
CANADA / JUDGMENT

Liao v. Ho

2016 BCSC 1496

COURT

Supreme Court of British Columbia

DECIDED

22 July 2016

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2016 BCSC 1496 Liao v. Ho

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liao v. Ho,

2016 BCSC 1496

Date: 20160722

Docket: S135784

Registry: Vancouver

Between:

Zhaohui Liao

Plaintiff

And

Christophere Nai Kit Ho, Ho & Associates Consulting Group Inc.,

and Thelma Wai Yee Leung

Defendants

Before: The Honourable Mr. Justice Macintosh

Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff:

George F.T. Gregory

Counsel for Defendants:

Ronald G. Pederson

Place and Date of Hearing:

Vancouver, B.C.

July 18, 2016

Place and Date of Judgment:

Vancouver, B.C.

July 22, 2016

- [1] The Defendants seek the cancellation of three certificates of pending litigation ("CPLs") registered against three properties in Richmond, B.C. They also seek other relief, which I will address later in these reasons.
- [2] I am ordering that the CPLs be cancelled. There was no reasonable basis, in my view, for registering them. I pause to say the CPLs were not registered by the Plaintiff's present counsel.
- [3] A CPL can only be maintained if the claimant can demonstrate an estate or interest in land. The Plaintiff has no such estate or interest in the three Richmond properties.
- [4] In essence, the facts are these, at least according to the available evidence.
- [5] A Ms. Zhang, who is not a party in this case, borrowed money from the Plaintiff. Unrelated to that borrowing, at least as I understand the evidence, Ms. Zhang hired the Defendant Christopher Ho, or his business, Ho & Associates Consulting Group Inc. Mr. Ho and Ho & Associates were in business as immigration consultants. Mr. Ho received approximately \$1 million from Ms. Zhang. Ms. Zhang apparently complains that Mr. Ho took the money in payment for representing her, or for costs to be incurred in representing her, in a deportation proceeding brought against her by Citizenship and Immigration Canada, and that he did not use the money as directed and did not represent her properly.
- [6] When I imply above that not all the facts are clear, it is partly because Ms. Zhang has never been cross-examined on her affidavit in this proceeding, notwithstanding a court order that she attend to be examined, and notwithstanding many attempts by the Defendants to examine her pursuant to that order. Further, the Plaintiff has never had any dealings with the Defendants and has no personal knowledge of any facts in the alleged dispute between the Defendants and Ms. Zhang.
- [7] The three properties against which the CPLs were registered are themselves registered in the name of the Defendant Leung. She is the wife of the Defendant Ho.

- [8] The Plaintiff has never had any interest in the three properties. His case for maintaining the CPLs rests entirely on an assignment from Ms. Zhang to him of a possible claim she has against the Defendants or some of them. I will speak about the assignment later in these reasons.
- [9] For now, however, I will assume that Ms. Zhang is the person who registered the CPLs, and who seeks their preservation. I will assume that only because the Plaintiff's case for the CPLs can be no greater than Ms. Zhang's case for them. Ms. Zhang herself has never had any estate or interest in the three properties. Her case, at its best, if she had ever brought a claim against any of the Defendants, would have been that Ho, or his company, failed in some manner in representing her in the deportation case. Obviously, that has nothing to do with the three properties registered in the name of Ho's wife.
- [10] Counsel for the Plaintiff spoke in the course of his submissions of a possible tracing remedy. However, among other concerns on that front, there is the absence of supporting evidence for a claim which would give rise to that remedy. The Plaintiff has no personal knowledge that any of his money went to the Defendants. Ms. Zhang has never allowed herself to be cross-examined and therefore can contribute no admissible evidence. The Defendants in their affidavits, and in discovery, deny that any money they received from Ms. Zhang went into the three properties. In summary, therefore, the Plaintiff and Ms. Zhang lack any evidentiary basis for pursuing the tracing remedy. Ho admits having obtained approximately \$1 million from Ms. Zhang, but the source of that money is unclear, let alone the absence of evidence that it ever went into the three properties. In short, no tracing remedy could be used as the basis for maintaining the CPLs.
- [11] Ms. Zhang herself therefore would have no right to the CPLs, and on that basis alone their registration must be cancelled.
- [12] The Plaintiff's position, one step removed from Ms. Zhang, is more vulnerable still. His only claim to the CPLs is based on the assignment he took from Ms. Zhang in July of 2013. She assigned to the Plaintiff her interest in:
- ... any and all claims I may have in law or in equity against Christopher Nai Kit Ho ("Ho") and/or Thelma Wei Yee Leung ("Leung") arising in any way from my course of dealings with either, or both of, Ho and Leung, and in particular, arising from a transfer of funds to Ho and/or Leung in or about April 2012, and including all rights of action or other rights accruing to me, or which might, after this assignment takes effect, accrue to me.
- [13] The Plaintiff says he lent Ms. Zhang approximately \$4 million for her to buy a house for him and to start a business, and he alleges that approximately \$1 million of that money went from Ms. Zhang to the Defendants without his knowledge. Ms. Zhang never sued the Defendants. (Presumably she gave the assignment to the Plaintiff because she has not paid the Plaintiff whatever money she has borrowed from him).

- [14] Other than retaining new counsel in November 2014, the Plaintiff has taken no steps to prosecute this action since at least June 2014, when this Court ordered the cross-examination of Ms. Zhang on her affidavit.
- [15] Pursuant to the assignment, the Plaintiff's claim against the Defendants alleges fraud and misrepresentation and the demand for return of monies in the amount of \$1,035,627. The relief sought in the claim includes damages, special damages and punitive damages, an equitable charge, and the certificates of pending litigation against the Defendants' lands, an accounting of all monies received by the Defendants directly or indirectly from the Plaintiff, interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79, and special costs or alternatively costs.
- [16] Given my earlier finding that Ms. Zhang, and therefore the Plaintiff, have never had any estate or interest in the three Richmond properties, it is unnecessary, in considering the CPL application, for me to address the Defendants' argument that the assignment itself is unenforceable. Whether the assignment is enforceable would be determined in light of our Court of Appeal's decision in *Fredrickson v. ICBC* (1986), 3 B.C.L.R. (2d) 145, along with s. 36 of the Law and Equity Act, R.S.B.C. 1979, c. 224 as amended. (I was advised that the Supreme Court of Canada dismissed an appeal from the *Fredrickson* decision.) As I stated above, however, that analysis need not be undertaken in this case.
- [17] Returning to the three CPLs, the application to cancel their registration is allowed under s. 249 of the Land Title Act. The Defendants will not be required to post any security or pay any amount into Court to obtain the cancellations. As I noted earlier, the CPLs should not have been registered to begin with. The Defendants' application for cancellation was also brought under s. 256 of the Land Title Act, R.S.B.C. 1996, c. 250. I make no decision as to whether the Defendants have suffered the hardship and inconvenience required in order for that section to also have application.
- [18] The Defendants also applied under Supreme Court Rules 9-4 (proceeding on a point of law) and 9-5 (striking pleadings) to have the Plaintiff's claim struck in whole or in part. I do not address those requests. In my respectful view, the better approach might be to proceed by summary trial if it remains necessary for the Defendants to attempt to get rid of the Plaintiff's action. On the evidence available thus far, the Plaintiff's claim appears to be without merit. That comment of course would neither bind nor influence a judge hearing an application for judgment. That judge presumably would have fresh evidence available. In such a proceeding, the Defendants would be unfettered in raising again their argument that the assignment is unenforceable.
- [19] The Defendants will have their ordinary costs of this application including costs for the date of the last appearance prior to July 18. I was considering an order of special costs because, as I noted, there was no reasonable basis for registering the CPLs to begin with. However, I am not going to punish the Plaintiff with special costs on this application. His new counsel said all that could reasonably be said for preserving the CPLs, which were already in place

before he was retained. Also, the Defendants waited for approximately two years to bring this application for the cancellation of the CPL registrations. I perhaps should order special costs, but am exercising my discretion not to.

"MACINTOSH J."

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