

CANADA / JUDGMENT

RSC Enterprise Canada Inc. v. Tan

2018 BCSC 67

COURT

Supreme Court of British Columbia

DECIDED

24 January 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 67 RSC Enterprise Canada Inc. v. Tan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

RSC Enterprise Canada Inc. v. Tan,

2018 BCSC 67

Date: 20180124

Docket: S162335

Registry: Vancouver

Between:

Jastram Properties Ltd.

Plaintiff

And

Virginia Mary Tan, Patrick Eng Tien Tan,

Marcus Soon-Keen Tan, Letan Investments Management,

Letan 88 Enterprises Inc., TLD Investments Inc., 0994439 B.C. Ltd.,

TJ10700 Holdings Ltd. and TJ132 Ventures Ltd.

Defendants

- and -

Docket: S162855

Registry: Vancouver

Between:

Valerie Lek Soo Noi

Plaintiff

And

Wong Chu Han and Laurence Lau

Defendants

And

Marcus Soon-Keen Tan, Letan Investments Management, and

TLD Investments Inc.

Third Parties

- and -

Docket: S162913

Registry: Vancouver

Between:

RSC Enterprises Canada Inc.

Plaintiff

And

Virginia Mary Tan, Patrick Eng Tien Tan,

Marcus Soon-Keen Tan, Virginia and Patrick Tan dba Letan Investments Management, Letan 88 Enterprises Inc., TLD Investments Inc.,

0994439 B.C. Ltd., TJ10700 Holdings Ltd. and TJ132 Ventures Ltd.

Defendants

- and -

Division No. 11

Estate No. 11-253976

Docket: B160363

Registry: Vancouver

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of

Patrick Eng Tien Tan

- and -

Division No. 3

Estate No.: 11-253984

Docket: B160364

Registry: Vancouver

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of

Virginia Mary Tan

Before: The Honourable Madam Justice DeWitt-Van Oosten

Reasons for Judgment

Counsel for Jastram Properties Ltd.:

Paul R. Bennett

Counsel for 0994439 B.C. Ltd. and TLD Investments Inc.:

Kalev A. Anniko

Counsel for Marcus Soon-Keen Tan (S162335):

John D. Whyte

Counsel for Marcus Soon-Keen Tan (S160363 and S160364)

R. Hoops Harrison

Counsel for Boale, Wood & Company Ltd.:

Christopher J. Ramsay

Counsel for RSC Enterprise Canada Inc.:

Michael J. Hewitt

No other appearances

Place and Dates of Hearing:

Vancouver, B.C.

January 10-11, 2018

Place and Date of Judgment:

Vancouver, B.C.

January 24, 2018

I. BACKGROUND

- [1] On January 10-11, 2018, I heard seven applications in five separate actions that are being managed as part of a case management framework governing 23 related actions involving Virginia Tan, Patrick Tan and/or Marcus Tan as defendants.
- [2] A copy of two memoranda to counsel in the related actions, dated April 12, 2017 and September 8, 2017, are attached as Appendix A to these Reasons for Judgment. They set out the case management framework, established thus far.
- [3] The actions against Virginia Tan, Patrick Tan and Marcus Tan are diverse in nature, including (but not limited to), bankruptcy proceedings, foreclosures and/or actions in debt.
- [4] Bankruptcy orders were granted against Virginia Tan and Patrick Tan on April 29, 2016.
- [5] Virginia and Patrick Tan are alleged to have operated an investment scheme that involved soliciting and receiving investments into a non-existent enterprise, in exchange for promissory notes that they failed to honour.
- [6] It is also alleged that the funds received by them were fraudulently diverted to Marcus Tan, their adult son, and used to purchase assets and properties in the name of Marcus Tan, or for his benefit.
- [7] It is not disputed that Marcus Tan is the registered owner of six properties that were acquired in connection with a condominium development in Surrey. It is alleged that these properties were acquired using funds invested with Virginia and Patrick Tan.
- [8] It is also not disputed that Marcus Tan is an officer and director of two corporate entities that own 24 properties in Fort St. John. These properties are also alleged to have been acquired with funds that were invested with Virginia and Patrick Tan.
- [9] Virginia Tan has admitted to the British Columbia Securities Commission that the investment scheme was fraudulent.
- [10] In a publicly-available "Settlement Agreement" indexed at 2017 BCSECCOM 124, the following facts have been admitted:
 - 6. From 2011 to 2015 Tan raised at least \$30 million from investors
 - 7. Tan issued promissory notes to the investors, which provided terms ranging from one month to two years and annualized rates of return of 16% to 21%.

9. Many investors renewed their investment with Tan when their promissory notes matured. When investors renewed their investment, Tan issued them a new promissory note even though they did not provide any new funds.
13. since Tan earned no business income, she made interest and principal payments to investors with funds raised from other investors. Tan also comingled a relatively small amount of her personal funds with investor funds in her bank accounts, and used these accounts to make payments to investors.
14. Tan was ultimately unable to raise sufficient new funds from investors, or to inject enough of her own funds, to continue making the interest payments owing under the promissory notes. By late 2015, Tan was insolvent and she ceased to make further interest payments to investors.
15. many individual investors suffered substantial losses as a result of their investment with Tan.
18. By failing to inform investors that she had no factoring business and was not earning income from any other business, and by using other investors' funds to pay the investors' purported returns, Tan perpetrated a fraud on the investors

II. APPLICATIONS 1, 2 and 3

- [11] RSC Enterprise Canada Inc. ("RSC Canada") invested with Virginia and Patrick Tan and seeks the following orders:
- a) A declaration that the statutory stays of proceedings pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "Act") in Court Nos. B-160363 and B-160364 shall not operate to bar RSC Canada from proceeding with and prosecuting its claim against the Defendants, Virginia Mary Tan and Patrick Eng Tien Tan, within this action;
 - b) Boale Wood and Company Ltd. [the Trustee in Bankruptcy] shall provide to RSC Canada, upon request in writing and payment for the cost of reproduction, copies of the following:
 - (1) Any banking or other financial records of Virginia Mary Tan or Patrick Eng Tien Tan that are in the possession or control of the Trustee in Bankruptcy; and
 - (2) Transcripts of any testimony taken pursuant to the Act from persons who are defendants in this action.
 - c) RSC Canada is relieved of any and all implied and express undertakings of confidentiality attached to any documents or evidence obtained pursuant to this Order to the extent necessary to enable listing and production of those documents for discovery in this action, provided that such undertakings continue in effect to any parties obtaining access to discovery within this action.

[12] Jastram Properties Ltd. ("JPL") also invested with Virginia and Patrick Tan. It too seeks to lift the stay in actions B-160363 and B-160364. Accordingly, JPL applies for the following orders:

Action B-160363

- a) A declaration pursuant to s. 69.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 ("B.I.A.") that ss. 69 through 69.31 of the B.I.A. no longer operate in respect of JPL, and the proposed class members it seeks to represent in BCSC Action No. S162335, concerning the claims advanced by JPL in BCSC Action No. S-162335, on its own behalf and on behalf of the class members it seeks to represent, against the defendant in that action, Patrick Eng Tien Tan.

Action B-160364

- b) A declaration pursuant to s. 69.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 ("B.I.A.") that ss. 69 through 69.31 of the B.I.A. no longer operate in respect of JPL, and the proposed class members it seeks to represent in BCSC Action No. S162335, concerning the claims advanced by JPL in BCSC Action No. S-162335, on its own behalf and on behalf of the class members it seeks to represent, against the defendant in that action, Virginia Mary Tan.

[13] The applications to lift the stays are not opposed.

[14] The Trustee in Bankruptcy takes no position. Virginia Tan and Patrick Tan, although provided with notice of the applications, did not attend the Chambers hearing or have someone appear on their behalf.

[15] Based on the submissions of counsel, as well as the material filed in support of their applications, I am satisfied that RSC Canada and JPL meet the criteria for a declaration and lifting of the stays under s. 69.4 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3.

[16] This provision allows a creditor to apply for a stay under the Bankruptcy and Insolvency Act to be rendered inoperable where: (a) the creditor is likely to be materially prejudiced by the continued operation of the stay; or (b) it is equitable on other grounds to make such a declaration.

[17] RSC Canada claims debts against the defendants totaling \$5.53 million that are owed pursuant to promissory notes signed by the two bankrupts. Its action alleges fraud and fraudulent misrepresentation. RSC has filed certificates of pending litigation on 35 properties said to have been improperly acquired with investors' funds.

[18] JPL has a civil action against Virginia Tan, Patrick Tan and Marcus Tan, as well as various companies that are alleged to be controlled by the defendants (S-162335). It claims to have invested over \$6 million with Virginia and Patrick Tan.

- [19] In November 2017, JPL filed an amended Notice of Civil Claim in its action, with the intention of bringing the action under the Class Proceedings Act, R.S.B.C. 1996, c. 50. It seeks to advance claims on behalf of JPL, as well as other persons who invested funds with Virginia Tan or companies controlled by her.
- [20] In its amended Notice of Civil Claim, JPL alleges that the "Tan Investment Scheme was a Ponzi scheme, in that the funds obtained by Virginia from investors were converted by Virginia for her own use and benefit, and were used by Virginia, in part, to pay interest payments to investors under the promissory notes Virginia had provided to them".
- [21] JPL also alleges that:
27. Patrick and Marcus [Tan] knew that the Tan Investment Scheme was a fraud, and agreed to and did assist Virginia in raising funds from investors and concealing the fraudulent nature of the Tan Investment Scheme from investors. These acts included repeating to investors the false representations concerning the Tan Investment Scheme which both Patrick and Marcus knew were false.
28. In addition, Patrick and Marcus agreed to and did assist Virginia in converting funds provided by investors for investment in the Tan Investment Scheme for uses unrelated to the represented purpose of the Tan Investment Scheme, for the mutual benefit of Virginia, Patrick and Marcus
- [22] The application record shows that both applicants are likely to be materially prejudiced by the continued operation of the stays under the Bankruptcy and Insolvency Act.
- [23] Among other things, the stays prevent RSC Canada from discovery rights in relation to the two bankrupts. They also prevent RSC Canada from pursuing its claim in fraud against Virginia and Patrick Tan, even though this type of claim would survive bankruptcy in any event.
- [24] For JPL, it is necessary for the stays to be lifted before the intended class action can be certified against Virginia Tan and Patrick Tan. And, similar to RSC Canada, the claim of fraud asserted in action S-162335 would survive bankruptcy in any event.
- [25] In application of the principles set out at para. 33 of *In the Matter of the Proposal of Maple Homes Canada Ltd.*, 2000 BCSC 1443, I grant both RSC Canada and JPL the declarations they seek under s. 69.4 of the Bankruptcy and Insolvency Act. In my view, there is a "fair issue" to be tried in their civil actions and these are actions, at least in part, to which a discharge in bankruptcy would not be a defence.

- [26] RSC Canada also applies for the production of documents, relying on Rule 7-1(18) of the Supreme Court Civil Rules, B.C. Reg. 168/2009. It seeks all of the banking and financial records of Virginia Tan and Patrick Tan in the possession of the Trustee in Bankruptcy, as well as the transcripts of any testimony that has been taken pursuant to s. 163 of the Bankruptcy and Insolvency Act from defendants in the RSC Canada action. This includes Marcus Tan.
- [27] The Trustee in Bankruptcy does not take a position on RSC Canada's application. However, counsel for the Trustee did speak to the issue before me, accepting that the banking and financial records in the Trustee's possession are "highly relevant" to the action brought by RSC Canada.
- [28] The Trustee further acknowledges that the transcripts of testimonial examinations conducted under the Bankruptcy and Insolvency Act are filed with the Court and, as such, they are public documents. See: *Re Howell Estate v. Gill*, 2008 BCSC 1270 at para. 34.
- [29] From the Trustee's perspective, there is "nothing repugnant" about the application for production brought by RSC Canada. Within the context of the outstanding civil actions, it makes sense for the Court to grant the orders sought.
- [30] As noted, Virginia Tan and Patrick Tan, although provided with notice of the RSC Canada applications, did not attend the Chambers hearing or have someone appear on their behalf.
- [31] Marcus Tan was represented and legal counsel retained for the purpose of the bankruptcy and foreclosure proceedings only, opposed the application for production.
- [32] It is his position that RSC Canada's application should be dismissed (or adjourned) to await completion of the enquiries and/or investigation of the Trustee in Bankruptcy within the context of the bankruptcy proceedings.
- [33] He argues that the banking and financial records gathered from Virginia and Patrick Tan, as well as any answers obtained through compelled examination under the Bankruptcy and Insolvency Act, are intended for use in the bankruptcy proceedings only. Although creditors may be entitled to access to these documents, or view them, extraneous to the bankruptcy proceedings, they are prohibited from "using" the documents in any way to advance their civil claims against the bankrupts and/or Marcus Tan. In his words, they cannot "intentionally [use] the bankruptcy process to ascertain claims against third parties, including Marcus Tan".
- [34] In opposing the application for production, counsel for Marcus Tan also makes arguments about the constitutionally-enshrined protection against self-incrimination under s. 13 of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11 [Charter], as well as use-immunity provisions found in the Canada Evidence Act, R.S.C. 1985, c. C-5 and provincial Evidence Act, R.S.B.C. 1996, c. 125.

- [35] He says Marcus Tan is afforded the right not to have evidence given in the bankruptcy process used to incriminate him in any other proceedings, including civil actions brought by RSC Canada and other creditors.
- [36] A number of authorities were referenced in support of this position, including *Rieger Printing Ink Co. (Re)* (2009), 94 O.R. (3d) 340 (Sup. Ct. J.), in which it was held that answers provided during a compelled examination under s. 163 of the Bankruptcy and Insolvency Act appropriately engage the principles of derivative-use immunity.
- [37] See also: *Innisfil Beach Gardens Retirement Residence Ltd. (Re)*, [2006] O.J. No. 288 at para. 5 (Sup. Ct. J.).
- [38] In my view, it is readily apparent that the materials sought by RSC Canada are relevant to the claims it advances against Virginia Tan, Patrick Tan and Marcus Tan.
- [39] As accepted by the Trustee in Bankruptcy, the banking and financial documents of Virginia and Patrick Tan would ordinarily find their way on to the defendants' list of documents within the context of the civil proceedings, and RSC Canada (as well as other plaintiffs) would be free to demand production of them, subject to claims of privilege (which are not advanced here).
- [40] The transcript of the s. 163 examinations, as noted, are public documents and by virtue of that characteristic alone, they are accessible by the creditors.
- [41] In my view, the arguments put forward by Marcus Tan on the "use" that may be made by RSC Canada (or any other of the creditors) of information that was produced to the Trustee by way of a compelled process, are best made in the form of an objection when this information is sought to be tendered in a proceeding, or some other substantive use is made of them that realistically engages the principles of self-incrimination and/or use-immunity.
- [42] The fact that documents and/or information gathered during the course of a bankruptcy proceeding may be incriminatory does not, standing alone, prevent production to and access by creditors who have initiated civil claims.
- [43] Accordingly, I grant RSC Canada the orders sought in paragraph 2(a) and (b) of Part 1 in its Notice of Application filed December 20, 2017. I do so on the understanding that the documents in question are not ones that have been created by the Trustee in Bankruptcy in furtherance of its own duties; rather, the documents and records sought by RSC Canada are ones that were received by the Trustee from Virginia Tan and Patrick Tan in relation to the investment scheme and their financial affairs.
- [44] Counsel for RSC Canada has indicated that with respect to item 2(b), he is not seeking production of any information that may yet be produced by Marcus Tan to the Trustee in Bankruptcy as a result of enquiries made during examinations under the Act. The order drafted pursuant to these Reasons for Judgment should include this caveat.

- [45] I do not consider it necessary to address item 3 of Part 1 in RSC Canada's Notice of Application. There is consensus among the parties that no "implied undertaking" within the context of the bankruptcy proceedings will attach to any records produced by the Trustee to RSC Canada, and/or the transcript of examinations made under the Bankruptcy and Insolvency Act.
- [46] Once these materials are in the hands of RSC Canada, or potentially other plaintiffs in the related actions, they will, of course, be subject to an implied undertaking within the context of their own proceedings not to use the documents for any purpose other than "securing justice in the civil proceedings": *Re Howell Estate* at para. 21, citing *Juman v. Doucette*, 2008 SCC 8 at para. 27.
- [47] Costs on these applications will be costs in the cause.

III. APPLICATIONS 4, 5 and 6

- [48] In his role as both defendant and third party, Marcus Tan has filed an application for particulars in three of the related actions: S-162855; S-162913; and S-162335.
- [49] At the start of the application, it was agreed between counsel that the application for particulars in action S-162335 should be adjourned, generally, to account for the fact that JPL filed an amended Notice of Civil Claim in November 2017. Marcus Tan's Notice of Application was predicated on the original Notice of Civil Claim in this action, rather than the amended version.
- [50] The adjournment is hereby granted, by consent.
- [51] This leaves actions S-162855 and S-162913 to address.
- [52] Marcus Tan complains in both actions that allegations of fraud or conspiracy to commit fraud, as pleaded against him, lack the specificity required at law. Moreover, he says the material facts pleaded in support of these allegations are deficient.
- [53] This is of significant concern to him, given the serious nature of allegations of fraud and the stigma associated with them. He points out that on April 28, 2017, the British Columbia Securities Commission issued Revocation Orders that Marcus Tan and TLD Investments Inc. (with which he is associated), were no longer subject to investigation by the Commission.
- [54] Mr. Tan has demanded particulars of the alleged conspiracies in both actions, and none have been provided.
- [55] In support of his application, Mr. Tan points to case authority that holds allegations of fraud must be precisely alleged and conclusively proven. See, for example, *McLean v. Johnston*, [1923] 3 W.W.R. 913 (B.C.C.A.) at para. 11; and *Marine Midland Bank, N. A. v. Li* (1989), 17 A.C.W.S. (3d) 506 (B.C.S.C.) at para. 7.

- [56] He also relies on case law that mandates specificity in conspiracy pleadings. See, for example, *Can-Dive Services Ltd. v. Pacific Coast Energy Corp.* (1993), 96 B.C.L.R. (2d) 156 (C.A.). There, McEachern C.J.B.C. held, at para. 9, that "pleadings alleging conspiracy must be as specific as possible".
- [57] It is the position of Marcus Tan that the defendants in S-162855 and the plaintiff in S-162913 should be ordered to furnish better particulars under Rule 3-7(22) of the Supreme Court Civil Rules. Or, depending on the Court's perspective, it may be that the pleadings of fraud and conspiracy to commit fraud are so deficient, they should be struck under Rule 9-5(1).
- [58] Valerie Lek Soo Noi is the plaintiff in action in S-162855. She invested in the scheme alleged to have been created by Virginia Tan and Patrick Tan. Marcus Tan is named as a third party in the action.
- [59] Ms. Noi has filed a Notice of Civil Claim seeking damages and costs from the defendants Chui Han Wong and Laurence Lau (who she says assisted her with the investments), alleging breach of contract, misrepresentation, unjust enrichment and breach of fiduciary duty.
- [60] As part of their Response to Ms. Noi's claim, Chui Han Wong and Laurence Lau filed a Third Party Notice against Marcus Tan, as well as two corporate entities. For one of these entities, Marcus Tan is a director and officer.
- [61] The Third Party Notice alleges, among other things, that the plaintiff's investment funds were "taken in and disbursed by the Third Parties as part of a fraudulent Ponzi Scheme, and conspiracy, perpetrated by Virginia and Patrick Tan, for the benefit of inter alia Marcus Tan and [the corporate entity to which he is attached as a director and officer]".
- [62] In response to the application brought by Marcus Tan, the defendants in action S-162855 say it is readily apparent from the Third Party Notice that the fraud and conspiracy allegations are focused on the "Ponzi Scheme" established by Virginia and Patrick Tan, and the use of investor funds from that scheme for the benefit of Marcus Tan.
- [63] More specifically, the Third Party Notice alleges that Marcus Tan was "unjustly enriched by the use of the Plaintiff's funds in the Ponzi Scheme, including by their use of the funds, acquisition of assets, delaying of creditors and avoidance of detection, resulting in the maintenance of assets owned or controlled by Marcus Tan and the other Third Parties".
- [64] From this, the defendants argue that the applicant knows what he is accused of. These allegations, coupled with the details of the pleadings of the related actions, including the one initiated by RSC Canada, provide sufficient specificity and there is no need for this Court to order particulars. Nor is there any basis for striking the pleadings under Rule 9-5(1).
- [65] RSC Canada is a respondent to the application in S-162913. It argues that its Notice of Civil Claim adequately sets out the claims of fraud and conspiracy made against the named defendants, including Marcus Tan. These details are laid out in RSC Canada's response to the application, at para. 8.

- [66] I am satisfied, based on my review of the pleadings, that they contain sufficient particularity on the allegations of fraud and conspiracy to commit fraud.
- [67] In making this determination, I appreciate the jurisprudential emphasis placed on specificity within the context of allegations of fraud. The applicant is right to remind the Court of this requirement.
- [68] However, I am also alive to the fact that the pleadings complained of in these applications form part of a large set of related actions that are being case managed together.
- [69] Marcus Tan is named as a defendant and/or third party in more than one action and participates in the case management process. This participation, and the multiple pleadings that have been filed alleging a fraudulent scheme operated by his parents, with the disbursement of investor funds to properties owned, controlled and/or managed by Marcus Tan, provide a good basis, collectively, from which to discern the scope and breadth of the case against him. He is aware of the pleadings.
- [70] Mr. Tan argues that no specific nexus has been pled between the allegedly fraudulent behaviour of Virginia and Patrick Tan, and the conduct of Marcus Tan, other than he is attached to properties that the plaintiffs say were purchased with investor funds.
- [71] I disagree. Paragraph 43 of the RSC Canada pleadings provides an example. There, it is explicitly alleged that "Marcus Tan acquired the Surrey Lands using funds that RSC had invested with Virginia Tan and Patrick Tan which were converted to an improper use". [Emphasis added.] This allegation, accepted as true for the purpose of the application, alleges active participation by Marcus Tan in fraudulent conversion associated with, and flowing out of, the "Ponzi Scheme".
- [72] I accept that the Third Party Notice filed in action S-162855 is less robust than the Notice of Civil Claim in S-162913. Counsel for Marcus Tan has made a valid point in respect of this pleading. On its face, the allegations of fraud and conspiracy have been articulated in generic fashion.
- [73] Counsel for the defendants in S-162855 has indicated to the Court that if considered necessary, he is prepared to amend the Third Party Notice to include the particulars set out in S-162913. [The defendants Chui Hang Wong and Laurence Lau are directors and officers of RSC Canada.]
- [74] In my view, this would be an appropriate step to take and leave is granted for that purpose (if leave is required). Any such amendments to the Third Party Notice must be completed and filed by no later than the end of February 2018.

- [75] Moreover, in light of my earlier ruling in which I granted an order for production of the banking and financial records relating to Virginia Tan and Patrick Tan in the possession of the Trustee in Bankruptcy, and confirmed the entitlement to access the transcript(s) of examinations conducted under s. 163 of the Bankruptcy and Insolvency Act, I order that the demands for particulars made of RSC, as well as the defendants Chui Han Wong and Laurence Lau by Marcus Tan, be responded to by no later than the end of February 2018.
- [76] To the extent that disclosure obtained from the Trustee offers additional material facts and/or particulars on the allegations of fraud and conspiracy to commit fraud specific to Marcus Tan, these particulars must be included in the response.
- [77] Costs on these applications are to be costs in the cause.

IV. APPLICATION 7

- [78] On March 21, 2016, Justice Adair granted an interim Mareva injunction against Virginia Tan, Patrick Tan, Marcus Tan and various numbered companies in action S-162335.
- [79] No Reasons for Judgment have been provided to me, only a copy of the signed order. The injunction applies to "all of [Marcus Tan's] assets", including the real properties situated in Surrey and Fort St. John and "any money in [bank] accounts with TD Canada Trust, the Royal Bank of Canada and Coast Capital Savings".
- [80] Some exceptions have been carved out of the order:

Exceptions to this Order

2. This Order does not prohibit the personal defendants Marcus Soon-Keen Tan, from spending reasonable amounts on ordinary living expenses, provided those amounts do not exceed (in the aggregate for all personal defendants) \$10,000 per month, and reasonable amounts on legal advice and representation. Before spending any money on living, business or legal expenses, the defendants must advise the plaintiff's solicitors in writing of the intended source of the funds.
3. This Order does not prohibit the defendants, Letan Investments Management, Letan 88 Enterprises Inc., TLD Investments Ltd., 0994439 B.C. Ltd., TJ0700 Holdings Ltd., and TJ132 Ventures Ltd., from dealing with or disposing of any of their assets in the ordinary and proper course of business, provided that to the extent of doing so involves the disposition of capital assets held in any way by or for any of the Defendants, or subject to any claim or potential claim by any of the Defendants, the proceeds of any such disposition are to be deposited in the trust account of the solicitors for the plaintiff, to be released in accordance with the terms of this Order.

Mortgage Payments

4. This Order does not prohibit the defendants from making automatic monthly mortgage payments from the numbered accounts particularized in Schedule "A" in respect of the mortgages registered in respect of the real property described in Section 1(A) of this Order.

[81] It is a term of the injunction that within eight days of its pronouncement, the defendants named in the order were to:

provide the plaintiff's solicitor with a list setting out all of the defendants' assets as of the date of [the] Order whether in or outside British Columbia and details of all such assets, including the nature of each asset

[82] I am told this has not been done.

[83] The Mareva injunction was sought by JPL and granted ex parte. Marcus Tan did not participate in the hearing. He now seeks to have the injunction discharged. The order made by Justice Adair allowed for any party "to apply to vary or discharge [the] order".

[84] In light of my role as case management judge for all related actions, I considered it appropriate that I hear the application to discharge, rather than ask that the matter be put back before Justice Adair. I have considered the application on a de novo basis: *Stovicek Estate v. Napier International Technologies Inc.*, [1995] B.C.W.L.D. 1514 at para. 11 (S.C.).

[85] The test for a Mareva injunction is well-established. As explained in *ICBC v. Patko*, 2008 BCCA 65:

[22] The granting or refusal of a Mareva injunction is a discretionary order

[24] the fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case: *Mooney No. 2* [*Mooney v. Orr* (1994), 100 B.C.L.R. (2d) 335 (S.C.)] at para. 43. In order to obtain an injunction, the applicant must first establish a strong prima facie or good arguable case on the merits. Second, the interests of the two parties must be balanced, having regard to all the relevant factors, to reach a just and convenient result. Two relevant factors are evidence showing the existence of assets within British Columbia or outside, and evidence showing a real risk of their disposal or dissipation, so as to render nugatory any judgment: *Mooney No. 2* at para. 44.

[26] The root of the Mareva injunction is the risk of harm either through dissipation of assets or removal of assets to a place beyond the court's reach: *Tracy* at para. 45. In most cases it will not be just or convenient to tie up a defendant's assets merely on "speculation that the plaintiff will ultimately succeed in its claim and have difficulty collecting on its judgment if the injunction is not granted": *Silver Standard* at para. 21. Thus, though a party may apply for and obtain an injunction as security for damages sought in the litigation without showing that there is a real risk the defendant will dissipate assets, in most cases a real risk of dissipation must be established before a party will be granted a Mareva injunction in British Columbia. [Emphasis added.]

- [86] A Mareva injunction is extraordinary. The discretion to grant the order must be exercised on "judicial principles", informed by the overarching consideration that "parties should not be restrained by interlocutory injunctions unless some irreparable injury is likely to accrue to the plaintiff": *The Chesapeake and Ohio Railway Company v. Ball*, [1953] O.R. 843 at pp. 845-55, as cited in *Aetna Financial Services v. Feigelman*, [1985] 1 S.C.R. 2 at para. 7.
- [87] See also: *Chloride Canada v. New Prince Tires*, 2012 ONSC 6579 at para. 39, wherein it was noted that a court "should not continue a Mareva injunction obtained without notice where there is no evidence to support the test for such injunctions".
- [88] In this case, the injunction has been in place for just shy of two years. This is a factor I must be mindful of in deciding whether the order should remain in place. See *Ciba-Geigy Ltd. v. Novopharm Ltd.*, [1997] F.C.J. No. 1836 at p. 10, wherein it was held that:

where a temporary, discretionary remedy, an interlocutory injunction, is granted to a plaintiff, one that infringes the liberty of action of a defendant on the basis of some future, inferred harm, it is with the implied understanding that the plaintiff's complaint will be pursued, and will be evaluated on its merits by the court, with reasonable dispatch. Where the plaintiff fails to meet its underlying responsibility to pursue the matter in the courts with due diligence, so that the injunction acts as a continuing bar on the defendant's liberty of action, the Court may on application of the defendants dissolve the injunction.

- [89] Marcus Tan argues that the evidence before Justice Adair did not satisfy the requirements for a Mareva injunction. JPL did not show a "strong prima facie case" against him. Nor was it shown there is a realistic potential Marcus Tan will dissipate assets in the absence of an injunction.
- [90] Mr. Tan submits that the case against him is even less strong now. Not only has the British Columbia Securities Commission ceased its investigation against him, but the injunction was granted almost two years ago and JPL has not advanced its action in any material way. It is reasonable to assume, from this, that JPL has nothing substantive to offer in support of the claims of fraud and/or conspiracy to commit fraud against Mr. Tan.
- [91] In the interim, Marcus Tan has been under the weight of a broad-scoped and crippling injunction that significantly impacts his ability to attend to his personal financial affairs. This includes (but is not limited to), an inability to obtain any banking support for refinancing properties in his name. As a result, he now faces foreclosure against several of these properties.
- [92] According to an affidavit filed by Mr. Tan, who is 29 years of age, the Mareva injunction has "caused and continues to cause hardship and inconvenience" to him, including: (1) degradation of his credit rating; (2) a refusal by several lending institutions to renew or continue existing mortgages on properties in his name, leading to foreclosure applications; and (3) an inability to borrow funds from other lenders, which are sufficient to redeem property subject to foreclosure.

- [93] Mr. Tan also deposes that since the injunction was pronounced, at least two banks have refused to do business with him. They "closed [his] accounts and discontinued [his] lines of credit". Recently, he was not able to borrow money to purchase a new car after the vehicle he was driving was involved in an accident.
- [94] I have reviewed the affidavit material put before Justice Adair in March 2016, coupled with the affidavit filed by Marcus Tan on the application to have the Mareva injunction discharged.
- [95] On the whole of the evidence, I am satisfied there is a strong prima facie case against Mr. Tan. In this regard, I reference the following evidence:

Affidavit of Chui Han Wong (Director and Officer of RSC Canada)

6. In recent years, Virginia Tan did speak to me on occasion about acquiring properties for her son Marcus Tan and said they were involved in projects in Surrey with other partners as well
7. In 2014, Virginia spoke to me about financing housing projects in Fort St. John, which also involved Marcus and other partners
21. I am advised by RSC investors Daniel and Jolie Godin, and believe, that on February 18, 2016, they met with Virginia Tan at her home, that Patrick Tan was briefly present at the meetings, and that the following events took place:
 - (a) Virginia explained her plans to make profits from the sale of the Fort St. John properties.
 - (b) She provided details of the Surrey project litigation, indicating that \$50,000 of an \$80,000 had been used to date, and she expected up to \$300,000 in legal fees

Affidavit of Laurence Lau (Director and Officer with RSC Canada)

19. As far as I am aware, based on many discussions of my wife and myself with Virginia Tan about her son, Marcus has no career and no significant work history
30. In the last year or two, Virginia did mention casually that she was involved in short term bridge financing involving her son and her friends
53. Virginia Tan has admitted recently that the investor's funds were used to finance the acquisition of properties by a company in Fort St. John
54. In December 2015, Virginia Tan stated to us that she needed money for this project and that, if she could not close on those units, the whole project would be at risk
62. Lock Weng and his family had a meeting at Virginia Tan's home with myself and Han on December 12, 2015. We met with Virginia Tan for about two hours. Patrick Tan was not present.

63. Although many of the things that Virginia Tan said during that meeting were unclear to me, my understanding from all of the statements made is that she admitted to, among other things, the following:
- (a) The investors' monies were involved in two projects that were in trouble, being the Surrey and Fort St. John projects
 - (b) Of the investors' \$20,000,000 total investment, \$5-6,000,000 of those funds was invested in factoring and the rest was invested in the Surrey project (\$4,500,000), the Fort St. John project (\$6-700,000), and a loan on the Sunshine Coast (\$4,000,000).
 - (c) The properties financed in those projects are held in the name of her son Marcus Tan (Surrey project) and a company controlled by Marcus Tan and another person (Fort St. John project)
65. In this meeting, Virginia spoke at length about her justifications for the investments and her belief that, given time, the property values would rise, she would obtain more financing, and the investor's problems would be solved. The belief she expressed in respect of the Fort St. John project was based on the future of LN and the Site C dam. For the Surrey project, she claimed to be slowed by the litigation from making immediate gains on rezoning but insisted that they were inevitable.

Affidavit of Rina Teo (Investor)

5. Over the years of our friendship Virginia told me about her family and background including:
- (e) Virginia and Patrick have one son, Marcus Tan Virginia told me that Marcus graduated from Simon Fraser University three or four years ago with a degree in communications. Since graduating Marcus has not held a full-time job and is supported by his parents.
25. Based on my communications with Virginia and with the investors identified below, I am aware of the following persons' outstanding investments with Virginia:

- Helen Shu
- A friend I met through Virginia & Patrick Tan
- Investor since December 2014
- Current Outstanding Investment: \$1,770,000
- I believe that Helen also has a promissory note from TLD Investments Ltd. issued by Virginia and her partners in the amount of \$600,000

...

30. In October 2015, Virginia asked me not to deposit my interest cheques. She said she was having trouble getting financing for a real estate development project in Fort St. John and that she had invested Jastram Ltd.'s, my and others' funds in this project
31. I was aware of the Fort St. John project when it started because I had been told by Virginia that she had been trying to help Marcus develop a career in property development. Virginia said that to do so she invested in two real estate developments in Marcus' name: one located in Surrey and the other Fort St. John
59. Also, at various times in conversations with Patrick that I did not record, Patrick told me that there is no trust fund for Marcus.
65. I have been advised by Virginia that some investors' funds were used for the development in Fort St. John [Emphasis added.]
- [96] I appreciate that the allegations made against Marcus Tan in JPL's Amended Notice of Civil Claim have not been established on a balance of probabilities. JPL will bear the onus of doing so at trial.
- [97] And, as counsel for Marcus Tan has correctly pointed out, much of the evidence contained in the affidavits in support of the Mareva injunction consists of hearsay; there are inconsistencies in the various statements attributed to Virginia Tan; and, the evidence about the December 2015 meeting in which she purportedly admitted to putting investors' funds into the Surrey and Fort St. John real estate projects, is described by the affiant himself as "unclear". Moreover, this meeting was apparently recorded, but the recording was not put before Justice Adair and it has not been put before me.
- [98] From the perspective of Marcus Tan, the evidence about the December 2015 meeting should, accordingly, be given little weight.
- [99] Notwithstanding these frailties, it is my view that the affidavit materials, at least on a prima facie basis, provide good support for JPL's theory; that is, funds invested with Virginia Tan in exchange for promissory notes were actively funnelled into Surrey and Fort St. John projects that are under the name of Marcus Tan and, perhaps more importantly, that Virginia Tan, together with her son, was involved in managing them.
- [100] According to the evidence before me, potential gains from these projects were held out by Virginia Tan as solutions to investor concerns.
- [101] There is also evidence that on at least one occasion a promissory note provided to one of the persons who invested with Virginia Tan was issued through TLD Investments, which is a corporate entity of which Marcus Tan is a registered director and officer. Virginia Tan told one investor that "she was involved in short term bridge financing involving her son". [Emphasis added.]

- [102] In light of the entirety of this evidence, I do not agree with counsel for Marcus Tan that the March 2016 record does not provide sufficient support for a Mareva injunction against his client, as opposed to Virginia Tan and Patrick Tan.
- [103] The affidavit filed by Marcus Tan in support of the application for a discharge does not take issue with the factual assertions made by these various affiants. As such, they are uncontested.
- [104] I am also satisfied that JPL has shown a "real risk" of dissipation of the assets in issue in this case, should the injunction be removed. Although I appreciate Mr. Tan's argument that he has no intention of leaving British Columbia, and the assets are already subject to so many certificates of pending litigation there is little he could do, in any event, my determination on this aspect of the Mareva test cannot ignore the nature of the allegations made against Mr. Tan.
- [105] He is alleged to have been involved in a large-scale fraudulent scheme, either as an active participant in the scheme itself, or in the post-conversion of funds to acquire property in his name. This scheme is said to have resulted in excess of \$35 million in debts. It is a scheme said to have been built on deceit, misrepresentations and concealment. Investors were told monies were being used for one purpose. The allegations are that they were used for an entirely different purpose.
- [106] As noted in *ICBC v. Patko* at para. 28, in "cases alleging serious fraud, the risk that assets will be dissipated may be inferred from the evidence related to the plaintiff's strong prima facie case". [Citing *Netolitzky v. Barclay*, 2002 BCSC 1098 at para. 31.]
- [107] On the whole of the evidence in this application, I draw this inference.
- [108] I note that the affidavit evidence alleges active participation by Virginia Tan in the Surrey and Fort St. John projects, even though the properties said to be at issue were under the name of Marcus Tan and/or corporate entities in which he is a director and officer, rather than Ms. Tan.
- [109] I have no evidence to suggest that Virginia Tan, who is alleged to have been the driving force behind the investment scheme that she now concedes was fraudulent, is no longer in a position of influence over Marcus Tan.
- [110] Finally, I must address the balance of convenience. I accept that the Mareva injunction is posing hardship for Marcus Tan. I also appreciate that the injunction has been in place for almost two years. And, I have not ignored the fact that JPL's action against him has not advanced in any material way since the injunction was put in place.
- [111] However, whether a Mareva injunction is warranted involves a case-by-case analysis. Within the context of this particular case, I am satisfied there continues to be a justified basis for the injunction against Marcus Tan.

- [112] JPL has shown a strong prima facie case that Marcus Tan was a party to a fraudulent scheme that resulted in a loss to JPL of approximately \$4 million. JPL is but one of many investors who have initiated actions against Virginia Tan, Patrick Tan and Marcus Tan, seeking to recover monies lost. As noted earlier, the cumulative value of debts is currently estimated at over \$35 million.
- [113] In light of the nature of the scheme, I infer there is a real risk that assets will be dissipated to the prejudice of JPL (and the plaintiffs in the related actions) if the injunction is discharged.
- [114] The Mareva order allows for some "exceptions" that provide an ability for Marcus Tan to manage his financial affairs, including managing the assets in question for defined purposes. Counsel for JPL indicated at the hearing that if Mr. Tan requires a further relaxation of the exceptions to arrange re-financing for properties in his name, JPL is open to having those discussions with counsel for Mr. Tan about a variation of the order, by consent, if need be.
- [115] JPL's action against Virginia Tan, Patrick Tan and Marcus Tan has not advanced in a material way; however, the bankruptcy proceedings in relation to Virginia Tan and Patrick Tan resulted in a stay of JPL's action effective April 2016. Moreover, along with the related actions, JPL has been part of an overarching case management process, necessitated by the number of related actions and overlapping issues. Within this context, it is understandable that the matter has not moved as quickly as might otherwise be the case. Now, with the lifting of the stay, a more proactive approach to moving JPL's litigation forward may be practicable.
- [116] Given the circumstances, as a whole, I am not prepared to discharge the injunction. At present, the balance of convenience continues to weigh in favour of the plaintiff. Mr. Tan's application for a discharge is dismissed.
- [117] Nothing in these Reasons for Judgment is intended to preclude Marcus Tan from bringing a subsequent application to discharge the injunction, on the basis of a material change in circumstance or otherwise.
- [118] Costs on the application shall be costs in the cause.

"DeWitt-Van Oosten J."

APPENDIX A

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/00/2018BCSC0067.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/rsc-enterprise-canada-inc-v-tan-2018>

Prepared on 25 October 2026 · Esheria