

CANADA / JUDGMENT

Tung v. Lu

2025 BCSC 810

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Supreme Court of British Columbia

DECIDED

29 April 2025

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2025 BCSC 810 Tung v. Lu

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tung v. Lu,

2025 BCSC 810

Date: 20250429

Docket: E69748

Registry: New Westminster

Between:

Joseph Tung

Claimant

And

Jie Lu, also known as Nancy Lu and Anshan Lu

Respondent

And

CIBC Wood Gundy (Incorporation #FM0280520), CIBC Private Wealth (Incorporation #FM0783385), CIBC Private Wealth (Incorporation #FM0783386), Hans Tung, Joseph Tung, Jie Lu also known as Nancy Lu

Respondents by Counterclaim

Corrected Judgment: The text of the judgment was corrected at paragraphs 4, 20, and 22 on May 22, 2025

Before: The Honourable Justice Hamilton

Reasons for Judgment

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Place and Dates of Hearing:

New Westminster, B.C.

April 16 and 17, 2025

Place and Date of Judgment:

New Westminster, B.C.

April 29, 2025

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Introduction

- [1] This is a highly contested family action between spouses Joseph Tung and Nancy Lu with issues including parenting, child and spousal support and property division. There is a four-week trial set for the fall of 2025, which was set before all parties were added and may have to be adjourned. I will use the parties' first names in my reasons for clarity and mean no disrespect in doing so.
- [2] Both Joseph's father Hans and Nancy's father Anshan have been added to the action as parties for different reasons. Hans is a senior wealth advisor and portfolio manager at CIBC. Joseph is also a wealth advisor at CIBC. Nancy worked at CIBC for a while as part of Hans' and Joseph's team but no longer works there. Anshan and Nancy maintained joint investment accounts at CIBC that contained approximately \$9 million and were originally under Hans' management. Anshan and Nancy subsequently changed advisors at CIBC, and Anshan subsequently opened a new account in his sole name under his new advisor which contains the \$9 million. These moneys are at issue in these proceedings. There have been many applications made in this action, including multiple orders regarding restraining the disposal of assets funds. CIBC has had to interpret various orders in this action restraining the funds it holds.
- [3] At this time, Nancy seeks by application filed April 3, 2025, to set aside an asset restraining order made without notice by Associate Judge Krentz on March 28, 2024 (the "Krentz Order"). In the alternative, she seeks an order varying the Krentz Order to permit her to pay reasonable living expenses, expenses for a Delta property and her legal fees. The Krentz order was made before Nancy's father Anshan was a party to the action. However, the Krentz Order restrained Nancy from using the \$9 million that was held in joint names with Anshan, among other assets.
- [4] Subsequent to the Krentz Order the parties appeared before Justice Milman in August 2024. Justice Milman made comment in his reasons that the Krentz Order only restrained Nancy, not Anshan, from using the funds in the joint accounts because Anshan was not a party to the action at the time. Justice Milman's comments prompted Anshan to move the \$9 million from the joint accounts with Nancy to a new account in his sole name at CIBC. In October 2024, Joseph became aware that the funds had been moved but was unaware of where they had gone and informed the CIBC of his concern. Out of caution, CIBC then froze all of Anshan and Nancy's CIBC accounts including Anshan's new account. Joseph applied to court on a without notice basis to add Anshan as a party and to restrain Anshan from disposing of any moneys that he held in his sole name or jointly with Nancy at CIBC or BMO. Justice Taylor made an order to this effect on December 17, 2024, freezing Anshan's accounts temporarily pending further order, with liberty to the parties to set aside his order on three days notice (the "Taylor Order").

- [5] Nancy also seeks to set aside the Taylor Order or, in the alternative, vary paragraph 4 of the Taylor Order to allow her and her father Anshan to pay their expenses. She wants to be able to use \$400,000 in her own accounts and also have the ability to borrow additional moneys from Anshan for her expenses including legal fees. Her counsel estimated that she would need \$350,000 for a three-week trial, but stated that the trial might actually take six weeks.
- [6] In addition, totally unrelated to the main issue of the asset restraining order, Nancy seeks in her notice of application fines against Joseph pursuant to s. 230 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] for failing to pay child and spousal support as ordered by Justice Kirchner made January 17, 2025 (with supplemental terms February 13, 2025) (the "Kirchner Order") and failing to pay the child KT's tuition at Delta Christian school. Finally, Nancy also seeks that Joseph produce documents that were demanded of him on January 8, 2025.
- [7] Anshan brought his own application filed April 3, 2025, for a declaration that the Krentz Order is void against himself as he was not a party to the action when the order was made. He also seeks an order setting aside paragraph 4 of the Taylor Order. Anshan's position is that the Krentz Order and/or the Taylor Order have effectively prevented Anshan from using what he claims are his own \$9 million in funds at CIBC.
- [8] At the outset of the two-day hearing, much to their credit, Anshan and Joseph reached terms of a consent order which would release almost all of the \$9 million funds for Anshan's use but continue to restrain a total of \$600,000 at CIBC. Counsel for Anshan and Joseph presented me with a vetted consent order which they sought to enter.
- [9] Nancy's counsel however raised concerns about entering the consent order because it varies only portions of the Krentz Order and the Taylor Order and then only in their application to Anshan, not Nancy. She noted that these orders are the very orders that Nancy seeks to set aside in her application. That is, if Nancy's application to set aside these orders were successful, Anshan and Joseph's proposed consent order would not make sense as it would purport to vary an order that no longer existed. As such, I declined to enter the consent order until I heard and decided Nancy's application.
- [10] Counsel for CIBC appeared on the applications to make limited submissions. CIBC needs to ensure that it understand and can follow any orders made. CIBC understandably wishes to avoid aiding anyone in breaching an order. Case law provides that a third party can be held in contempt for aiding a party to an action to breach an order. In this case, there has been confusion to date as various orders have been made and the parties do not see eye to eye regarding the interpretation of the orders.

- [11] As such, CIBC seeks to ensure that any orders made are clear and easy to follow. CIBC is satisfied with the clarity of the wording of Anshan and Joseph's proposed consent order. CIBC expressed concerns regarding the wording suggested by Nancy in her alternative arguments to allow her to pay her "reasonable" living expenses, expenses for the Delta property and legal fees. It would be impossible for CIBC to monitor the use of funds to ensure they are used for the stated purpose or to determine what is "reasonable".
- [12] I will deal with Nancy's application to set aside or vary the Krentz and Taylor orders first before addressing the proposed consent order. I will then turn to the issue of the fines and document production.

Application to Set Aside or Vary the Krentz Order and Paragraph 4 of the Taylor Order

- [13] Nancy's counsel submits that the Krentz Order and Taylor Order should be set aside for four reasons:
- (1) The Krentz order is ultra vires;
 - (2) Joseph engaged in material non-disclosure of key facts at the without notice hearing before Associate Judge Krentz;
 - (3) Joseph is abusing the court process;
 - (4) The orders are causing Nancy hardship.
- [14] I will outline three of Nancy's reasons (1, 2 and 4 above) in more detail.
- [15] With respect to the first reason, Nancy claims that while Associate Judge Krentz had jurisdiction to make an order under s. 91 of the FLA, he had no jurisdiction to grant a Mareva Injunction pursuant to Rule 12-1 and 12-4 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR]. In support of this argument, she points out that Joseph's former counsel's notice of application and submissions refer to Rules 12-1 and 12-4 and the Krentz Order itself refers to both s. 91 of the FLA and Rules 12-1 and 12-4. Furthermore, Nancy submits that a Mareva injunction requires the applicant to undertake to pay damages unless a court otherwise orders but Associate Judge Krentz did not address this.
- [16] Nancy's second argument for why the Krentz Order ought to be set aside is that Joseph's former counsel failed to inform Associate Judge Krentz that the source of \$9 million of the funds held in the joint accounts was Anshan, not Nancy. Nancy submits that Joseph would have known that the funds were Anshan's and that his failure to inform the court constitutes material non-disclosure.
- [17] During this hearing, Anshan's counsel took the court through a complicated tracing exercise with respect to the \$9 million. I will not relay the details because the facts are very much in issue. Suffice it to say that the bulk of the \$9 million of the funds held at CIBC (now in Anshan's sole name) relate to proceeds of the sale of property in Suzhou, China (the "Jinshuiwan Property") which sold for approximately \$6.1 million. Ashan maintains that the

proceeds of the Jinshuiwan Property belong to him entirely, not Nancy. Joseph on the other hand maintains that Nancy inherited and was gifted the entire Jinshuiwan Property after her mother passed away. Joseph maintains that Nancy was the sole owner of the Jinshuiwan Property and that he is entitled to compensation for his share of its increase in value from the time of the marriage to present (I am told that the increase is approximately \$3.3 million, 50% of which would be \$1.6 million). It would be inappropriate for me to weigh in regarding who may be right or wrong, except to say that the ownership of this property and its proceeds would seem to be one of the main issues at trial.

- [18] Nancy's fourth argument as to why the Krentz Order and Taylor Order ought to be set aside is that the orders are causing hardship. Nancy submits that she is unable to pay her living expenses or borrow money from Anshan to pay her living expenses, legal fees or expenses for the Delta property.
- [19] Joseph disagrees with each of Nancy's reasons to set aside the Krentz Order and the Taylor Order and submits that Nancy's application should be dismissed. For the reasons outlined below, I agree.
- [20] The Krentz Order specifically provided that Nancy could apply to set aside the order on three days' notice, which she in fact did. Nancy applied to Associate Judge Nielsen to set aside the order on April 19, 2024. A transcript of the hearing makes it clear that Nancy argued before Associate Judge Nielsen that the Krentz order should be set aside based on material non-disclosure. She made the same argument that she makes now, that Joseph should have disclosed to Associate Judge Krentz that the \$9 million came from Anshan's funds, not Nancy's funds. Associate Judge Nielsen considered but dismissed the argument as a reason to set aside the Krentz Order, recognizing that the source of the funds appeared to be a complicated issue. Nothing has changed in that regard. As mentioned, the source/ownership of the funds is a live issue for trial.
- [21] In terms of Nancy's argument that the Krentz Order was ultra vires, Associate Judge Nielsen found that the Krentz Order was made pursuant to s. 91 of the FLA. Clearly, Associate Judge Krentz had jurisdiction to make a s. 91 order.
- [22] If Nancy disagreed with Associate Judge Nielsen's characterization of the Krentz Order as a s. 91 order or his decision not to set it aside, the proper procedure was to appeal Associate Judge Nielsen's order. In fact, Nancy did apply to extend the time in which to bring an appeal of Associate Judge Nielsen's order. Justice Milman did not grant the extension in August 2024.
- [23] When Justice Milman was granting the extend the time to appeal Associate Judge Nielsen's order, he commented that in his view, the Krentz Order did not apply to Anshan as a non-party. In response, Nancy's counsel indicated that if that was the case, she would not take the proceedings further. If the Krentz Order did not apply to Anshan, then he could use the funds in their joint accounts, including lending Nancy moneys for her own expenses. Indeed, following the appearance before Justice Milman, Nancy chose not proceed with an

appeal.

- [24] I agree with Joseph that Nancy's application before me is yet another "kick at the can" to address the Krentz Order. In my view, it is inappropriate to continue to come back to court to try to set aside or vary the Krentz Order. Nancy had a chance to set the order aside before Associate Judge Nielsen. She also had the chance to appeal the order of Associate Judge Nielsen and did not.
- [25] Further, the Taylor Order restrains Anshan not Nancy. It appears to me that Nancy is now attempting to use the term in the Taylor Order that parties can apply to set the order aside on three days' notice to revisit the Krentz Order. In my view, this is inappropriate. Further, Nancy has not shown hardship. She was granted child and spousal support after a two day hearing without even having to attend a JCC in advance. As well, despite the Krentz Order, Nancy admits to having disposed of some funds in her accounts to pay for her expenses. I was not told how much she has spent or from what accounts.
- [26] Finally, given the terms of the consent order that Joseph and Anshan negotiated, Anshan will have access to all but \$600,000 of the \$9million of funds at CIBC. Nancy specifically stated in her affidavit materials and submissions that she wanted to be able to borrow money from Anshan. The consent order will permit that. Finally, Joseph's obtaining a restraining order pursuant to s. 91 of the FLA is not anywhere close to an abuse of process. The order is relatively standard and in fact mandatory against a spouse unless Nancy could demonstrate why the s. 91 restraining order was unnecessary.
- [27] I will now turn to address the fines sought by Nancy pursuant to s. 230 of the FLA.

Application for Fines for Failure to Pay Child Support, Spousal Support and Tuition for Private School

- [28] Justice Kirschner made an order on January 17, 2025, that Joseph pay Nancy \$1356 per month child support and \$1350 per month spousal support commencing September 1, 2024 and continuing. Joseph was voluntarily paying child support of \$1197 per month before the Kirschner Order. Joseph still owes Nancy the differential for the first months, such that a total of \$447 of child support is outstanding. I am advised that Joseph owes a total of \$4,050 in spousal support. Nancy seeks fines pursuant to s. 230 for his failure to pay. I decline to order a fine pursuant to s. 230.
- [29] In my view, these applications are better left to the trial as opposed to an interim application on affidavits at this stage. There is no doubt that Joseph should comply with the order and pay his full support. However, in this case, in my view there have been too many interim applications already. The SCFR and the FLA each encourage parties to try to reduce litigation and encourage cooperation. The request for fines at this stage, particularly in the one instance over arrears totalling \$447, seems to me to be an to punish Joseph or gain some perceived strategic advantage in the litigation rather than to encourage compliance with the order. I note that Nancy also sought a fine pursuant to s. 230 after Joseph removed furniture

from the Delta residence but her application was dismissed by Justice Kirchner. In this case, there are other options to enforce support orders, such as the BC Family Maintenance Agency, which is able to enforce child support orders, including imposing penalties and calculating interest. I adjourn the applications before me for fines pursuant to s. 230 to trial.

- [30] At the same time, I will comment that I am unimpressed by Joseph's failure to pay the outstanding child support. Joseph maintains that he has been unable to pay in full because his current income is now \$105,000, not \$150,000 as recently imputed to him by Justice Kirchner after a two-day hearing. However, Joseph already argued that his income was currently \$105,000 and Justice Kirchner obviously rejected this argument in imputing \$150,000. Joseph's excuse for not paying his full support obligation is simply not good enough. He should comply with the order of Justice Kirchner and pay all outstanding amounts of child and spousal support immediately.
- [31] Nancy also seeks an adjustment for a tuition payment for their child's private school which the parties paid on August 30, 2024. Justice Kirchner's order made January 17, 2025, states that Joseph is to pay 75% and Nancy is to pay 25% of their child's tuition fees for Delta Christian School. While Justice Kirchner's orders for monthly child and spousal support were made retroactive to September 1, 2024, the term relating to tuition does not mention a start date.
- [32] Nancy seeks to adjust the last tuition payment already made by the parties equally on August 30, 2024. I dismiss Nancy's application to adjust the August 30, 2024 payment. As mentioned, Justice Kirchner's order does not specify a date for commencing the 75/25 split. In my view that implies that the parties are to share tuition on a 75%/25% basis from the date of the order forward. The last tuition payment was due September 1, 2024 and the parties paid on August 30, 2024. Even if Justice Kirchner had intended that the 75/25 sharing of tuition to commence September 1, 2024 to match the start date for child and spousal support, the payment made prior to September 1, 2024 ought not to be captured by the order.
- [33] Nancy may apply for adjustments at trial if she deems necessary. However, in consideration of the concept of proportionality incorporated into the SCFR, one might question the advisability of spending legal fees and court time arguing over such small items as the difference between 50% and 75% of a single tuition payment. Similarly, in my view, Joseph should be encouraged to pay his 75% share of his child's tuition pending trial as ordered instead of writing to his child's school principal that he cannot afford tuition and contemplating further interim applications to reduce support while the ink is barely dry on Justice Kirshner's order.
- [34] The parties ought to consider that interim orders are intended to provide rough justice pending trial. They keep returning to court asking for multiple interim orders, many of which deal with the same or similar subject matter. This ought to be discouraged going forward.

Application for Disclosure of Documents

- [35] Pursuant to Rule 9-1(10) of the SCFR, Nancy seeks that Joseph produce the documents that she demanded through her counsel's letter of January 8, 2025. At the hearing, Nancy's counsel submitted that she would prefer for expediency that Joseph sign authorizations allowing her to obtain the documents. I decline to entertain the request for authorizations. Rule 9-1 (9) and (10) are clear that the procedure is for the listing party to provide the documents and amend their list.
- [36] In terms of the actual documents sought, I am satisfied that Joseph should produce the following documents listed in Nancy's counsel's letter of January 8, 2025 (the paragraph numbering refers to the letter):
- 1) Joseph's bank account and investment account statements from 2015 to date for accounts in his sole or joint name that have not already been produced;
 - 2) 3) and 4) All documents in Joseph's possession or control relating to the Olympic Village condo not already produced;
 - 7) receipts and invoices for section 7 expenses paid by Joseph since separation;
 - 8) 9) any documents in Joseph's possession relating to the New Westminster or Delta properties or relating to Anshan reimbursing the parties for expenses they paid;
- [37] All of the above documents relate to issues in the proceedings. While Nancy seeks bank and investment statements from Joseph dating back to the start of the relationship in 2015, this is a complex file in terms of property division and determining family assets is difficult. Each of the spouses has held assets either for their fathers or with their fathers and/or for their family members. The determination of family property in this case involves tracing the source of funds used to acquire property, determining who paid for expenses relating to the properties and tracing of beneficial ownership of property and/or proceeds over the years. It is not as simple as looking only to the property in each parties' as at the date of separation.
- [38] In terms of investment accounts in Joseph and Hans' joint names, Joseph and Hans claim that Hans is the beneficial owner of the investments. However, Joseph's personal income taxes show he disposed of \$20 million of investments from 2020 through 2022 alone. In my view, Nancy is entitled to see what investments and accounts existed throughout the marriage, not just at separation. Not only are the documents relevant to determining and tracing family property, they are also potentially relevant to Joseph's income and means for child and spousal support purposes.
- [39] In specific reference to the Olympic Village property which sold for \$910,000 around the separation date, Joseph claims that his parents provided the funds to purchase the property and paid for all its expenses. He maintains that his parents were the beneficial owners and that he as the owner on title held the property in trust for his parents as the beneficial owners. However, this remains a live issue. Nancy points to documentation that Joseph

claimed this property as his principal residence. In addition, Joseph made no mention on his form 8 as to the sale of this property or where the proceeds of sale went. In my view, the documents relate to determination of family property.

- [40] I find that the balance of the documents demanded by Nancy have either been provided/ answered, do not relate to an issue in the proceeding, are too far-reaching or speculative or are not in Joseph's possession or control.

Costs

- [41] The respondent's applications were dismissed other than document production which did not take much time. The hearing focussed mainly on Nancy's applications to set aside or vary the restraining orders. The parties did not specifically address costs. My preliminary view is that Nancy ought to pay costs to the other parties for this hearing in any event of the cause, but not payable forthwith. If parties however, wish to address costs, they may within the next 30 days make a request to schedule a brief appearance via Teams on a day at 9:15 am.

Summary of Orders

- [42] The respondent Nancy Lu's applications to set aside or alternatively vary the Krentz Order and/or the Taylor Order are dismissed.
- [43] The respondent Nancy Lu's applications for fines pursuant to s. 230 of the FLA are adjourned to trial.
- [44] The claimant Joseph Tung shall produce the above-noted documents demanded of him on January 8, 2025 (set out in para. 36 of these reasons) as soon as possible.
- [45] The consent order proposed by the claimant Joseph Tung and the respondent Anshan Lu is granted, the terms of which are as follows:
- 1) All funds as referenced in Associate Judge Krentz' Order dated March 28, 2024 ("Associate Judge Krentz Order"), held in joint accounts by the Respondents Anshan Lu and Jie Lu also known as Nancy Lu, and successor accounts held solely by Anshan Lu, are not subject to the Associate Judge Krentz Order, if in fact they were so encumbered with the exception of \$600,000.00 which shall remain restrained by CIBC from use by Anshan Lu, which can be invested in GIC-type investments.
 - 2) An order setting aside and vacating paragraph 4 of the Order Made After Application -- Without Notice by Justice Taylor dated December 17, 2024 (the "Taylor Order").
 - 3) Save and except for the \$600,000.00 referred to in paragraph 1 above, Anshan Lu is at liberty to utilize the funds as he wishes, whether at CIBC or another institution.
 - 4) The relief sought in Part 1(c) of Anshan Lu's Notice of Application filed April 3, 2025, is adjourned generally.

- 5) Anshan Lu will not seek costs as claimed in Part 1(d) of Anshan Lu's Notice of Application filed April 3, 2025, heard on this date, but otherwise reserves his right to seek costs in this litigation generally.

"Hamilton, J."

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