

CANADA / JUDGMENT

Liu v. Zhao

2025 BCSC 1651

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1651 Liu v. Zhao

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liu v. Zhao,

2025 BCSC 1651

Date: 20250826

Docket: E211707

Registry: Vancouver

Between:

Yunshan Liu

Claimant

And

Siqin Zhao and Hairong Zhao

Respondents

Before: The Honourable Justice Latimer

Reasons for Judgment

In Chambers

Counsel for the Claimant:

G. Round

Counsel for Respondent, Siqin Zhao:

B.M. Desruisseaux

Counsel for Respondent, Hairong Zhao:

L. Jiang

Place and Date of Hearing:

Vancouver, B.C.

July 28, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 26, 2025

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Introduction

- [1] This is a family law proceeding. At the time of separation in April 2021, the claimant and the respondent Siqin Zhao resided in China with their child. Shortly thereafter, the claimant initiated related family law proceedings in both China and British Columbia. Two years after separation, in circumstances that are disputed, the claimant relocated with the child to Vancouver, British Columbia where they continue to reside to this day. Siqin Zhao, continues to reside in China.
- [2] The respondent Hairong Zhao takes no position on this application. For this reason, when I refer to "the parties" in this decision, I refer only to the claimant and Siqin Zhao, and when I refer to "the respondent", I refer only to Siqin Zhao.
- [3] The parties and their child are all citizens of China and permanent residents of Canada.
- [4] The respondent applies for:
- a) An order pursuant to Rule 18-2 of the Supreme Court Family Rules declining jurisdiction over the claimant's claim for child support and spousal support under the Family Law Act, S.B.C. 2011, c. 25 [FLA] in favour of China; and
 - b) An order recognizing the judgment granted to Yunshan Liu and Siqin Zhao by the Futian District People's Court of Shenzhen City, Guangdong Province ("Chinese Court") on January 24, 2022 (the "2022 Order") in respect of divorce, Chinese property division, and spousal support.
- [5] The claimant opposes the relief sought.

Background Facts

- [6] The parties began living in a marriage like relationship in Vancouver in November 2018. They were married in February 2019.
- [7] The claimant travelled to China in March 2019 and gave birth to the one child of the marriage in May 2019. The claimant and the child returned to Vancouver in November 2019. The family resided in Vancouver until January 2021 when they relocated to China.
- [8] The parties separated in China in April 2021.

The Chinese Proceedings

- [9] On August 27, 2021, the claimant commenced proceedings in the Chinese Court ("Chinese Proceedings") seeking orders for divorce, custody, child support, and division of Chinese property "to be divided according to law".
- [10] On January 24, 2022, the Chinese Court issued the 2022 Order in which it ordered, among other things, that:

- a) The parties are divorced.
 - b) The claimant has custody of the child.
 - c) The respondent must pay child support to the claimant.
 - d) The respondent has specific visitation rights with the child and can live with the child for specific periods of time during winter and summer vacation. The claimant is obliged to assist the respondent in his visits.
 - e) The respondent will compensate the claimant a specific amount from the parties' Chinese properties.
- [11] The respondent initially appealed the 2022 Order but withdrew his appeal. The claimant did not appeal the 2022 Order and the time for doing so has passed.
- [12] A year and half later, in or around June 2023, the claimant relocated to Vancouver with the child.
- [13] In July 2023, the respondent filed an application in the Chinese Court to enforce the parenting arrangements set out in the 2022 Order. In December 2023, the Chinese Court found that the claimant had failed to assist the respondent in his visits as required by the 2022 Order which resulted in a failure to realize the respondent's visitation rights (the "2023 Decision"). The 2023 Decision was confirmed by the Shenzhen Intermediate People's Court of Guangdong on August 30, 2024.
- [14] In June 2024, the respondent commenced proceedings in the Chinese Court to vary the parenting arrangements set out in the 2022 Order such that he would have custody, and the claimant would pay him child support. A hearing was held in on April 23, 2025. A judgment has not yet been issued.

The British Columbia Proceedings

- [15] On July 19, 2021, the claimant filed a notice of family claim in this Court ("British Columbia Proceedings") seeking orders for divorce and division of British Columbia property. She did not, initially, seek any orders concerning parenting, child support, or spousal support.
- [16] I will not set out every procedural step that has been taken in the British Columbia Proceedings to date but will note those of some significance to this application.
- [17] As mentioned above, in or around June 2023, the claimant relocated to Vancouver with the child.
- [18] On June 2, 2023, the claimant filed a notice of application in this Court seeking, among other things, an order permitting her to amend the notice of family claim to seek an order recognizing the custody and parenting order made by the Chinese Court in the 2022 Order and to seek child support and spousal support. The respondent did not oppose these amendments if the scheduled trial was adjourned without prejudice to his ability to dispute

this Court's jurisdiction regarding the support issues. On January 14, 2025, a consent order was made permitting the amendments.

- [19] On June 14, 2023, the respondent filed a notice of application seeking declarations that the claimant had wrongfully removed the child from China to Vancouver, recognizing the 2022 Order, and that this Court has no jurisdiction over the child pursuant to s. 74(2) of the FLA. He also sought an order returning the child to China pursuant to s. 77 of the FLA. The claimant opposed the application and made her own application for a stay of the respondent's application pending the final appeal or review of certain orders made in China.
- [20] At a hearing before Justice Baker in September 2024, both parties submitted that China should retain jurisdiction over the child, and neither party sought to have this Court assert jurisdiction over the child: *Liu v. Zhao*, 2024 BCSC 1744 at para. 29.
- [21] On September 20, 2024, Justice Baker:
- a) Recognized the 2022 Orders that:
 - i. The claimant has sole custody of the child; and
 - ii. The respondent is entitled to visit the child one day each week, 7 days in winter vacation and 15 days in summer vacation, with the specific visit time, place, and method of the visits to be negotiated between the parties. The claimant must assist the respondent in realizing his visitation rights.
 - b) Declined to exercise jurisdiction over matters relating to the parenting arrangements for the child.
 - c) Declined to order the return of the child to China, pursuant to s. 77 of the FLA.
 - d) Dismissed the claimant's application.
- [22] On January 14, 2025, the claimant filed her amended notice of family claim seeking orders for child support and spousal support.
- [23] On March 3, 2025, the respondent filed his jurisdictional response in which he pleaded the following:

The respondent, Siqin Zhao

- disputes that this court has jurisdiction over this respondent, except for the claims made by the claimant Yunshan Liu related to property located in British Columbia under Part 5 of the Family Law Act.
- submits that this court ought not to exercise its jurisdiction over this respondent, except for claims made by the claimant Yunshan Liu related to property located in British Columbia under Part 5 of the Family Law Act.

[24] On April 2, 2025, the respondent served the within notice of application, seeking that this Court decline jurisdiction over the claimant's claims for child support and spousal support in favour of China pursuant to Rule 18-2 of the Supreme Court Family Rules, and recognize the elements of the 2022 Order not already recognized in the September 20, 2024 order of Baker J. (i.e., the orders related to divorce, support, and division of Chinese Property).

[25] On April 28, 2025, the claimant served the within application response.

Issues

[26] The issues for determination are:

- a) Does this Court have territorial jurisdiction?
- b) Is it clearly more appropriate for the Chinese Court to retain jurisdiction over child support and spousal support?
- c) Is the 2022 Order final and is there a real and substantial connection between the cause of action and the foreign court, subject to defences on the basis of natural justice, public policy and fraud?

[27] For the reasons that follow I conclude this Court has territorial jurisdiction. However, it is clearly more appropriate for the Chinese Court to retain jurisdiction over child support and spousal support. The 2022 Order with respect to divorce, property division, and its disposal of the issue of spousal support should be recognized.

Analysis

Territorial Jurisdiction

[28] When a court determines whether to take jurisdiction over a dispute, it engages in a two-step process. First, the court determines whether the party asserting territorial competence has established its existence. Second, the court determines whether the party asserting that another forum is more appropriate has established that the other forum is clearly more appropriate, notwithstanding the court's territorial jurisdiction. This second step is referred to as the forum non conveniens analysis, a Latin phrase meaning "inconvenient forum": B.C. v. D.E., 2022 BCSC 1597 at para. 23.

[29] The Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 ("CJPTA") is the usual starting point for determination of territorial competence and forum non conveniens in British Columbia. However, the CJPTA recognizes that there may be circumstances in which Parliament or the Legislature have expressly conferred or denied jurisdiction to a court. Section 12 of the CJPTA provides for primacy of the other legislative enactment, as follows:

Conflicts or inconsistencies with other Acts

12 If there is a conflict or inconsistency between this Part and another Act of British Columbia or of Canada that expressly

- (a) confers jurisdiction or territorial competence on a court, or
- (b) denies jurisdiction or territorial competence to a court,

that other Act prevails.

[30] Thus, in some instances the CJPTA will be displaced by provisions in either the Divorce Act, R.S.C. 1985, c.3 (2nd Supp), or the FLA. Both the FLA and the Divorce Act expressly confer jurisdiction to the court in some, but not all, circumstances.

[31] Sections 3 to 7 of the Divorce Act deal with questions of jurisdiction in divorce proceedings and corollary relief proceedings. Under the Divorce Act, a corollary relief proceeding "means a proceeding in a court in which either or both former spouses seek a child support order, a spousal support order or a parenting order".

[32] The Divorce Act displaces s. 3 of the CJPTA with regard to territorial competence over parenting orders, child support, and spousal support in certain circumstances: ss. 3(1), 4(1), and 6.2(1). Pursuant to s. 3(1) of the Divorce Act, this Court has territorial competence over divorce proceedings where at least one of the spouses was habitually resident in British Columbia for at least one year immediately prior to the commencement of the proceeding. Section 4(1) provides that a court has jurisdiction over a corollary relief proceeding if s. 3(1) is met or if both spouses consent.

[33] In the particular circumstances of this case where neither party was habitually resident in British Columbia for at least one year immediately prior to the commencement of the proceeding, the parties agree that section 3 of the CJPTA governs territorial competence over the issues raised.

[34] Section 3 provides:

Proceedings against a person

3 A court has territorial competence in a proceeding that is brought against a person only if

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
- (b) during the course of the proceeding that person submits to the court's jurisdiction,
- (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
- (d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or

- (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.
- [35] Section 10 of the CJPTA sets out a non-exhaustive list of circumstances which create a presumption that a real and substantial connection exists under s. 3(e).
- [36] The claimant has met her onus of establishing that this Court has territorial jurisdiction.
- [37] The respondent does not concede territorial jurisdiction although he advanced no argument against such a finding.
- [38] The respondent has filed a counterclaim in these proceedings and submitted to this Court's jurisdiction, at least with respect to division of British Columbia property.
- [39] There is a real and substantial connection between British Columbia and the facts on which the proceeding is based. Specifically, the parties lived here on and off throughout their relationship. The parties agree that this Court has jurisdiction to adjudicate the division of British Columbia property. The child currently resides here with the claimant and has resided here since 2023.

Forum non conveniens

- [40] For reasons I will explain, I conclude that the respondent has established that China is the clearly more appropriate forum to address issues of child support and spousal support so that this Court should decline to exercise its jurisdiction over those matters pursuant to s. 11 of the CJPTA.
- [41] Section 11 of the CJPTA provides:

Discretion as to the exercise of territorial competence

11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

- (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
 - (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
 - (b) the law to be applied to issues in the proceeding,
 - (c) the desirability of avoiding multiplicity of legal proceedings,
 - (d) the desirability of avoiding conflicting decisions in different courts,
 - (e) the enforcement of an eventual judgment, and

(f) the fair and efficient working of the Canadian legal system as a whole.

[42] These factors are not restrictive, and the court may consider other factors such as the best interests of the child: *L.M.H. v. R.M.V.*, 2024 BCSC 1199 at para. 25.

[43] The forum non conveniens analysis does not require that all the factors point to a single forum; however, it does require that one forum emerge as clearly more appropriate: *Breeden v. Black*, 2012 SCC 19 at para. 37. The court may decline to exercise jurisdiction over one or more aspects of a case: *D.L. v. M.Y.*, 2019 BCSC 881.

Comparative Convenience and Expense

[44] A significant feature of this case that impacts many of the factors this court must consider is that the claimant has elected to proceed simultaneously in two different jurisdictions.

[45] As noted above, initially the Chinese Proceedings were more comprehensively pleaded than the British Columbia Proceedings. The claimant sought to address all issues arising from the breakdown of the marriage in the Chinese Proceedings save for division of British Columbia property. The claimant initially sought to deal only with divorce and division of British Columbia property in the British Columbia Proceedings.

[46] The Chinese Proceedings are further along than the British Columbia Proceedings. Both parties, each represented by counsel, have engaged extensively in hearings before the Chinese courts.

[47] As noted, the Chinese Court has already granted a divorce.

[48] Both parties agree that China is the appropriate forum to deal with issues relating to parenting arrangements for the child. This Court has already so ordered in *Baker J.*'s decision from September 2024. The Chinese Court has already made an order regarding parenting arrangements and there is presently an application before the Chinese Court seeking to vary that order. Judgment is under reserve.

[49] It is also not disputed that the Chinese Court has already adjudicated the question of child support. That is apparent on the face of the 2022 Order which requires the respondent to pay child support to the claimant. Again, there is presently a judgment under reserve following an application at which the respondent sought to vary that order.

[50] With respect to division of Chinese property and spousal support, it is also not disputed that the Chinese Court has already adjudicated these issues, at least in part.

[51] With regard to spousal support, the laws of British Columbia differ significantly from Chinese law. The expert evidence adduced on this application confirms that the description of Chinese law on spousal support set out in *Cao v. Chen*, 2020 BCSC 735 is essentially correct:

[148] With respect to Chinese law on spousal support, Prof. Cheng and Prof. deLisle agreed that article 42 of the Marriage Law governs. A certified translation of the Marriage Law entered as an exhibit at trial translates article 42 as follows:

If, at the time of divorce, either party has difficulties in life, the other party shall render appropriate assistance with his or her personal property like house, etc. Specific arrangements shall be agreed upon by both parties. In case no agreement is agreed upon, the people's court shall make the decision.

[Emphasis added in Cao.]

[149] Prof. deLisle explained that the Interpretation of the Marriage Law by the Supreme People's Court provides further guidance of when "difficulties" are experienced for the purposes of article 42. Article 27 of the Marriage Law Interpretation, as translated, provides:

The circumstance under which "either party has difficulties in life" as mentioned in Article 42 of the Marriage Law means that it can't sustain the local basic living level by depending on the personal property and the property divided to him (her) at the time of divorce.

A party who has no domicile after divorce conforms to the circumstances of having difficulties in life.

At the time of divorce, one party may help the party who has difficulties in life by offering the dwelling right to or ownership of the house out of his (her) personal properties.

[Emphasis added in Cao.]

[150] These provisions are consistent with Prof. deLisle's evidence that property division is the primary means of wealth division between divorcing spouses, and that support is only awarded in certain circumstances where a basic standard of living is not attainable

[153] I find that, under Chinese law, spousal support is only intended to address an inability to meet a basic standard of living at the time of divorce. It is not intended to equalize wealth between the parties of a long-standing relationship and it is not subject to changes in the means and needs of the spouses in the years following the divorce.

[52] Although article 42 of the Chinese Marriage Law has since been replaced by article 1090 of the Chinese Civil Code, both are consistent in meaning.

[53] Further, Chinese family law recognizes that "the female party might be in a weaker financial position than the male party". Article 1087 of the Chinese Civil Code prescribes that:

Upon divorce, the family property shall be divided between the spouses through agreement; if no agreement is reached, the people's court shall make a decision based on the actual status of the property in compliance with the principle of favoring the rights and interests of their child, the female party, and the no-fault party.

[54] The expert evidence adduced on this application confirms that seeking division of Chinese property "to be divided according to law" required the Chinese Court to take these laws into account and it did so.

[55] The expert opines:

The Chinese Court took into account the laws and granted certain relief in the Divorce Judgment concerning [the claimant]. On page 11 of the Divorce Judgment, [the Chinese Court] gave "favor" to [the claimant] in accordance with Paragraph 1 of Article 1087 of the Civil Code in that more than half, that is 55% was given when "dividing the bank savings"; the principle of favoring the female party [the claimant] was also reflected in the compensation for joint mortgage repayment. These "favors" given to [the claimant] in the Divorce Judgment were no doubt based on the consideration that the claimant might be in a weaker financial position than [the respondent].

[56] The expert opines that the claimant could not rely on article 1090 by claiming she had "difficulties in life" because she had already presented evidence and claimed she was not a party with "difficulties in life". Permitting her to rely on article 1090 in those circumstances would be against the principle of "equitable estoppel" and "the principle of integrity that is to be followed in civil litigation".

[57] Thus, the Chinese Court has already divided Chinese properties "according to law" and, in so doing, addressed spousal support. However, the Chinese Court left open that division of property issues may be revisited:

If the plaintiff and the defendant have joint property that needs to be divided or claim that the other party has intentional concealment and disposal of property, they can file another lawsuit.

[58] It is apparent that litigating the support claims in British Columbia will be expensive and inconvenient.

[59] First, an important issue for resolution if British Columbia law applies will be the income of the parties. In consideration of Chinese property division, the Chinese Court gave a detailed account of the means and needs of the parties at the time of divorce. Thus, the analysis will require a substantial duplication of efforts in translating not only the Chinese judgment but likely also the evidence that underlies it and expert opinion to interpret it.

[60] Second, in the British Columbia Proceedings, the claimant has given evidence to address the respondent's assets, businesses, and employment income. She deposes that the respondent did not disclose all of his assets in the Chinese Proceedings, including, among other things, his interest in a number of Chinese companies. It appears therefore that the claimant will wish to translate and analyze a broad array of Chinese-language documents from Chinese companies she believes the respondent has an interest in. The determination of income from these companies would also likely require expert opinion evidence concerning Chinese business and accounting practices. This Court would have limited ability to compel production of documents or witnesses.

- [61] Third, both parties would be necessary witnesses on the support issues. If the British Columbia Proceedings advance in this Court, both of the parties and likely many witnesses will need to testify through interpreters.
- [62] Finally, neither party is a Canadian citizen; although both are permanent residents. The respondent currently resides in China. The claimant currently resides in British Columbia, although she resided in China when she initiated both the Chinese Proceedings and the British Columbia Proceedings. Unless an order is made for remote attendance, the respondent and many witnesses will likely have to travel from China.

The Law to be Applied

- [63] The FLA does not contain any choice of law rules for spousal or child support, nor does the CJPTA. Further, the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29, [ISOA] provisions regarding choice of law for spousal and child support do not apply because China is not a reciprocating jurisdiction under s. 6 of the Interjurisdictional Support Orders Regulation, B.C. Reg. 15/2003. No clear choice of law rule emerges from the common law.
- [64] Neither party has suggested that anything other than British Columbia law would apply with respect to child support. Instead, their submissions were focused on the choice of law regarding spousal support.
- [65] The respondent has argued that if this Court were to assume jurisdiction, then Chinese law would apply because China is the jurisdiction having the closest connection to the parties and the issues, citing *Tang v. Cheng*, 2020 BCSC 1341 at para. 55. In *Tang*, the Court determined that "an appropriate choice of law rule for the purposes of this application is that spousal support is governed by the law of the jurisdiction having the closest connection to the parties and the issues" (at para. 55; emphasis added). However, *Tang* does not stand for the proposition that this approach is the correct rule for determining choice of law in all spousal support cases.
- [66] In reviewing previous cases that have determined choice of law in respect of spousal support, the Court in *Tang* outlined the following principles at para. 88:
- a) Spousal support is not governed by the law of the matrimonial domicile.
 - b) Spousal support is not necessarily governed by the law of the parties' most recent common habitual residence, but that place may be a factor in the choice of law analysis.
 - c) The residence of the claimant at the time the proceeding was commenced is an important factor, but standing alone does not justify the application of British Columbia law to a non-resident spouse.
 - d) The presence of real property in British Columbia with a connection to the spousal support claim is an important factor in the choice of law analysis.

- e) Other factors include the location where the spouses contributed to their economic union or raised their children.

[67] In this case, these considerations do not all point in one direction.

- a) All parties and the child are citizens of China and permanent residents of Canada. When the parties met, the respondent resided in British Columbia and the claimant resided in China. The parties lived in Vancouver for approximately 18 months, on and off, during the course of their relationship.
- b) The parties also resided in China during the course of their relationship. For example, the parties chose that the claimant return to China between March and November 2019 to ensure the child would be born in China and be a Chinese citizen.
- c) At the time of separation, in 2021, the parties had resided in China for several months.
- d) Both parties continued to reside in China when both the Chinese Proceedings and the British Columbia Proceedings were initiated in 2021. No party raised any jurisdictional question in the Chinese Proceeding. The Chinese Court has already determined at least some of the issues raised in the British Columbia Proceeding, and when it has done so, it has applied Chinese law. The Chinese Court initially examined these issues in 2022 while both parties continued to reside in China. Both parties continued to reside in China continuously until 2023.
- e) There is real property in both China and British Columbia. The Chinese property has been considered in the Chinese Court's disposal of the issue of spousal support. The parties have leave to return if there are additional property issues to be determined.

[68] In all the circumstances, I consider this factor to be neutral.

Avoiding Multiple Proceedings

[69] The claimant simultaneously commenced parallel proceedings in two jurisdictions. Thus, a multiplicity of proceedings is inevitable.

[70] The parties agree that the Chinese Court is the appropriate forum to determine parenting issues and to divide Chinese properties. The Chinese Court has already exercised jurisdiction with respect to divorce, parenting, child support, and property division which includes spousal support.

[71] The parties also agree that this Court is the appropriate forum to divide British Columbia properties. However, if this Court exercises jurisdiction with respect to the support issues, that will result in a multiplicity of proceedings on these additional issues. This Court has recognized that it is generally preferable that all issues directly affecting children be done in the same forum, as illustrated by the Court's conclusions in *S.R.L. v. K.J.T.*, 2014 BCSC 1562 at paras. 35, 37; *Souhaibb v. Javed*, 2023 BCSC 584 at para. 120; and *Y.Q. v J.D.*, 2021 BCSC 943 at para. 90.

Avoiding Conflicting Decisions

- [72] There is a high risk of a conflicting decision if this Court takes jurisdiction with respect to support.
- [73] As noted, the Chinese Court has already grappled with these issues including considerations of the parties' means and needs at the time of divorce. There is therefore a risk of conflictual factual determinations.
- [74] A further risk arises if this court exercises jurisdiction in respect of spousal support and if British Columbia law applies because, as I have explained above, the laws of British Columbia differ significantly from the Chinese laws: Cao at para. 100.
- [75] Indeed, reaching a different result appears to be the claimant's end in amending the pleadings in the British Columbia Proceedings. Not only would a different result conflict with the Chinese Court's adjudication of the spousal support claim, it would undermine the Chinese limitation of time for seeking such compensation and also the Chinese litigation principle of "prohibition against double jeopardy."
- [76] As I have noted, the ongoing Chinese Proceedings could result in a change of custody and support. With respect to child support, there is no evidence before me with respect to the Chinese law in respect of child support. However, I cannot assume it is the same as the laws of British Columbia.

Enforcement of Eventual Judgment

- [77] As I have noted, the claimant moved to British Columbia in 2023. The child currently resides in British Columbia; however, this is the subject of an application currently under reserve before the Chinese Court and may change.
- [78] Assuming the respondent continues to reside in China and remains the payor, having the support orders made by a Chinese court would make their enforcement easier.
- [79] To enforce support orders made by this Court when the payor of support does not reside in British Columbia, the orders must be conjunctly brought under the ISOA . As noted above, China is not a reciprocating jurisdiction under that Act. On the other hand, Chinese orders pertaining to child support are enforceable in British Columbia pursuant to s. 10(k) of the CJPTA.

Fair and Efficient Working of the Canadian Legal System as a Whole

- [80] The fair and efficient working of the Canadian legal system requires this Court to respect the jurisdiction and orders of foreign courts. It does not benefit the system to permit parties who are dissatisfied with the outcome in foreign courts to relitigate those same issues in this Court: Ma v. Li, 2016 BCSC 469 at para 35.

Conclusion on the Forum Non Conveniens Analysis

[81] Considering the forum non conveniens test set out in s. 11 of the CJPTA in its totality, including each of the factors listed in s. 11(2), I conclude that China is clearly the more appropriate forum to address issues of child support and spousal support in this case. I have determined that this Court should decline to exercise its jurisdiction over those elements of the claimant's claim.

Recognition of the 2022 Order

[82] The respondent seeks recognition of the 2022 Orders for divorce, division of Chinese property, and its disposal of spousal support. The respondent concedes that the order concerning child support cannot be recognized because the issue is currently being litigated before the Chinese Court and is therefore not final.

[83] With respect to the order for divorce, the parties do not meet the statutory requirements of s. 22 of the Divorce Act. That section provides that a foreign divorce will be recognized in Canada if either former spouse was habitually resident in the jurisdiction that issued the foreign divorce for at least one year immediately preceding the commencement of those divorce proceedings. If the 2022 Order regarding divorce is to be recognized by this Court, it must therefore be under a common law principle.

[84] At common law, the test for recognition of a foreign judgment in the family law context is whether it is final and whether there was a real and substantial connection between the cause of action and the foreign court, subject to defences on the basis of natural justice, public policy, and fraud: *Cao* at paras. 110--113.

[85] The claimant did not advance any argument in opposition to recognition of the divorce order. Indeed, it is the claimant who initiated the proceeding seeking that relief from the Chinese Court. It is a final order and there was a real and substantial connection between the cause of action and the Chinese court.

[86] However, on the question of spousal support, the claimant argues that this may not be subject to a final order.

[87] A similar argument was rejected in *Cao*, where Justice Force held:

147 ... In my view, the fact that the decision left open issues between the parties that may need to be resolved at a later date is not particularly relevant to the question of whether the issues that it did decide were decided finally or not.

[88] Justice Forth went on to explain that under Chinese Law, spousal support is only awarded in certain circumstances where a basic standard of living is not attainable and that this is addressed at the time of divorce. Unlike Canadian law, there does not appear to be a means of revisiting support based on changing means and needs of the spouses after separation. I have substantially the same expert evidence before me.

[89] This supports that the 2022 Order in respect of the Chinese properties before the court, including the "favours" granted to the claimant in accordance with article 1087, is a final order.

[90] No defence was raised on the basis of natural justice, public policy or fraud.

[91] In all these circumstances, I recognize the following orders made by the Futian District People's Court of Shenzhen City, Guangdong Province, China on January 24, 2022:

The claimant Liu Yunshan [also known as Yunshan Liu] and the respondent Zhao Siqin [also known as Siqin Zhao] are granted divorce.

The respondent Zhao Siqin shall compensate the claimant Liu Yunshan RMB 178,158.32 for the division of the bank account deposit within 10 days from the effective date of [the 2022 Order].

Room 2816,28 / F, unit h, project phase JV, Shenwan Huiyun center, Baishi Sandao, Nanshan District, Shenzhen registered in the name of the defendant Zhao Siqin belongs to the respondent Zhao Siqin. The respondent Zhao Siqin shall compensate the claimant Liu Yunshan RMB 80,000 for the joint loan repayment of the above-mentioned real estate and the corresponding property increase in value within 10 days from the effective date of [the 2022 Order].

Costs

[92] The respondent is entitled to his costs of this application, in any event of the cause.

"Latimer J."

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