
CANADA / JUDGMENT

Shi v. Winnipeg Stitch Factory Ltd.

2019 BCSC 639

COURT

Supreme Court of British Columbia

DECIDED

24 April 2019

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

2019 BCSC 639 Shi v. Winnipeg Stitch Factory Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shi v. Winnipeg Stitch Factory Ltd.,

2019 BCSC 639

Date: 20190424

Docket: S186487

Registry: Vancouver

Between:

Shang Shou Shi

Plaintiff

And

Winnipeg Stitch Factory Ltd. and Julie Land

Defendant

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiff:

Micah Goldberg

Counsel for the Defendant:

D. Klein

Place and Date of Trial/Hearing:

Vancouver, B.C.

February 20, 2019

Place and Date of Judgment:

Vancouver, B.C.

April 24, 2019

Introduction

- [1] These are reasons on a summary trial application by the plaintiff, Mr. Shi, pursuant to Rule 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules]. The underlying action is an action in debt and guarantee.
- [2] The respondent opposes the summary trial of the action, on the basis that:
- 1) the Court must make credibility findings which are not appropriate on affidavit evidence;
 - 2) the scope of the relationship between the parties requires the Court to examine a body of contractual relationships which are not before the Court and which bear directly on the intended source of funds to repay advances of capital made by the plaintiff apparently to the defendant company; and
 - 3) the written agreements upon which the plaintiff relies for a personal guarantee by the individual defendant of corporate indebtedness does not include the individual defendant as a party. As a result, it was submitted that there is no proof of authority for the corporate defendant to bind the credit of the individual defendant.

Background

- [3] The facts, which are not in dispute, are as follows.
- [4] The plaintiff is a businessman, who works to provide investment opportunities and business development for investors from China in Canadian companies.
- [5] One such company was the defendant, Winnipeg Stitch Company Ltd. ("WSF"). The principal of WSF is the defendant, Julie Land.
- [6] Mr. Shi and Ms. Land were introduced by a mutual acquaintance. Ms. Land described to Mr. Shi the size and scope of the clothing manufacturing business of WSF and provided Mr. Shi with copies of the financial plan and financial statements of WSF. Mr. Shi and Ms. Land met in Winnipeg where Ms. Land told Mr. Shi that WSF was seeking investors from China on an urgent basis to provide additional capital to WSF for business development. Ms. Land requested assistance from Mr. Shi to locate such investors as that was his business.

- [7] Mr. Shi agreed to locate an investor through his corporate enterprise called Canada Business & Culture Development Services Inc., a corporation which promotes Canadian business and educational opportunities for Chinese investors.
- [8] Loan agreements were then drafted with input from both Mr. Shi and Ms. Land. At least one of the draft loan agreements was reviewed by a lawyer.
- [9] Ultimately, Mr. Shi was unable to identify an investor for WSF. He advised Ms. Land that he would make a personal investment in WSF. Monthly interest payments on loaned funds and a personal guarantee were conditions which Mr. Shi said he required.
- [10] On or about August 23, 2016, Mr. Shi prepared a loan agreement, designated as Loan #1, for \$120,000.00, which contained a clause for interest at 8% per annum and security over Ms. Land's "personal assets". The term "personal assets" was not defined and so the breadth and scope of the meaning of that phrase was never made clear.
- [11] An issue which presents a difficulty in deciding this case on a summary basis arises from the drafting of the Loan #1 agreement. The only parties to the Loan #1 agreement are "Shang Shou (Mike) Shi" as the Lender and "Winnipeg Stitch Factory Ltd. of 1380 Notre Dame, R3E OP7" as the Borrower. Ms. Land is not a party to and has not personally signed the Loan #1 agreement. Her signature does, however, appear at the end of the agreement as follows:

[Signature of Julie Land]

Borrower

Winnipeg Stitch Factory Ltd.

Per: Julie Land

President Winnipeg

- [12] At para. 6 of the Loan #1 agreement the following words appear:

6. This Loan is secured by the following:
 1. Equipment, Inventory, Receivables of Winnipeg Stitch Factory Ltd.
 2. Personal Assets of Julie Land[.]

- [13] The language of para. 6 does not provide any basis to find that Ms. Land's assets are charged as security for Loan #1. There is no contractual language which suggests that WSF had legal authority or capacity to create a charge over the personal assets of Ms. Land. Therefore, there is no basis to find that Ms. Land is liable to repay any debt under the Loan #1 agreement.

- [14] The plaintiff then proffered five emails said to support the advance of funds under the Loan #1 agreement. Again, without more evidence concerning the personal liability of Ms. Land, there is not a basis for a finding of liability in debt for Ms. Land pursuant to the Loan #1 agreement.
- [15] Apparently, three interest payments were made pursuant to the Loan #1 agreement, but no details of the source of those funds was provided in the evidence on this application.
- [16] A second Loan Agreement dated January 2, 2017, was also placed in evidence by the plaintiff ("Loan #2"). Again, this document contains a recital that the agreement is between "Mike Shang Shou Shi (Lender) and Winnipeg Stitch Factory Ltd. (Borrower)." The agreement contains a promise by the Borrower to pay the Lender "\$12,084.00 on or before January 31, 2017 for short term bridge financing for \$12,000.00 plus interest". As before, the loan is "secured by the equipment and receivables of Winnipeg Stitch Factory Ltd.", located at an address in Winnipeg, Manitoba. The second loan agreement did not specify an annual or any other rate of interest. The personal assets of Ms. Land are not mentioned.
- [17] Ms. Land is not a party to the Loan #2 agreement but her signature appears as "Julie Land for Winnipeg Stitch Factory Ltd."
- [18] Throughout the affidavit of Mr. Shi, he takes the position that Ms. Land is personally liable for debts for the funds advanced. This liability is said to be reflected in subsequent emails between Ms. Land and Mr. Shi, but the basis for liability is not reflected in either of the agreements proffered by the plaintiff.
- [19] The defendants, in opposing the present application, assert that any agreements were made in Manitoba and subject to the laws of that province. Ms. Land swears that the agreements were made in Manitoba, and that neither she nor WSF owns any business or assets outside of Manitoba. Ms. Land asserts that the bringing of this action in British Columbia has occasioned prejudice to WSF and to her because of the distance from Winnipeg to the situs of this Court.
- [20] Ms. Land also swears that she understood that Mr. Shi would provide a number of business opportunities to WSF. Ms. Land says that these opportunities would create sufficient business and resultant income to service the indebtedness of any monies advanced as loans to enhance the business of WSF. In addition, the parties introduced by Mr. Shi to WSF would obtain assistance with immigration to Canada. Exhibit H attached to Ms. Land's affidavit dated January 22, 2019, demonstrates an introduction of potential investors, a Ms. Dai and a Ms. Wang, the latter whom was said to be interested in investing the sum of \$125,000 in WSF, which was also to provide an opportunity for a relative of Ms. Wang to work in Canada in the textile business. None of the business investments occurred, to the detriment of the defendants. Ms. Land swore in her affidavit that, as a result of Mr. Shi's failure to introduce actual investors to WSF, the ability of WSF to repay loans has been damaged.

Suitability for Summary Trial

Legal Principles

[21] Rule 9-7(15) of the Rules provides:

- (15) On the hearing of a summary trial application, the court may
- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
 - (b) impose terms respecting enforcement of the judgment, including a stay of execution, and
 - (c) award costs.

[22] In *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-35, the following appears:

[30] In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.), the court confirmed that the court under this rule "tries the issues raised by the pleadings on affidavits", that "a triable issue or arguable defence will not always defeat a summary trial application", and that "cases will be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law" provided that the judge does not find "it is unjust to do so" (p. 211). In determining the latter issue (whether it would be unjust to proceed summarily), the Chief Justice identified a number of relevant factors to consider (at p. 215):

In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, *inter alia*, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

[31] To this list has been added other factors including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: *Dahl v. Royal Bank of Canada et al.*, 2005 BCSC 1263 at para. 12, upheld on appeal at 2006 BCCA 369.

[32] All parties to an action must come to a summary trial hearing prepared to prove their claim, or defence, as judgment may be granted in favour of any party, regardless of which party has brought the application, unless the judge concludes that he or she is unable to find the facts necessary to decide the issues or is of the view that it would be unjust to decide the issues in this manner. This requirement was underscored by Madam Justice Newbury in *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275:

- [34] It is trite law that where an application for summary determination under Rule 18A is set down, the parties are obliged to take every reasonable step to put themselves in the best position possible. As this court noted in *Anglo Canadian Shipping Co. v. Pulp, Paper & Woodworkers of Canada, Local 8* (1988) 27 B.C.L.R. (2d) 378 (B.C.C.A.) at 382, a party cannot, by failing to take such steps, frustrate the benefits of the summary trial process. Where the application is brought by a plaintiff, the defendant may not simply insist on a full trial in hopes that with the benefit of viva voce evidence, 'something might turn up': see *Hamilton v. Sutherland* (1992), 68 B.C.L.R. (2d) 115, [1992] 5 W.W.R. 151 (B.C.C.A.) at paras. 66-7. The same is true of a plaintiff where the defence has brought the R. 18A motion. [Emphasis added.]
- [33] Newbury J.A. discussed this issue in greater depth in *Brown v. Douglas*, 2011 BCCA 521 at paras. 29 and 30, which passages were relied upon by the trial judge (at para. 24):
- [29] I should also advert briefly to an argument made by the plaintiffs at the oral hearing of this appeal - that the summary trial judge should not have proceeded at all under Rule 18A in the face of their lack of evidence as to what counsel referred to as "proof of damages". ... It was said that in the circumstances, the summary trial judge should have dismissed the defendants' motion for judgment and permitted the plaintiffs to address this matter on a later occasion. In this regard, the plaintiffs cited the comments of this court in *Placer Development Ltd. v. Skyline Explorations Ltd.* (1985), 67 B.C.L.R. 366, where Taggart J.A. described three options available to counsel faced with an application brought against his or her client under R. 18A. These options were:
1. He may agree that the case is an appropriate case for a summary trial and he may decide to seek judgment on the merits in favour of his client.
 2. He may decide that it is a wholly inappropriate case for summary trial and he may decide to oppose the application for summary trial on the basis of material already filed and on the basis of additional material including affidavits that tend to show that the case is inappropriate for disposition under the rule.
 3. He may decide that the case is an inappropriate case for summary trial but he may decide to file affidavits and other material tending to show that while it is not an appropriate case for summary trial, if there is to be a summary trial the judgment should be in favour of his client [At 384-5.]

The Court went on to observe that the language of what was then R. 18A(3) - more latterly, R. 18A(11) and now R. 9-7(11) - clothes the judge with a "broad discretion" to refuse to proceed where the judge is unable to find the facts necessary to decide the issues of fact or law or if it would be unjust to decide the issues.

- [30] The authorities are clear, however, that (as counsel for the plaintiffs acknowledged at the hearing of this appeal) counsel acting on behalf of the respondent to an application for summary judgment who takes the second course described in *Placer* "runs a risk". This is

the risk that the court will not agree that the case is not appropriate for summary trial and may give judgment against his or her client. This point was made in *Inspiration Management*, supra, where the Chief Justice observed at 214 that "There is no room in the proper construction of R. 18A for a respondent's veto." The point was also made at greater length in *Anglo Canadian Shipping Co. v. Pulp, Paper and Woodworkers of Canada, Local 8* (1988), 27 B.C.L.R. (2d) 378. There a plaintiff had sued for judgment under R. 18A, giving the defendant two months' notice of its application. The defendant did not examine the plaintiff for discovery within that period and on the day scheduled for trial, argued that it had been prevented from exploring arguments it might wish to make with respect to mitigation. The trial judge nevertheless granted judgment to the plaintiff under R. 18A and awarded damages of some \$42,000. On appeal, this court rejected the defendant's argument that judgment should not have been granted. Lambert J.A. stated:

In my opinion, the summary trial procedure contemplated by R. 18A cannot be open to being frustrated by one of the parties delaying the pre-trial procedures until it is too late for the summary procedure to use them effectively.

I am not suggesting that there was any intentional delay in this case. But it must be the case that if adequate notice is given to an opposing party that a summary trial application is going to be brought on, there then falls on that party an obligation to take every reasonable step to complete as much of the pre-trial procedures as is necessary to put him in the best mastery of the facts that is reasonably possible before the summary trial proceedings are heard. He cannot, by failing to take those pre-trial procedures, frustrate the benefits of the summary trial rule.

... In my opinion, it is not in this case appropriate that the judgment be set aside, on the ground that sufficient facts were not available to one of the parties to lay before the court on the summary trial application. [At 381-2.; emphasis added.]

Anglo Canadian Shipping has been cited and applied by this court on many occasions: see, e.g. *Everest Canadian Properties Ltd. v. Mallmann* 2008 BCCA 275 at paras. 34; *Gilmour Estate v. Parchomchuk*, 2011 BCCA 207 at paras. 19; *Dixon v. British Columbia Snowmobile Federation*, 2003 BCCA 174 at para. 5; *Strathloch Holdings Ltd. v. Christensen Bros. Foods Ltd.* (1997), 29 B.C.L.R. (3d) 341 (C.A.) at para. 12.

[34] In summary, the jurisprudence is clear that, subject to certain guidelines, the decision as to the suitability of proceeding by way of summary trial to determine an action (or issue), is a discretionary one. Appellate deference is given to the exercise of discretionary powers in the absence of a clear conclusion that the discretion has been wrongly exercised, in that no weight or insufficient weight has been given to relevant considerations (see *Creasey v. Sweny* (1942), 57 B.C.R. 457 at 459 (C.A.); *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 at para. 104; *Stone v. Ellerman*, 2009 BCCA 294, 92 B.C.L.R. (4th) 203 at para. 94, leave to appeal ref'd [2009] S.C.C.A. No. 364; and *Bell v. Levy*, 2011 BCCA 417 at para. 75), or it appears that the decision is clearly wrong and may result in an injustice (see *Taylor v. Vancouver General Hospital* (1945), 62 B.C.R. 42 at 50, [1945] 3 W.W.R. 510

(C.A.)).

- [35] The authorities are also clear that a summary trial, although heard on affidavits in chambers, remains a trial of the action for which the plaintiff (even if not the applicant) retains the onus of proof of establishing his or her claim(s) and the defendant (even if not the applicant) retains the burden of establishing any defence that is raised. Mr. Justice Wood, writing for the Court in *Miura v. Miura* (1992), 66 B.C.L.R. (2d) 345 (C.A.), clarified this issue (at page 352):

There is no reason why the onus should be reversed simply because the defendant moves for judgment under Rule 18A, thus requiring the plaintiff to prove her case in a summary trial proceeding. ...

... the onus of proof does not shift simply because a trial is conducted summarily under rule 18A [now R. 9-7]. As in an ordinary trial, the party asserting the affirmative of an issue must prove it on a balance of probabilities. I believe that such a result is also consistent with what was said by McEachern, C.J.B.C. in *Inspiration Management et al. v. McDermid et al.* [citation omitted] at page 215 of the report:

The test for R. 18A, in my view, is the same as on a trial. Upon the facts being found the chambers judge must apply the law and all appropriate legal principles. If then satisfied that the claim or defence has been established according to the appropriate onus of proof he must give judgment according to the law unless he has the opinion that it will be unjust to give such judgment.

Indeed, the respondents gave express notice to Mr. Gichuru of his burden in the application by referring to the first paragraph of this passage in their summary of the legal basis for their application to strike Mr. Gichuru's action.

- [23] The Court has also reviewed *Hryniak v. Mauldin*, 2014 SCC 7, where the Supreme Court of Canada encouraged trial courts to decide cases on summary trials where evidence allows the judge to make necessary findings of fact, allows application of law to the found facts and where the process is a proportionate, expeditious and less expensive means to achieve a just result.

Application

- [24] In the present case, there are a number of factual conflicts between the affidavits filed by Mr. Shi and Ms. Land, in particular with respect to their intentions regarding the agreements and the purposes for which those documents were signed. There is no ready path to resolve those conflicts based on reading those affidavits alone.
- [25] An issue which arises through the affidavit of Ms. Land, is the question of the applicable law. All of the documents referred to above were prepared and signed in Manitoba. No evidence of the law in that jurisdiction was presented by either party. This evidence would normally include an expert opinion on the laws of Manitoba. For example, in order for a "security agreement" to be enforceable in British Columbia, there are a number of "writing

requirements" set out in s. 10 of the Personal Property Security Act, R.S.B.C. 1996, c. 359, which requirements are not met in either of the documents referred to above. There is no basis before this Court to determine the applicable law or its effect on the two documents referred to above.

Conclusion

[26] I find this to be one of those unfortunate cases, where after hearing full argument by counsel and a careful review of the affidavits filed, that I am unable to find the facts necessary to decide the issues of fact or law and it would be unjust to decide the issues necessary to grant judgement for any party.

[27] That said, the case should proceed to trial in the normal way. The trial judge will be in a better position to award costs of this application, than this court is presently, so the awarding of costs for this application shall be deferred to the trial judge.

"Ball J."

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/19/06/2019BCSC0639.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/shi-v-winnipeg-stitch-factory-ltd-2019>

Prepared on 29 October 2026 · Esheria