

CANADA / JUDGMENT

Lim v. Zhu

2018 BCSC 2376

COURT

Supreme Court of British Columbia

DECIDED

28 February 2018

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2018 BCSC 2376 Lim v. Zhu IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Lim v. Zhu, 2018 BCSC 2376 Date: 20180228 Docket: S154197 Registry: Vancouver Between: William H. Lim Plaintiffs (Defendant by Counterclaim) And: Xiao Yang Zhu, Wai Tung Loong Kong Chicken Ltd., Winnie Chan, Daniel Chan, W & K Produce Ltd., Cham Ki Chau, Zhan Zhou (also known as Wan Qi Zhou), Cost Watcher Food Ltd., Alan Gao also known as Linxu Gao, JC Bunny Bunny Trading Co. Ltd., Hai Min Lu (also known as Jacky Lu), Gar-Lock Seafoods (1996) Ltd., Li Wei, Wingsum International Trading Inc., Zuoyu Wan, Kick Yick Trading Co. Ltd., Patrick Ip Defendants (Plaintiffs by Counterclaim) And: Cheng-Hsiung Huang, Manli Liu, Nu Shanghainese Bistro Ltd., 1026658 B.C. Ltd. and Min-Jian Chen Defendants by Counterclaim Before: The Honourable Madam Justice Adair Oral Ruling on Application for Sealing Order In Chambers Counsel for the Plaintiff: D.J. Reid Counsel for the Defendant Xiao Yang Zhu: N.M.G. Chantler Counsel for the Defendants W & K Produce Ltd., Cost Watcher Food Ltd., JC Bunny Bunny Trading Co. Ltd., Gar-Lock Seafoods (1996) Ltd., Wingsum International Trading Inc., Cham Ki Chau, Zhan Zhou (also known as Wan Qi Zhou), Alan Gao also known as Linxu Gao, Hai Min Lu (also known as Jacky Lu) and ZuoYu Wan: B.E. McLeod Counsel for the Defendant by Counterclaim Cheng-Hsiung Huang: J. Rost Counsel for the Defendants by Counterclaim Manli Liu and Nu Shanghainese Bistro Ltd.: M.S. Oulton B. Duong For the Defendants by Counterclaim 1026658 B.C. Ltd. and Min-Jian Chen: No appearance Place and Date of Hearing: Vancouver, B.C. February 28, 2018 Place and Date of Ruling: Vancouver, B.C. February 28, 2018

- [1] THE COURT: I am dealing this morning with an application that was filed on February 26, 2018, by the defendants by counterclaim in this action and also the plaintiff, Mr. Lim, who is also a defendant by counterclaim. The applicants seek a sealing order in the terms of the order attached as Schedule A to the notice of application in relation to materials expected to be filed for a costs hearing that is scheduled for March 9. They also seek a direction that the costs hearing proceed in camera.
- [2] The application is opposed by Mr. McLeod's clients, who have been referred to as the "Suppliers," and also by the defendant Mr. Zhu.

- [3] The background and the circumstances in which this application is being brought are somewhat unusual. The action was scheduled last week to proceed for a 19-day trial, and following several days of hearing preliminary applications (which were dismissed), when the defendants, who were proceeding on their counterclaim, were scheduled to open their case on the morning of February 22, counsel advised later that morning that the parties had been successful in reaching a settlement. I was advised that the terms of the settlement were confidential, but that it was a term of the settlement that the defendants represented by Mr. McLeod - and I am not sure if it includes Mr. Chantler's client, as well - were going to be at liberty to speak to costs. That is how the costs hearing was scheduled.
- [4] The dispute (which originated in events in 2015) was, on the basis of what I heard last week, and has been, extremely hard-fought, and I would say somewhat bitter. It has been fought in part in the Chinese media. Based on the material that is before me on the application today, after the settlement was announced on February 22, the group of Suppliers continued to some degree with a media campaign. There are photographs taken in the Great Hall of the Courthouse of a group who I assume are the Suppliers and their counsel with thumbs up. I am not sure what anybody was thinking of in doing that, but in my view, it was a very bad idea, especially for counsel, to participate in that kind of show.
- [5] I have concluded that there is a significant risk that the plaintiff, Mr. Lim, and the defendants by counterclaim will, unless the orders sought are granted, be deprived of a fair hearing when the costs hearing proceeds on March 9. As I say, the circumstances here are, in my view, quite unique. It is critical for a fair and proper hearing of the costs matters that all parties be in a position where they can make full and frank submissions on costs without having to fear that somehow those submissions will be the subject of unfair and distorted reporting in the media. It is also very important, in the context of this litigation and the settlement of the litigation, and in the context of the submissions that are likely to be made at the costs hearing, to preserve the confidentiality of the terms of the settlement.
- [6] Settlements of legal proceedings are to be encouraged. Among other things, they preserve scarce judicial resources. The cases discussing costs awards consequent on offers to settle made under the Rules often discuss this particular point, and I have a concern in the peculiar circumstances of this case that, unless the orders being sought are granted, there is a significant risk that the benefits bargained on the settlement will be lost.
- [7] In my view, the test set out in *Sierra Club* has been met on the unique facts before me, and the order sought is necessary to preserve the integrity of the court process.
- [8] I am therefore granting the orders sought in the terms of the sealing order in the form attached to Schedule A to the notice of application.

- [9] I am just going to clarify that, by way of clerk's notes, there was no intention that the clerk's notes of any order that might be made consequent on the application be sealed. Rather, it was a sealing of the record that is maintained by the clerk during the hearing. That would follow from the fact that the hearing is to be held in camera.
- [10] So I will ask you, Mr. Oulton - I assume you are going to be responsible for drafting the order - that you clarify that.
- [11] MR. OULTON: Absolutely, My Lady, and I should note the registry has asked us to clarify certain aspects of -- the way the order currently reads is it lumps together the notice, any notice of application, supporting affidavits, and everything, the registry has asked that we break all of those things down and indicate, "Sealed, sealed, sealed, sealed."
- [12] THE COURT: All right.
- [13] MR. OULTON: And so we do have to rework the order. So we will make it clear that the clerk's notes with respect to the hearing, but not with respect to any order, are done. We do have a vetted order with respect to the in camera hearing --
- [14] THE COURT: All right.
- [15] MR. OULTON: -- because the sealing order, of course, is of a slightly different character.
- [16] THE COURT: That is right.
- [17] MR. OULTON: So we dealt with them separately. That has been vetted that I am happy to hand up where we can do it all at once. I understand Your Ladyship is sitting today and we can bring it up at one of the breaks.
- [18] THE COURT: All right. If you have a vetted sealing -- I am sorry, vetted order regarding the in camera hearing we can deal with that now.
- [19] MR. OULTON: Certainly.
- [20] THE COURT: And then deal with the necessary revisions to the sealing order to break out the specific items, I can deal with that later today.
- [21] MR. OULTON: Yes.
- [22] THE COURT: I will say, as well, with respect to the sealing order, in the context of the hearing on March 9, I am prepared to revisit whether it is necessary to seal particular items once I actually see what they are, but I think the only reasonable thing to do at this time is to grant the sealing order in the form requested, as directed by the registry, and, if necessary, revisit particular items later when the matter comes on for hearing
- [23] That concludes my ruling.

- [24] MR. MCLEOD: My Lady, I must rise to address one point in your reasons. I speak as counsel and I know the same goes for Mr. Chantler. The photographs in the Great Hall were, in my understanding, entirely for private purposes, and it came as much as a surprise to me to see them in the material as to Your Ladyship, and I say that in all sincerity as counsel to assure you that there was no participation of counsel in what appears to have happened with those photographs.
- [25] THE COURT: All right. I accept that, Mr. McLeod. But these days participating in any kind of photographic array can be a very bad idea because you really have very little control over how it is used, and photographs like the ones I have seen in the materials, you have got the group of clients with counsel with thumbs up, very bad.
- [26] MR. MCLEOD: Thank you. I understand.
- [27] THE COURT: All right. "ADAIR J."

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