
CANADA / JUDGMENT

Mo v. Liang

2020 BCSC 1943

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1943 Mo v. Liang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mo v. Liang,

2020 BCSC 1943

Date: 20201030

Docket: S208558

Registry: Vancouver

Between:

Ricky Siu Fung Mo

Petitioner

And

Jing Yun Liang aka Crystal Liang, Perfect View Holdings Inc. and Crystal Blue Spa & Nail Inc.

Respondents

Before: The Honourable Mr. Justice Basran

Oral Reasons for Judgment

Counsel for Petitioner:

D.R. North

Counsel for Respondents:

R. G. Lew

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 22, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 30, 2020

Table of Contents

Overview.. 3

The Business Venture. 3

Loans to Perfect View.. 4

Business Problems. 4

Oppression. 5

Relevant Legal Principles of Oppression. 5

Positions of the Parties on Oppression. 8

Did Ms. Liang Oppress Mr. Mo pursuant to s. 227 of the BCA?. 10

Liquidation. 13

Relevant Legal Principles of Liquidation. 13

Position of the Parties on Liquidation. 14

Should Perfect View be liquidated pursuant to s. 324?. 14

Overview

- [1] The petitioner, Ricky Siu Fung Mo, is a 50% shareholder, one of two directors, and secretary of Perfect View Holdings Inc. ("Perfect View").
- [2] The respondent, Jing Yung Liang aka Crystal Liang, is also a 50% shareholder and the other director of Perfect View. She is the president of this company.
- [3] Perfect View owns the only issued and outstanding share of Crystal Blue Spa & Nail Inc. ("Crystal Blue"). Ms. Liang is Crystal Blue's sole director and president.
- [4] The purpose of incorporating Perfect View was to act as a holding company for Crystal Blue and purchase property from which to operate the Crystal Blue Salon (the "Salon"). Perfect View was to receive rent from Crystal Blue as lessee of the space from which the Salon would be operated.

- [5] Ms. Liang manages and works at the Salon.
- [6] Mr. Mo alleges that Ms. Liang has engaged in oppressive conduct as a director and president of Perfect View, within the meaning of s. 227 of the Business Corporations Act, S.B.C. 2002, c. 57 [BCA]. Among other things, he seeks her removal as director and officer of Perfect View. Alternatively, he seeks an order under s. 324 of the BCA to liquidate Perfect View because he and Ms. Liang are deadlocked, an order that the property owned by Perfect View be sold, its debts repaid, and the company wound up and dissolved.

The Business Venture

- [7] On September 8, 2017, Perfect View purchased two adjoining properties located at 1982 E. 39th Ave., Vancouver, BC (the "Property") for \$750,000. The Property was purchased from Hong Kong 2000 Hair Ltd. ("Hong Kong Hair"). The contract for purchase and sale included an addendum that set out the terms of a commercial lease between Perfect View and Hong Kong Hair, pursuant to which Hong Kong Hair leased 1/3 of the Property. This lease commenced on September 9, 2017 at a rate of \$1,650 per month.
- [8] The Salon commenced business on or about April 15, 2018.

Loans to Perfect View

- [9] On September 8, 2017, Ms. Liang provided a shareholder loan of \$150,000 to Perfect View. Similarly, as of April 30, 2018, Perfect View had received a net shareholder loan of \$150,000 from Mr. Mo.
- [10] In September and October 2017, Perfect View borrowed a total of \$650,000 via two loans from Wordlpac Asia Trading Ltd. ("Worldpac"). Interest on these loans was payable yearly. Upon demand or default, the full loan amounts were immediately due.

Business Problems

- [11] Crystal Blue sustained losses in 2018 and 2019. In its financial year ending July 31, 2019, it had revenue of \$26,844 and expenses of \$66,629, of which \$37,697 was salary. Ms. Liang received a salary of approximately \$3,000 per month. Approximately 8% of the total revenue was spent on meals and entertainment.
- [12] Hong Kong Hair did not start paying rent to Perfect View until April 2018, approximately five months after the commencement of its lease.
- [13] Prior to September 2019, Mr. Mo and Ms. Liang's shareholder loans remained outstanding.
- [14] Mr. Mo was a director of Crystal Blue when it was incorporated but he resigned from this position on September 13, 2019.

- [15] The Salon receives revenue in cash. It is Ms. Liang's evidence that she takes \$1,500 per month of her salary in cash in order to minimize the amount payable for Canada Pension Plan premiums.
- [16] Neither of the Worldpac loans have been repaid in full or in part and Perfect View has not paid any interest on them. On December 16, 2019, Worldpac issued a debit note to Perfect View in respect of the unpaid interest on its loans. On February 27, 2020, Worldpac's counsel wrote to Perfect View demanding full repayment of the loans plus interest. As of August 1, 2020, the total amount owing to Worldpac, including interest, is \$698,496.
- [17] On April 21, 2020, at Perfect View's board meeting, Mr. Mo and Ms. Liang agreed that it would hire a realtor, Tony Tang, to sell the Property at a list price of \$998,000. The Property was listed for sale the following day at that price.
- [18] On May 1, 2020 Mr. Tang received an offer on the Property for \$873,600. Mr. Mo proposed a counter offer at \$900,000. However, Ms. Liang directed the realtor to raise the price of the property to \$1,080,000. Mr. Mo disagreed with this direction. No counter offer was made and the Property was not sold.
- [19] As of September 2020, Mr. Mo is owed \$186,000 in respect of the shareholder loans he provided to Perfect View.

Oppression

Relevant Legal Principles of Oppression

- [20] The primary relief sought by Mr. Mo is an order that Ms. Liang, as a director and officer of Perfect View, oppressed him in his role as a shareholder of this company, pursuant to s. 227 of the BCA. On this basis, he seeks to remove her authority to act on behalf of the company and her removal as a director and officer of it. This would make him the sole authority to act on behalf of Perfect View as well as the company president. He intends to sell the Property and wants an order dispensing with a special resolution as required by s. 301(1) of the BCA.
- [21] Section 227 provides:
- 227 (1) For the purposes of this section, "shareholder" has the same meaning as in section 1 (1) and includes a beneficial owner of a share of the company and any other person whom the court considers to be an appropriate person to make an application under this section.
- (2) A shareholder may apply to the court for an order under this section on the ground
- (a) that the affairs of the company are being or have been conducted, or that the powers of the directors are being or have been exercised, in a manner oppressive to one or more of the shareholders, including the applicant, or

- (b) that some act of the company has been done or is threatened, or that some resolution of the shareholders or of the shareholders holding shares of a class or series of shares has been passed or is proposed, that is unfairly prejudicial to one or more of the shareholders, including the applicant.
- (3) On an application under this section, the court may, with a view to remedying or bringing to an end the matters complained of and subject to subsection (4) of this section, make any interim or final order it considers appropriate, including an order
 - (a) directing or prohibiting any act,
 - (b) regulating the conduct of the company's affairs,
 - (c) appointing a receiver or receiver manager,
 - (d) directing an issue or conversion or exchange of shares,
 - (e) appointing directors in place of or in addition to all or any of the directors then in office,
 - (f) removing any director,
 - (g) directing the company, subject to subsections (5) and (6), to purchase some or all of the shares of a shareholder and, if required, to reduce its capital in the manner specified by the court,
 - (h) directing a shareholder to purchase some or all of the shares of any other shareholder,
 - (i) directing the company, subject to subsections (5) and (6), or any other person, to pay to a shareholder all or any part of the money paid by that shareholder for shares of the company,
 - (j) varying or setting aside a transaction to which the company is a party and directing any party to the transaction to compensate any other party to the transaction,
 - (k) varying or setting aside a resolution,
 - (l) requiring the company, within a time specified by the court, to produce to the court or to an interested person financial statements or an accounting in any form the court may determine,
 - (m) directing the company, subject to subsections (5) and (6), to compensate an aggrieved person,
 - (n) directing correction of the registers or other records of the company,
 - (o) directing that the company be liquidated and dissolved, and appointing one or more liquidators, with or without security,
 - (p) directing that an investigation be made under Division 3 of this Part,
 - (q) requiring the trial of any issue, or

- (r) authorizing or directing that legal proceedings be commenced in the name of the company against any person on the terms the court directs.
- (4) The court may make an order under subsection (3) if it is satisfied that the application was brought by the shareholder in a timely manner.
- (5) If an order is made under subsection (3) (g), (i) or (m), the company must pay to a person the full amount payable under that order unless there are reasonable grounds for believing that
 - (a) the company is insolvent, or
 - (b) the payment would render the company insolvent.
- (6) If reasonable grounds exist for believing that subsection (5) (a) or (b) applies,
 - (a) the company is prohibited from paying the person the full amount of money to which the person is entitled,
 - (b) the company must pay to the person as much of the amount as is possible without causing a circumstance set out in subsection (5) to occur, and
 - (c) the company must pay the balance of the amount as soon as the company is able to do so without causing a circumstance set out in subsection (5) to occur.
- (7) If an order is made under subsection (3) (o), Part 10 applies.
- [22] The test for an oppression remedy, as contemplated by s. 227 of the BCA, is based on the reasonable expectations of the shareholders and stakeholders in the overall context of the matter: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para. 62.
- [23] Stakeholders reasonably expect fair treatment. The court will look at what is fair given all of the relevant interests: *BCE* at para. 64 and 71.
- [24] In determining an oppression claim, a twofold inquiry is required, "(1) Does the evidence support the reasonable expectation asserted by the claimant? and (2) Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms "oppression", "unfair prejudice" or "unfair disregard" of a relevant interest?": *BCE* at para. 68.
- [25] General commercial practice, the nature of the corporation and the relationship between the parties are useful factors in determining the reasonable expectations of the parties: *BCE* at para. 72.
- [26] A departure from normal business practices that undermines or frustrates a party's exercise of their legal rights will generally result in a remedy: *BCE* para. 73.
- [27] A shareholder must suffer peculiar or special and distinct harm in comparison to other shareholders to engage the oppression remedy: *Jaguar Financial Corporation v. Alternative Earth Resources Inc.*, 2016 BCCA 193 at para. 179.

- [28] A shareholder loan is presumptively repayable on demand: *China Dragon Fund Ltd. v. FIC Real Estate Fund Ltd.*, 2010 BCSC 1698 at para. 28 relying on *Glacier Creek Development Corporation v. Pemberton Benchlands Housing Corporation*, 2007 BCSC 286 at para. 58.

Positions of the Parties on Oppression

- [29] Mr. Mo alleges that Ms. Liang engaged in oppressive conduct by:

- a) sabotaging the sale of the Property by Perfect View;
- b) failing to cause Perfect View to repay the debts to its shareholders and Worldpac; and
- c) refusing to collect rent owed to Perfect View by Hong Kong Hair.

- [30] Mr. Mo further asserts that Ms. Liang agreed not to take a salary until the Salon became profitable. Ms. Liang counters that Mr. Mo agreed that she would receive a salary of \$4,000 per month and that she did not agree to work without a salary for two to three years. Neither party provided documentary or independent evidence on this issue.

- [31] Mr. Mo wants to sell the Property and wind up Perfect View because the businesses and investments of Crystal Blue and Perfect View failed to yield any profit and Perfect View failed to repay its debts. The Property and share in Crystal Blue are Perfect View's only assets.

- [32] Mr. Mo believes that Ms. Liang's decision not to accept or counter the offer to purchase the Property, but instead raise the price of the Property, is sufficient to meet the test for the oppression remedy. He notes that the directors of Perfect View agreed to sell the Property but he believes that Ms. Liang sabotaged its sale.

- [33] Mr. Mo also speculates that Ms. Liang removed cash revenue from the Salon without properly accounting for it. He believes that Ms. Liang profited personally from the business of Crystal Blue while depriving the shareholders of Perfect View of revenue they are entitled to.

- [34] Ms. Liang asserts that the parties agreed to give the Salon two to three years to become profitable, after which they would either rent the Property or sell it. The Salon is in its third year of operation and she would like to continue operating this business.

- [35] Ms. Liang's evidence is that she and Mr. Mo were in a relationship that began in early 2013 and ended on July 18, 2019. She also deposes that Worldpac is a company owned and controlled by Mr. Mo's father.

- [36] She seeks an independent valuation of Mr. Mo's shares in Perfect View, an order that Mr. Mo provide all necessary information to facilitate this valuation, and an order under s. 227(3)(h) that she be able to purchase Mr. Mo's shares. Ms. Liang does not commit to paying Mr. Mo the amount set by the valuation. Instead, she proposes that the parties engage a "shotgun"/ buy-sell remedy whereby she will make the first offer because she wants to continue operating the Salon.
- [37] Ms. Liang's evidence is that in July 2019, she reached an agreement with Mr. Mo whereby:
- a) Crystal Blue would pay Mr. Mo \$20,000;
 - b) Ms. Liang would become the sole owner of the Salon;
 - c) Mr. Mo would transfer his shares in Perfect View to her on the condition that she repay the Worldpac Loans and half of the interest on them and repay Mr. Mo's investment of \$150,000.
 - d) If Ms. Liang failed to pay these amounts by May 31, 2020, she would list the Property for sale.
- [38] Ms. Liang deposes that this agreement was written in Chinese and that she has since lost it and is unable to locate a copy of it. Mr. Mo made no reference to this agreement. Ms. Liang did not provide an explanation of the circumstances surrounding the alleged loss of this agreement nor did she provide any further evidence of its existence.
- [39] Ms. Liang's evidence is that Honk Kong Hair did not pay rent from February to April 2018 because the Property was being renovated. She also states that rent collected in June 2020 could not be deposited to Perfect View's bank account because it was frozen. She asserts that she deposited this amount in her personal bank account then used these funds to pay some of Perfect View's expenses.
- [40] Ms. Liang contends that some of the accounting entries completed by Mr. Mo "did not seem right."
- [41] Ms. Liang wants to purchase Mr. Mo's interest in Perfect View pursuant to an agreement to be negotiated by the parties. Alternatively, she seeks a court ordered sale of Mr. Mo's shares in Perfect View to her because she intends to continue operating the Salon.

Did Ms. Liang Oppress Mr. Mo pursuant to s. 227 of the BCA?

- [42] Mr. Mo and Ms. Liang intended that Ms. Liang would operate the Salon for two to three years. If after that period it was viable, it would pay rent to Perfect View for the use of the Property. If the Salon was not financially capable of paying rent to Perfect View, the Property would be sold. I am satisfied that these were the reasonable expectations of the parties because Perfect View cannot pay its debts, let alone be profitable, if it does not obtain rental income from the 2/3 of the Property used by the Salon.

- [43] The parties disagree on the issue of Ms. Liang's salary. Mr. Mo believes that she agreed not to take a salary until the Salon became profitable. Ms. Liang asserts that Mr. Mo agreed that she would receive \$4,000 per month, later reduced to \$3,000 per month. The evidence demonstrates that Ms. Liang received a salary from the Salon. Mr. Mo has not received remuneration in any form from the operation of the Salon or Perfect View. Ms. Liang's interests are served by the ongoing operation of the Salon.
- [44] Mr. Mo was entitled to be treated fairly by Ms. Liang. On April 21, 2020, Mr. Mo and Ms. Liang agreed to sell the Property for a sale price of \$998,000. On May 1, 2020, they received an offer for \$873,600. Mr. Mo wanted to counter this offer at the price of \$900,000. Ms. Liang unilaterally instructed their real estate agent to increase the purchase price to \$1,080,000 in response to the offer. I am satisfied that Ms. Liang intentionally sabotaged the potential sale of the Property in furtherance of her own interests. No counter offer was made and the Property did not sell.
- [45] Mr. Mo reasonably expected that he would get a return on his investment within two to three years, either in the form of rental revenue from the Salon, or the sale of the Property. Ms. Liang's decision to thwart the sale of the Property unfairly prejudiced Mr. Mo's reasonable expectations. She disregarded his suggestion that Perfect View counter the offer and instead disrupted this potential sale of the Property. She sacrificed Mr. Mo's reasonable expectations in favour of her desire to continue operating the Salon on the Property. This conduct was oppressive and completely out of step with general commercial practice in relation to the purpose of Perfect View: earning rental income. Increasing a sale price in response to an offer that is below the listed sale price is a marked departure from normal business practices and in my view, it was an attempt to undermine Mr. Mo's legal rights.
- [46] Mr. Mo is suffering peculiar or special and distinct harm in comparison to Ms. Liang because he gains nothing from the status quo and his capital is at risk. Mr. Mo is receiving no income from Perfect View or the Salon. Ms. Liang is drawing a salary from the Salon and trying to build that business while operating rent free. She has an incentive to continue operating the Salon on the Property. Mr. Mo has no analogous or similar incentive.
- [47] The shareholder loan owing to Mr. Mo is approximately \$186,000 as compared to \$150,000 owed to Ms. Liang. His shareholder loan is therefore 24% larger than hers. This also constitutes a peculiar or distinct harm because he has markedly more capital at risk. Perfect View owes Mr. Mo the amount of his shareholder loan on demand but is incapable of repaying it in the absence of rental revenue from the Salon.
- [48] The evidence does not establish that Ms. Liang behaved oppressively by failing to cause Perfect View to repay the debts to its shareholders and Worldpac. There is also no evidence that she refused to collect rent owed to Perfect View by Hong Kong Hair or that Mr. Mo took any steps to enforce payment of these amounts.

[49] By interfering with the sale of the Property, I am satisfied that Ms. Liang oppressed Mr. Mo within the meaning of s. 227. However, I am not convinced that the remedies Mr. Mo seeks are appropriate. This is because the evidence establishes that there is significant animosity between the parties. Each accuse the other of bad faith and dishonest conduct. Their personal relationship broke down. Perfect View's largest creditor, Worldpac, is owned and controlled by Mr. Mo's father. Ms. Liang has an interest in continuing to operate the Salon whereas Mr. Mo has no similar interest. Ms. Liang and Mr. Mo clearly do not trust each other as evidenced by Mr. Mo's suspicions regarding Ms. Liang's cash transactions and missing rental revenue and Ms. Liang's allegations of accounting irregularities in the work done by Mr. Mo. In these circumstances, I am not satisfied that the correct outcome is removing Ms. Liang as a director and officer thereby leaving Mr. Mo in complete control of Perfect View.

Liquidation

Relevant Legal Principles of Liquidation

[50] Section 324 provides for the liquidation of a company where the directors, officers and shareholders are deadlocked and it is just and equitable to do so. This section provides:

324 (1) On an application made in respect of a company that is a financial institution by the Authority, or made in respect of a company, including a company that is a financial institution, by the company, a shareholder of the company, a beneficial owner of a share of the company, a director of the company or any other person, including a creditor of the company, whom the court considers to be an appropriate person to make the application, the court may order that the company be liquidated and dissolved if

- (a) an event occurs on the occurrence of which the memorandum or the articles of the company provide that the company is to be liquidated and dissolved, or
- (b) the court otherwise considers it just and equitable to do so.
- (2) Nothing in subsection (1) prevents the court from requiring that security for costs be provided by a person bringing an application under that subsection.
- (3) If the court considers that an applicant for an order referred to in subsection (1) (b) is a person who is entitled to relief either by liquidating and dissolving the company or under section 227, the court may do one of the following:
 - (a) make an order that the company be liquidated and dissolved;
 - (b) make any order under section 227 (3) it considers appropriate.
- (4) If the court orders under this Act that a company be liquidated and dissolved, the court must, in its order, appoint one or more liquidators.
- (5) An appointment of a liquidator under subsection (4) takes effect on the commencement of the liquidation.

- [51] A deadlock between equal shareholders is a "classic situation" in which it is just and equitable to order a liquidation under s. 324: *Kinzie v. The Dells Holdings Ltd.*, 2010 BCSC 1360 at para. 10.

Position of the Parties on Liquidation

- [52] If unsuccessful in obtaining an oppression remedy, Mr. Mo seeks a declaration that the directors, officers, and shareholders of Perfect View are deadlocked and an order that the Property be sold and the company liquidated pursuant to s. 324 of the BCA.
- [53] As a shareholder of Perfect View and holder of a shareholder loan, Mr. Mo believes that he is best placed to liquidate the assets of Perfect View and pay off its debts. He does not trust Ms. Liang to handle the financial affairs of Perfect View including the sale of the Property.
- [54] If Perfect View is to be liquidated, Ms. Liang wants to continue operating the Salon. For this reason, she wants to be able to make the first offer to the liquidator and if there are competing offers, an opportunity to make the last offer. She does not want Mr. Mo to be appointed as liquidator. She suggests an independent third party be appointed with the cost divided equally between them.

Should Perfect View be liquidated pursuant to s. 324?

- [55] In my view, the liquidation of Perfect View, pursuant to s. 324 of the BCA, is the appropriate remedy in these circumstances because Mr. Mo and Ms. Liang are clearly deadlocked over the sale of the Property and distrustful of one another. In these circumstances, the Property must be sold. The parties will appoint an independent liquidator to dispose of Perfect View's assets, pay its debts, distribute the remaining proceeds equally to Mr. Mo and Ms. Liang and then dissolve this company. Mr. Mo and Ms. Liang will pay the cost of the liquidator equally.
- [56] I am not acceding to Ms. Liang's request that she have the opportunity to make the first and last offer to the liquidator. The evidence shows that the Salon has not been profitable, even while operating rent free. Objectively, there is no viable business interest for Ms. Liang to protect. Her interest in continuing to operate the Salon is secondary to ensuring that the Property is sold on the open market in order to obtain the highest possible value for both of its shareholders.
- [57] I am also not granting Mr. Mo's request for an accounting or forensic audit. After two and a half years of operation, the Salon generates little revenue in relation to its expenses. Mr. Mo's concerns about Ms. Liang's financial mismanagement are vague and speculative. In my view, the cost of an accounting or forensic audit in these circumstances is disproportionate to the benefit of any further information that may arise.
- [58] If Mr. Mo and Ms. Liang are unable to agree on the liquidator to be engaged, they may apply for a further order of the Court.

[59] Mr. Mo was successful in establishing that his interests were oppressed by Ms. Liang. He is entitled to his costs of this application at Scale B.

[60] THE COURT: Counsel, anything further at this time? That concludes my reasons.

[61] MS. NORTH: My Lord, I would just ask, would you be seized of the matter if they had to come back to have a liquidator appointed, or no?

[62] THE COURT: No, I do not need to be seized of that.

[63] MS. NORTH: Okay. Thank you, My Lord.

[64] THE COURT: Thank you. That concludes this matter.

"Basran, J."

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