a company who was entrusted with its control due to his knowledge of financial matters and his facility with English. His actions resulted in the financial "destruction" of the plaintiffs, who were awarded \$10,000 in punitive damages.

[157] The Supreme Court of Canada set out the factors to be considered when assessing whether to award punitive damages in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18. A summary thereof can be found in *Olive Hospitality* at paras. 220 and 221:

[220] The leading case on punitive damages is *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595, 2002 SCC 18 [Whiten]. In that decision Mr. Justice Binnie, speaking for the majority, described the role of punitive damages and the circumstances in which they are appropriate as follows at para. 26:

Punitive damages are awarded against a defendant in exceptional cases for "malicious, oppressive and high-handed" misconduct that "offends the court's sense of decency": *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, at para. 196. The test thus limits the award to misconduct that represents a marked departure from ordinary standards of decent behaviour. Because their objective is to punish the defendant rather than compensate a plaintiff (whose just compensation will already have been assessed), punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment).

[221] The court emphasized that punitive damages are the exception, and to be used with restraint. The governing rule with respect to quantum is proportionality. Specifically, Binnie J. outlined at paras. 111-25 that a proper award has to be proportionate to:

- (i) the blameworthiness of the defendant's conduct;
- (ii) the degree of vulnerability of the plaintiff;
- (iii) the harm or potential harm directed specifically at the plaintiff;
- (iv) the need for deterrence;
- (v) other penalties, both civil and criminal, which have been or are likely to be inflicted on the defendant for the same misconduct; and
- (vi) the advantage wrongfully gained by a defendant from the misconduct.

[158] After considering these factors, I find that the case at bar is not an exceptional one which warrants an award of punitive damages.

[159] It is true that Mr. Wang's conduct is blameworthy. However, the compensatory damage award he will be ordered to pay in respect of that conduct is substantial. I also accept Mr. Wang's explanation that he sold Unit #2300 out of a misguided sense that he had to do so in order to maintain a lifestyle that he had become accustomed to, and gained no enduring

advantage from his misconduct. Unlike the defendant in *Olive Hospitality*, I do not find that Mr. Wang's actions were motivated by anger or vindictiveness, and do not feel that punitive damages are required to deter future bad behaviour. Finally, while I agree with *West Ask* that its shareholders (i.e., the Li Parents) relied on and placed their trust in Mr. Wang, their degree of vulnerability was at the lower end of the spectrum given Mr. Li's considerable business acumen and financial sophistication. *West Ask* will therefore not be awarded any punitive damages.

4. Conclusion and Disposition

[160] Mr. Wang will be ordered to pay damages to *West Ask* in the amounts of:

- 1) \$65,000 plus pre-judgment interest calculated from December 22, 2017; and
- 2) \$280,000 plus pre-judgment interest calculated from September 17, 2018.

Issue 7: Tiffany Jewellery

1. The Property Misappropriation Issue

[161] The third misappropriation of property issue relates to a set of valuable jewellery owned by Ms. Peng that was purchased from *Tiffany & Co.* in or around 2010 (the "Tiffany jewellery"). It includes rings, earrings, and pendants made from platinum and diamonds. Their purchase price was \$378,300.

2. The Parties' Positions

[162] The Li Family submits that Ms. Peng's Tiffany jewellery was entrusted to Ms. Li for safekeeping while the Li Parents went away to China on a trip that began in April 2019. The Tiffany jewellery was initially stored in the West 7th House. However, in anticipation of their own upcoming trip to Asia, Ms. Li and Mr. Wang decided that it would be better to store the Tiffany jewellery in a bank safe deposit box. In June 2019, such a box was leased from the Royal Bank of Canada ("RBC") and the Tiffany jewellery was placed within it. After Ms. Li returned to Canada in late July 2019 separately from Mr. Wang, she attempted to access the box. However, she was denied entry by RBC because the lease agreement was solely in Mr. Wang's name. There is also a record of Mr. Wang having gained access to the box once again in September 2019, and the box is now empty. The Li Family therefore asks the Court to conclude that Mr. Wang took the Tiffany jewellery. They seek an order requiring Mr. Wang to return the Tiffany jewellery to Ms. Peng, or else to pay her \$378,300 in damages for conversion.

[163] Mr. Wang denies taking the Tiffany jewellery. He says that it was given by Ms. Peng to Ms. Li as a gift, and that it was never deposited in a bank safe deposit box. Mr. Wang takes the position that since Ms. Peng has not proven on a balance of probabilities that Mr. Wang stole the Tiffany jewellery, he should not be ordered to pay any compensation for its loss.

3. Analysis

- [164] Adjudication of this issue requires an assessment of Ms. Li and Mr. Wang's competing narratives regarding the lease of the RBC safe deposit box, and whether it was used to store the Tiffany jewellery.
- [165] Ms. Li testified that shortly before she and Mr. Wang left for their trip to Asia in late June 2019, she discussed with Mr. Wang the idea of leasing a safe deposit box at a bank close to the West 7th House where they were living. Ms. Li proposed this as she felt it was risky to continue to store Ms. Peng's Tiffany jewellery in that home. Mr. Wang agreed. After placing the Tiffany jewellery in silk bags, Ms. Li accompanied Mr. Wang to the neighbourhood RBC branch bank where he arranged to lease the last safe deposit box available. Ms. Li went into the bank's private room and then put the Tiffany jewellery in the box Mr. Wang had leased.
- [166] Ms. Li further testified that she attempted to access the safe deposit box after she returned to Canada in August 2019. However, she was told that she could not since her name was not registered in connection with the box. Ms. Li understood that Mr. Wang was ultimately able to access the box, and she surmised that he took the Tiffany jewellery away. Ms. Li later asked Mr. Wang to return Ms. Peng's Tiffany jewellery, along with the contents of a paper box that Ms. Peng had given to Ms. Li just prior to the Li Parents' April 2019 trip to China. That box had been stored at the West 7th House but had also gone missing. It contained Mr. Li's bank cards, will, notebooks, passcodes, and other documents. Mr. Wang then arranged for the return of the material in the box and Ms. Peng's everyday jewellery, but not Ms. Peng's Tiffany jewellery.
- [167] Mr. Wang testified that he decided to lease the RBC safe deposit box in order to better organize his documents. This was suggested to him by his friend Jiang Chao. Shortly before Mr. Wang and Ms. Li's June 2019 trip to Asia, Jiang Chao drove them to the RBC branch, and helped Mr. Wang carry a bag containing the items that he wanted to place in the box. Mr. Wang required this assistance because he had recently undergone surgery to remove his appendix. The three of them went into the bank's private room and placed the bag's contents in the safe deposit box. The contents consisted of documents, old passports, the Child's birth certificate, a USB containing AXKA data, and some cash. Mr. Wang said that he did not see Ms. Li bring any items to the bank, including jewellery.
- [168] Mr. Wang returned to the RBC branch in September 2019. He did so because he was concerned that Ms. Li may have been able to access the safe deposit box and take the items he was storing there. Mr. Wang said that it was unclear to him whether he was the only one who was allowed to open the box. Mr. Wang therefore made sure to remove everything from the box at that time.
- [169] The bank documents tendered into evidence with respect to this issue consist of a lease agreement between Mr. Wang and RBC, and two safe deposit box access cards signed by Mr. Wang. The latter contain only two entries. They indicate that Mr. Wang accessed the box first on June 18, 2019, and then again on September 9, 2019.

- [170] On my assessment of this evidence, I find Ms. Li's explanation of why the safe deposit box was leased and what items were stored within it to be more plausible and cogent than that of Mr. Wang.
- [171] In particular, it is entirely logical to go to the trouble and expense of leasing a safe deposit box to store diamond and platinum jewellery worth hundreds of thousands of dollars. This is especially so when such valuable property was being kept in a home whose occupants planned to be outside the country for an extended period.
- [172] On the other hand, it makes little sense to do so simply to organize and store some documents and other items whose value is neither apparent nor specified. This is particularly the case here where there is no evidence that Mr. Wang arranged to lease another safe deposit box at a different bank after removing the contents from the RBC box that he feared Ms. Li might be able to access.
- [173] Therefore, on a balance of probabilities, I accept Ms. Li's evidence regarding the events of June 18, 2019 at the RBC branch, and I reject the contradictory evidence provided by Mr. Wang.
- [174] Accordingly, I find that Ms. Peng's Tiffany jewellery was in fact placed in the safe deposit box by Ms. Li on June 18, 2019. I also find that Mr. Wang accessed the box again on September 9, 2019 and removed all of its contents, including Ms. Peng's Tiffany jewellery. Finally, I find that Ms. Li asked Mr. Wang to return the Tiffany jewellery to Ms. Peng, and that he has refused to do so without justification.

4. Conclusion and Disposition

- [175] An order will therefore be issued requiring Mr. Wang to either return the Tiffany jewellery to Ms. Peng forthwith, or to provide monetary compensation to her in the amount of \$378,300.

Issue 8: Real Estate Rental Income

1. The Property Misappropriation Issue

- [176] The fourth misappropriation of property issue relates to income derived from short-term rentals of the Rockbank House and the West 7th House through Airbnb.

2. The Parties' Positions

- [177] The Li Family submits that Mr. Wang has been renting out rooms in the Rockbank House and the West 7th House from time to time through Airbnb since 2018. They claim that he has obtained \$61,995 from doing so. The Li Parents therefore seek a judgment in this amount from Mr. Wang on the basis of their beneficial ownership of the two properties.

[178] Mr. Wang submits that, as the legal owners of the Rockbank House and the West 7th House, he and Ms. Li were entitled to effect short-term rentals of these properties and to benefit from the proceeds. Accordingly, Mr. Wang says that the Li Parents' claim to compensation for this money should be dismissed.

3. Analysis

[179] The only documentary evidence presented to the Court with respect to this issue is a PayPal activity statement for a corporation called Melody Development Inc. It indicates that, for the period from May 28, 2019 to April 30, 2022, payments were received by this company in the amount of \$61,995.79.

[180] During his cross-examination by counsel for the Li Family, Mr. Wang explained that Melody Development Inc. is a company that was incorporated jointly by him and Ms. Li. Mr. Wang admitted that the \$61,995.79 represents Airbnb rental income, but says that the proceeds were placed in a CIBC bank account controlled by Ms. Li. Mr. Wang did not provide specifics of the actual rentals other than to say they had been effected in respect of certain rooms in the Rockbank House and the West 7th House since 2018. The nightly rental rate for the Rockbank House rooms was considerable, ranging from \$800 to \$1,500 per night, while the rate for the West 7th House room was only about \$70 to \$80 per night. Mr. Wang also said he had effected some rentals of a portion of the basement at the Li Parents' Chancellor House for \$200 per night.

[181] On the other hand, none of the Li Family members provided any testimony to contradict Mr. Wang's assertions.

[182] On the basis of this limited evidence, I am not persuaded, on a balance of probabilities, that the Li Parents have established their claim against Mr. Wang in respect of \$61,995.79 worth of Airbnb rental income. This evidence only seems to show that such income was received by a corporation that is not a party to these proceedings, and suggests that the funds were placed in Ms. Li's bank account. In the absence of clearer evidence that Mr. Wang personally obtained these sums without the express or tacit approval of the Li Family, this claim cannot be accepted.

4. Conclusion and Disposition

[183] An order will be issued dismissing the Li Parents' claim in respect of rental income allegedly misappropriated by Mr. Wang.

VII. OTHER FAMILY CLAIM ISSUES

Issue 9: Child Support

1. The Parties' Positions

- [184] The parties agree that since the Child resides exclusively with Mr. Wang, child support must be paid by Ms. Li to Mr. Wang. However, they disagree on the amount she should be ordered to pay.
- [185] The Li Family submits that Ms. Li's guideline annual income for the purposes of the Federal Child Support Guidelines, SOR/97-195 [Guidelines] is either \$83,239 or \$17,453.
- [186] The figure of \$83,239 reflects Ms. Li's total income as reported on her T1 General form issued by the Canada Revenue Agency ("T1 Form") that was filed with the Court. That income consists of \$65,786 worth of rental income from China, and \$17,453 worth of rental income from Unit #5240 at Aberdeen Square.
- [187] The Li Family suggests that the latter figure of \$17,453 should be used for calculating child support. While not clearly articulated, it appears that the Li Family's suggestion is founded upon its position that the rental income from China is derived from property that is beneficially owned by the Li Parents, notwithstanding how the income was declared in Canada for tax purposes.
- [188] If Ms. Li's guideline income is found to be \$17,453, the Guidelines provide that the amount of child support payable to Mr. Wang is \$119 per month. If Ms. Li's guideline income is found to be \$83,239, then the amount payable is \$795 per month.
- [189] That said, counsel for the Li Family also indicates in his closing submissions that Mr. Li has offered to voluntarily pay to Mr. Wang \$1,000 per month for the benefit of the Child. This "offer" is set out as follows:

Mr. Li has offered to pay \$1,000 per month until [the Child] is 19 but has no obligation to do so and should not be ordered to pay that amount. It is submitted that figure, being higher than the Guidelines require, should include special expenses so as to reduce the need for communication between the parties. It is proposed there should be a review each year commencing in 2024 in the usual terms with support to be no less than \$1,000 per month include of special expenses for so long as [the Child] resides primarily with Mr. Wang.

- [190] As I understand this position, the Li Family appears to be suggesting that the Court should issue a formal order with respect to child support calculated in accordance with Ms. Li's Guideline income. However, this should be done with the tacit understanding that in fact Mr. Li is willing to voluntarily pay \$1,000 per month to Mr. Wang for child support instead, so long as the Child is living mainly with Mr. Wang.
- [191] However, Mr. Wang does not accept the Li Family's "offer". Instead, Mr. Wang's position is that Ms. Li's guideline annual income should be imputed to be \$400,000. This figure is derived from an estimate and extrapolation of past rental income allegedly earned by Ms. Li from the Jin An Garden properties in Hefei, China. Pursuant to the Guidelines, the appropriate amount of child support payable by Ms. Li to Mr. Wang is \$3,306 per month if her guideline annual income is imputed to be \$400,000. Mr. Wang therefore seeks an order to that effect.

2. Analysis

[192] In the absence of an agreement between the parties, I am not prepared to issue a child support order that is not calculated in accordance with the Guidelines. As such, a determination must be made of Ms. Li's guideline income.

[193] Section 16 of the Guidelines provides that a spouse's guideline income is presumptively determined by using the sources of income set out under the heading "Total income" of the spouse's T1 Form. In this case, I accept that Ms. Li's total declared income of \$83,239 is her appropriate guideline income amount. Not having made a determination with respect to whether there is real estate in China registered in the name of Ms. Li that is held in trust for the Li Parents, I will not accede to the Li Family's suggestion that Ms. Li's guideline income should differ from what she declared on the T1 Form. For the same reason, I also do not agree with Mr. Wang's position that there should be an imputation of income with respect to the Jin An Garden properties pursuant to s. 19 of the Guidelines.

3. Conclusion and Disposition

[194] Given my finding that Ms. Li's guideline income is \$88,239, I will therefore order that Ms. Li pay monthly child support to Mr. Wang in the amount of \$795, commencing on September 1, 2023. This sum will be payable on the first day of each month thereafter so long as the Child is a child of the marriage, until further order of the Court or written agreement of Ms. Li and Mr. Wang. Child support will also be subject to an annual review pursuant to the Guidelines.

[195] Before concluding on this issue, however, it is worth stating that this order does not preclude Mr. Li from voluntarily ensuring that Mr. Wang receives a total of \$1,000 per month to support the Child given that she is residing exclusively with Mr. Wang, as Mr. Li has offered. Indeed, it is to be hoped that Mr. Wang will accept this reasonable and laudable offer in the best interests of the Child.

Issue 10: Parenting

[196] The parties have reached an agreement on the terms of a parenting order in respect of the Child. The terms can be summarized generally as follows:

- 1) Ms. Li and Mr. Wang are guardians of the Child;
- 2) the Child shall reside primarily with Mr. Wang;
- 3) Mr. Wang shall have day-to-day care and control of the Child;
- 4) Ms. Li shall have parenting time with the Child as agreed by Mr. Wang at his discretion until further order of the Court;

- 5) parental responsibilities for the Child will be shared by Ms. Li and Ms. Wang in accordance with the Joyce model, with Mr. Wang being entitled to make significant decisions in the absence of an agreement with Ms. Li, subject to Ms. Li's right to apply for directions to the Court;
- 6) Ms. Li and Mr. Wang shall have equal access to information concerning the Child from third parties;
- 7) Mr. Wang shall not relocate the Child outside of Greater Vancouver without the consent of Ms. Li or a Court order; and
- 8) Ms. Li shall deliver to Mr. Wang the Child's passport and all of her other identification documents.

[197] Orders incorporating these terms will be issued on consent.

[198] While this agreement is commendable, it does not address one very significant aspect of the Child's parenting: the location of the Child's residence.

[199] Indeed, Ms. Li and Mr. Wang agree that an order should be issued providing that the Child shall reside primarily with Mr. Wang, and that Mr. Wang shall have day-to-day care and control of the Child. However, such an order presupposes that Mr. Wang will have a residence in which he can properly exercise this responsibility in the best interests of the Child.

[200] Mr. Wang is presently caring for the Child at the Rockbank House in which they reside. Mr. Wang has been able to do so in accordance with his right to occupy the Rockbank House as its joint legal owner. Yet, Mr. Wang will lose that right once title to the house is transferred to the Li Parents. Furthermore, the Li Parents have signalled their desire to evict Mr. Wang from the Rockbank House through their request for an order that Mr. Wang vacate the property within 90 days.

[201] As noted at paragraph 93 above, I am not prepared to grant such an eviction order at this time. Having heard some evidence regarding the Child's circumstances, I am concerned that such an order would be detrimental to her best interests. This is particularly the case as I understand from counsel that arrangements have been made for the Child to attend a neighbourhood school beginning in the fall. There is also no evidence that any alternate accommodations have been identified for the Child and Mr. Wang to reside in.

[202] I am therefore of the view that it would be in the Child's best interests to continue to live in the Rockbank House until the issue of the location of the Child's residence can be addressed by agreement or by further order of the Court. To that end, I will remain seized of this issue.

[203] Accordingly, I direct the parties to discuss the issue of the location of the Child's residence with a view to reaching an agreement on where it should be. If this proves not to be possible, they are at liberty to bring an application to the Court to resolve the issue.

[204] In the interim, I will order that Mr. Wang and the Child have a temporary and non-exclusive right to occupy the Rockbank House notwithstanding the Li Parents' title to the home. This right shall subsist only so long as both Mr. Wang and the Child continue to reside at the Rockbank House together. The right is non-exclusive in the sense that Mr. Wang is not entitled to prevent the Li Parents from accessing the Rockbank House that they own and otherwise fully possess and control. I am not aware of any prejudice that such a temporary order would inflict on the Li Parents, but since I have not heard submissions on this issue they are also at liberty to apply to set it aside if they wish.

Issue 11: Divorce

[205] The parties have been living separate and apart since at least September 22, 2019. I am also satisfied that all of the other requirements for a divorce as provided by s. 12 of the Divorce Act, R.S.C. 1985, c. 3 (2nd) supp. are met in this case. Accordingly, I grant an order of divorce that will take effect on the 31st day after the date of this judgment.

VIII. SUMMARY OF ORDERS AND DECLARATIONS

[206] For the reasons set out above, I make the following orders and declarations:

- 1) Subject to s. 12 of the Divorce Act, Ran Li ("Ms. Li") and Xiao Min Wang also known as Xiaomin Wang ("Mr. Wang"), who were married in the City of Hefei, Province of Anhui, China on July 11, 2003, are divorced from each other. The divorce is to take effect on the 31st day after the date of this judgment.
- 2) Ms. Li and Mr. Wang are guardians of the Child pursuant to s. 39 of the FLA.
- 3) Mr. Wang shall have the day-to-day care and control of the Child, who shall reside primarily with Mr. Wang.
- 4) The parental responsibilities for the Child will be shared by Ms. Li and Mr. Wang pursuant to the Joyce model, as follows:
 - a. In the event of the death of a guardian, the surviving guardian will be the only guardian of the Child, and the surviving guardian will have the obligation to ensure that the Child has the benefit of a continuing relationship with the deceased guardian's family on such terms as are in her best interests;
 - b. each guardian owes a duty to the other to keep the other fully informed of significant developments in the Child's life and to discuss and consult with the other guardian concerning all matters of a significant nature affecting the Child;

- c. the guardians will mutually decide all significant decisions to be made concerning the Child, including significant decisions about her health (except emergency decisions) and general welfare;
- d. "significant decisions" include, without limitation:
 - i. referrals to healthcare specialists, including mental health professionals;
 - ii. invasive medical procedures including vaccinations (except in emergencies);
 - iii. selection of schools, tutoring or educational support programs, and foreign language programs;
 - iv. cultural activities; and
 - v. location of the Child's residences;
- e. in the event that Ms. Li and Mr. Wang are unable to agree on a "significant decision" (except in emergencies), a court application can be made to have a judge decide as set out in paragraph 5 below;
- f. the guardians will:
 - i. make day-to-day decisions affecting the Child and have day-to-day care, control and supervision of the Child during their respective parenting time;
 - ii. consult and use best efforts to agree in the making of decisions respecting:
 - 1. where the Child will reside;
 - 2. with whom the Child will live and associate;
 - 3. the Child's education and participation in extracurricular activities, including the nature, extent and location;
 - 4. the Child's cultural, linguistic and spiritual upbringing;
 - 5. subject to s. 17 of the Infants Act, R.S.B.C. 1996, c. 233, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the Child;
 - 6. applying for or renewing passports, licenses, permits, benefits, privileges or other things for the Child;
 - 7. giving, refusing or withdrawing consent for the Child, if consent is required;
 - 8. receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
 - 9. requesting and receiving from third parties health, education or other information respecting the Child;
 - 10. subject to any applicable legislation,

- a. starting, defending, compromising or settling any proceeding relating to the Child; and
- b. identifying, advancing and protecting the Child's legal and financial interests; and
- 11. exercising any other responsibilities reasonably necessary to nurture the Child's development;
- iii. maintain contact with each other, communicate openly and respectfully, and respond to inquiries about the Child and her well-being; and
- iv. subject to the Child's rights of privacy, have the right to obtain information concerning the Child directly from third parties, including but not limited to teachers, medical professionals, counsellors, and any third-party care givers.
- 5) In the event that Ms. Li and Mr. Wang cannot reach agreement on a significant decision despite their best efforts, Mr. Wang will be entitled to make those decisions and Ms. Li will have the right to apply to the Court for directions on any decision she considers contrary to the best interests of the Child.
- 6) Ms. Li and Mr. Wang will have the right to obtain information concerning the Child directly from third parties, including but not limited to teachers, counsellors, medical professions and third party care givers.
- 7) Mr. Wang shall not relocate the Child outside of Greater Vancouver without Ms. Li's consent or a court order.
- 8) Ms. Li shall have parenting time with the Child as agreed by Mr. Wang at his discretion until further order of the Court or written agreement of Ms. Li and Mr. Wang, with a right of review on or after September 1, 2024 or sooner should Mr. Wang not cooperate in effecting parenting time for Ms. Li.
- 9) Ms. Li shall deliver to Mr. Wang forthwith the Child's passport and all other forms of identification documents belonging to the Child.
- 10) Ms. Li shall pay child support to Mr. Wang in respect of the Child in the amount of \$795 per month, commencing September 1, 2023, and payable on the first day of each month thereafter for so long as the Child is a child of the marriage pursuant to the Divorce Act, until further order of the Court or written agreement of Ms. Li and Mr. Wang.
- 11) There shall be an annual review of child support pursuant to the Guidelines, with the first to be conducted no sooner than September 1, 2024.
- 12) With respect to the property with a civic address of 4253 Rockbank Place, West Vancouver (the "Rockbank House"), whose registered owners on title are presently Ms. Li and Mr. Wang, it is declared and ordered that:
 - a. Ms. Li and Mr. Wang presently hold title to the Rockbank House in trust for Hongsheng Li ("Mr. Li") and Chaoxia Peng ("Ms. Peng") absolutely;

- b. the Rockbank House is not family property of Ms. Li and Mr. Wang for the purposes of the FLA;
 - c. Ms. Li and Mr. Wang shall forthwith transfer to Mr. Li and Ms. Peng title to the Rockbank House;
 - d. Ms. Li and Mr. Wang have no legal interest in the Rockbank House, except as otherwise provided in this order;
 - e. Mr. Wang and the Child shall have a non-exclusive right to occupy the Rockbank House so long as they continue to reside together in the property and the Child is a child of the marriage pursuant to the Divorce Act, subject to further order of the Court or a written agreement of Mr. Li, Ms. Peng, and Mr. Wang;
 - f. an application for an order to modify or cancel Mr. Wang and the Child's right to occupy the Rockbank House may be brought by Mr. Li and Ms. Peng at any time on notice to Mr. Wang of at least 14 days.
- 13) With respect to the property with a civic address of 4643 West 7th Avenue, Vancouver (the "West 7th House"), whose registered owners on title are presently Mr. Li and Ms. Peng, it is declared that:
- a. Mr. Li and Ms. Peng hold title to the West 7th House absolutely, free of any claim by Mr. Wang; and
 - b. the West 7th House is not family property of Ms. Li and Mr. Wang for the purposes of the FLA.
- 14) With respect to the property with a civic address of Unit #5240 - No. 3 Road, Richmond ("Unit #5240 of Aberdeen Square"), whose registered owner on title is presently Ms. Li, it is declared and ordered that:
- a. Ms. Li holds title to Unit #5240 of Aberdeen Square absolutely, free of any claim by Mr. Wang;
 - b. Unit #5240 of Aberdeen Square is not family property of Ms. Li and Mr. Wang for the purposes of the FLA; and
 - c. Ms. Li shall pay to Mr. Wang the sum of \$37,438.88 representing Mr. Wang's equal share of the increase in value of Unit #5240 pursuant to s. 84(2)(g) of the FLA.
- 15) With respect to the nine bank and investment accounts identified and described in para. 95 of these reasons for judgment, it is declared and ordered that:
- a. the bank and investment accounts are family property of Ms. Li and Mr. Wang for the purposes of the FLA;
 - b. Ms. Li shall pay to Mr. Wang one-half of the value of each account;

- c. Ms. Li and Mr. Wang shall arrange forthwith for their joint CIBC account bearing the last three digits 989 to be registered in Ms. Li's name alone; and
- d. once payment is made by Ms. Li to Mr. Wang of one-half of the value of each account, Ms. Li shall retain these accounts free of any further claim by Mr. Wang.
- 16) With respect to the shareholding and assets of West Ask Investments Inc. ("West Ask"), it is declared and ordered that:
 - a. Mr. Li and Ms. Peng own all of the shares in West Ask in equal proportions;
 - b. Ms. Li and Mr. Wang own no shares in West Ask, and have no interest in the assets of West Ask;
 - c. for greater certainty, no West Ask shares or assets are the family property of Ms. Li and Mr. Wang for the purposes of the FLA; and
 - d. West Ask shall take the steps necessary to ensure that the requisite corporate records reflect the fact that Mr. Li and Ms. Peng own all of the shares in West Ask in equal proportions.
- 17) Mr. Wang is ordered to pay to Mr. Li and Ms. Peng \$1,000,000 in damages on account of Mr. Wang's conversion of funds in relation to monies transferred to AXKA Group Inc., plus pre-judgment interest from March 4, 2016.
- 18) Mr. Wang is ordered to pay to West Ask \$345,000 in damages plus applicable interest, broken down as follows:
 - a. \$65,000 on account of conversion in relation to monies transferred to AXKA Group Inc. from West Ask, plus pre-judgment interest from December 22, 2017; and
 - b. \$280,000 on account of breach of fiduciary duty and conversion in relation to the sale of Unit #2300 of Aberdeen Square, plus pre-judgment interest from September 17, 2018.
- 19) Mr. Wang shall forthwith return to Ms. Peng the personal goods described as:
 - a. a Tiffany platinum and diamond solitaire ring, prong set with one round brilliant cut diamond weighing 2.24 carats, F colour, VS1 clarity;
 - b. one pair of Tiffany platinum and diamond stud earrings, set with one round brilliant cut diamond weighing 1.00 carats, G colour, VVS2 clarity;
 - c. a Tiffany platinum and diamond pendant, set with one round brilliant cut diamond weighing 4.01 carats, J colour, VS2 clarity;
 - d. a Tiffany platinum and diamond solitaire ring, prong set with one round brilliant cut diamond weighing 0.91 carats, E colour, VS2 clarity;
 - e. one pair of Tiffany platinum and diamond stud earrings, set with one round brilliant cut diamond weighing 1.10 carats, F colour, VS2 clarity; and

- f. a Tiffany platinum and diamond solitaire ring, prong set with one round brilliant cut diamond weighing 3.01 carats, H colour, VS2 clarity

(the "Tiffany Jewellery");

- 20) In the event the Tiffany Jewellery is not returned to Ms. Peng within 30 days of the date of this judgment, Mr. Wang shall pay damages to Ms. Peng in the amount of \$378,300.
- 21) Except as otherwise provided for in this Order, all claims as set out in Ms. Li's notice of family claim are hereby dismissed.
- 22) Except as otherwise provided for in this Order, all claims as set out in Mr. Li and Ms. Peng's notice of civil claim are hereby dismissed.
- 23) Except as otherwise provided for in this Order, all claims set out in West Ask's counterclaim are hereby dismissed.
- 24) Except as otherwise provided for in this Order, all claims as set out in Mr. Wang's counterclaim are hereby dismissed.

IX. Costs

- [207] Each party has asked for an award of costs. If they cannot agree on the specifics of a costs order, they may contact Supreme Court scheduling within 30 days to arrange a hearing before me on this issue.

"Brongers J."

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