

CANADA / JUDGMENT

Vansky International Education Ltd. v. Guo

2023 BCSC 1507

COURT

Supreme Court of British Columbia

DECIDED

18 August 2023

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2023 BCSC 1507 Vansky International Education Ltd. v. Guo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vansky International Education Ltd. v. Guo,

2023 BCSC 1507

Date: 20230818

Docket: S-218850

Registry: Vancouver

Between:

Vansky International Education Ltd. and Xiaoping Ye

Plaintiffs

And

Yixin Guo also known as Sissi Guo

Defendant

Before: Master Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

F. Lin

The Defendant, appearing on her own behalf, with an Interpreter:

Y. Guo

Place and Date of Hearing:

Vancouver, B.C.

August 11, 2023

Place and Date of Judgment:

Vancouver, B.C.

August 18, 2023

Introduction

[1] THE COURT: The plaintiffs apply for an order that the defendant, Ms. Guo, deliver to them copies of the following documents:

- a) All documents relied on by Ms. Guo to prepare the 2020 and 2021 payroll record for the instructor Samantha;
- b) Names and contact information of all purported signatories of the declaration at Exhibit H to Ms. Guo's Affidavit Number 1 made January 23, 2023;
- c) Names and contact information of adult class students described in the following:
 - i. May 2019 dance competition student list;
 - ii. July 2019 Dance World student list; and
 - iii. Adult class student list produced by the defendant.

[2] They also seek an order that non-parties Crystal Arts Academy Inc. ("Crystal Inc.") and Crystal Dance Society ("Crystal Society"), collectively, "Crystal Academy", deliver to the plaintiffs:

- a) A complete copy or a complete student list and income records for the students of Crystal Academy from September 2021 to present;
- b) Crystal Academy's lease agreement (the "Lease") for 2211A - 4500 Kingsway, Burnaby (the "Premises");
- c) Bank statements of all business accounts for Crystal Academy from inception to present; and
- d) Crystal Academy's income tax returns from inception to present.

[3] Ms. Guo opposes all of the relief sought.

Background

- [4] On or about January 25, 2019, the plaintiff Xiaoping Ye ("Ms. Ye"), and Ms. Guo entered into a written partnership agreement (the "Partnership Agreement") to operate a dance studio called Vancouver Little Dancing Flower Dance Academy ("VLDFD Academy"). Prior to the parties entering into this agreement, Ms. Ye had been operating VLDFD Academy at the Premises. She says the plaintiff Vansky was operating it and paying all expenses associated with it.
- [5] The terms of their Partnership Agreement include that:
- a) Ms. Ye would be legal representative and principal of VLDFD Academy;
 - b) Ms. Guo would be head of educational administration;
 - c) Ms. Ye would hold an 80 percent ownership interest in VLDFD Academy and Ms. Guo the remaining 20 percent;
 - d) The partnership was for a fixed term from January 20, 2019 to January 20, 2021, without automatic renewal after expiry of the term; and
 - e) If the parties did not reach an agreement to continue the partnership before the end of the term, it would be wound up and the assets would be distributed 80 percent to Ms. Ye and 20 percent to Ms. Guo.
- [6] Ms. Guo was responsible for managing student recruitment and classroom rentals, managing adult education and after-school classes, and collecting tuition and fee payments from students.
- [7] The parties had various disagreements during the partnership term. They did not renew the Partnership Agreement before it expired on January 20, 2021. After expiry, both parties continued operating VLDFD Academy.
- [8] The lease term for the Premises expired on January 31, 2021, after which it continued on a month-to-month basis.
- [9] On March 31, 2021, Crystal Society was formed with Ms. Guo as a director.
- [10] In June and July 2021, the plaintiffs attempted to negotiate a new fixed-term lease with the landlord, but the landlord declined to do so.
- [11] On July 11, 2021, the landlord advised it was terminating the month-to-month lease and directed that the Premises be vacated by August 31, 2021.
- [12] On July 22, 2021, Crystal Inc. was incorporated. Its director is Ms. Guo's husband, Shaojie Wang ("Mr. Wang").

- [13] On September 1, 2021, Crystal Academy began operating a dance studio at the Premises. There is currently a formal admission via an unanswered notice to admit that Ms. Guo is involved in the operation at the new dance studio, and some of Crystal Academy's students were formerly VLDFD Academy students.

Procedural history

- [14] On October 15, 2021, the plaintiffs filed their notice of civil claim. The claims include allegations that Ms. Guo failed to account to the partnership for about \$28,000 in revenue she is believed to have received from adult dance classes. It is also alleged that she breached fiduciary duties owed to the plaintiffs by procuring Premises for the new studio, Crystal Academy, and by soliciting VLDFD Academy's students. They seek an order that she account for and disgorge any benefits she derived without Ms. Ye's consent from any transaction affecting the partnership or from her use of partnership property, name, or business connections, and profits from the Crystal Academy business.
- [15] On December 17, 2021, Ms. Guo filed her response to civil claim. She denies all claims made against her.
- [16] In March 2022, the parties exchanged lists of documents.
- [17] On or about August 19, 2022, the plaintiff sent a lengthy and highly-detailed notice to admit to Ms. Guo by email. She did not deliver a response to it within the specified time. Ms. Guo says when she was served with the notice to admit, she did not have legal representation. She had filed a notice of intention to act in person on July 13, 2022. In her affidavit sworn January 23, 2023, she says she intended to make an application to withdraw the deemed admissions and attached a proposed response to notice to admit. It is my understanding she has not yet applied to withdraw the deemed admissions.
- [18] There have been no examinations for discovery held thus far.
- [19] Trial is set for November 27, 2023, for five days.

Applicable law

- [20] The plaintiffs rely on Supreme Court Civil Rules, B.C. Reg. 168/2009, Rule 7-1, specifically referring to Sub-rule (1), (10), and (11).
- [21] Sub-rule (1) provides that each party of record is required to prepare a list of documents that lists all documents that are or have been in their possession or control, and that would, if available, be used by a party or by any party of record at trial to prove or disprove a material fact, and all other documents to which the party intends to refer to at trial.
- [22] Sub-rule (10) provides that if a party who has received a list of documents believes it omits documents or a class of documents that should have been disclosed under Sub-rule (1), the party may, by written demand, require the list be amended to add them.

- [23] Sub-rule (11) provides that if a party who has received a list believes the list should include documents or classes of documents that are within the listing party's possession, power, or control, which relate to any or all matters in question in the action and which are additional to the documents or classes of documents required under Sub-rule (1), in that case the requesting party is required to make a written demand that identifies the additional documents or classes of documents with reasonable specificity, and indicate the reason why such additional documents or classes of documents should be disclosed.
- [24] Despite seeking production of non-party documents, the plaintiffs did not specifically refer to Sub-rule (18) in their application, [documents not in possession of a party], or authorities which interpret it.

Analysis

All documents relied on by Ms. Guo to prepare the 2020 and 2021 payroll record for the instructor "Samantha"

- [25] The plaintiffs say Ms. Guo has produced two conflicting sets of payroll records for one of the instructors named "Samantha". One categorizes her salary as a 2021 expense, while the other characterizes it as a 2020 expense. They say the source documents Ms. Guo relied on in generating payroll records are material and relevant because they affect how this instructor's salary should be accounted for. They also argue these are producible under s. 31 of the Partnership Act, R.S.B.C. 1996, c. 348.
- [26] Ms. Guo states in her affidavit #1 that she was paying instructors in cash.
- [27] I agree that it is appropriate to order Ms. Guo to produce any source documents she has in her possession or control relating to the 2020 and 2021 payroll for VLDFD Academy relating to the instructor "Samantha".

Names and contact information for all purported signatories of the declaration at Exhibit H to Ms. Guo's Affidavit Number 1 made January 23, 2023

- [28] The plaintiffs say Ms. Guo's affidavit #1 attaches a declaration purportedly signed by students in VLDFD Academy's adult class who declare that they have never paid Ms. Guo any fees or for various categories of classes during 2019 to 2021. The categories include adult class practice (without instructor), adult class fitness (without instructor) and adult class annual fee. They say these signatories will possess information relevant to the issue of adult class fees which is a matter in issue.
- [29] Ms. Guo states in her affidavit #1 at paragraph 29 that VLDFD Academy never asked the adult class students to pay annual or practice fees, and there was no such policy or fee requirement. During the term of the partnership, she never charged or received annual fees or practice fees from adults to class students. She says tuition fees paid by adult students were recorded as income of VLDFD Academy.

[30] This is framed as a request for information, rather than as a request for a document or class of documents. The plaintiffs will have to pursue information requests via examination for discovery or seek leave to issue interrogatories. This item is dismissed.

Names and contact information of adult class students described in:

- (a) May 2019 dance competition student list;
- (b) July 2019 Dance World student list; and
- (c) adult class student list produced by the defendant

[31] The plaintiffs say Ms. Guo's records note that VLDFD Academy had anywhere between 16 and 24 adult class students. These students would possess information relevant to the issue of adult class fees. Because it was Ms. Guo who was managing adult classes, the plaintiffs do not have student contact information.

[32] I agree it is appropriate for Ms. Guo to produce any lists in her possession or control of VLDFD Academy adult students for each of the categories requested. That includes: (a) May 2019 dance competition, (b) July 2019 Dance World, and (c) adult class for the period of the partnership, January 2019 to end of August 2021; that latter date is not the end date of the partnership, but is the end of VLDFD Academy's operations at the Premises.

Ms. Guo's personal income tax returns from 2019 to present

[33] The plaintiffs claim for disgorgement of profits Ms. Guo made from Crystal Academy and argue that presumably these would have been declared on her income tax returns. As such, they say her returns are material and relevant.

[34] As this request seeks documents relevant to disgorgement of profit from Crystal Academy related sources, and Crystal Academy did not begin to operate until September 2021, I agree it is appropriate for Ms. Guo to produce copies of her personal income tax returns for 2021 and 2022, assuming she has filed returns.

Documents from non-parties, Crystal Inc. and Crystal Society, including:

- (a) A complete student list and income records for the students of Crystal Academy from September 2021 to present;
 - (b) Crystal Academy's lease agreement for the Premises;
 - (c) Bank statements of all business accounts for Crystal Academy from inception to present; and
 - (d) Crystal Academy's income tax records from inception to present
- [35] The plaintiffs allege Ms. Guo breached fiduciary duties owed to the partnership by soliciting VLDFD Academy students and procuring the premises for Crystal Academy.

- [36] The plaintiffs say Ms. Guo is a director of Crystal Society and her husband is a director of Crystal Inc. These entities were created before VLDFD Academy's lease for the Premises ended on August 31, 2021 -- or I should say that is when the month-to-month portion of the post-Lease term ended. Shortly after the month-to-month lease was terminated, Crystal Academy began operations at the Premises. They argue that all of these facts suggest Ms. Guo had been planning to take over and did take over the Premises.
- [37] In argument, counsel suggested Ms. Guo continued to owe obligations to the partnership, i.e., Ms. Ye, her partner, after the fixed partnership term expired, because there had been no formal winding up and partnership assets had not been distributed as contemplated by the Partnership Agreement. It is noteworthy that one of the plaintiffs' chief complaints is that they were unable to negotiate a new lease for the Premises themselves, because Ms. Guo had managed to procure the Premises first.
- [38] The plaintiffs also rely on an admission that at least some of the students of the new studio had been students of VLDFD Academy, and that at least some of the new studio's revenues came from former VLDFD Academy students.
- [39] In my view, the plaintiffs' efforts to obtain discovery from Crystal Inc. and Crystal Society are based on a misguided theory of their case. They appear to concede that it is Crystal Academy that has been operating at the Premises since shortly after VLDFD Academy's month-to-month lease was terminated. They acknowledge that any former VLDFD Academy students would now be students of Crystal Academy. They define the term "Crystal Academy" as being a combination of Crystal Inc. and Crystal Society. There is no suggestion that Ms. Guo has been operating Crystal Academy as a proprietorship, i.e., on her own behalf. She is noted as being a director of Crystal Society only.
- [40] The plaintiffs have not made any claims against Crystal Inc. or Crystal Society directly. Their disgorgement claim focuses on profits that Ms. Guo may have received from Crystal Academy, not profits of Crystal Society or Crystal Inc. As such, the company or society's finances and operations do not appear to be relevant to the issues in dispute. Only amounts Ms. Guo may have received from Crystal Academy appear arguably relevant based on the allegations made in the notice of civil claim.
- [41] It is also significant that the plaintiffs did not refer to Rule 7-1(18) in their application:
- (18) If a document is in the possession or control of a person who is not a party of record, the court, on an application under Rule 8-1 brought on notice to the person and the parties of record, may make an order for one or both of the following:
- (a) production, inspection and copying of the document;
- (b) preparation of a certified copy that may be used instead of the original.

- [42] In *Northwest Organics, Limited Partnership v. Roest*, 2017 BCSC 673 at paragraph 81, Justice G.C. Weatherill notes that Sub-rule (18) was not intended to provide broad discovery of documents from non-parties. Paragraph 81:
- [81] It is apparent from the wording of Rule 7-1(18) that it was not intended to provide broad discovery of documents from non-parties, but rather a mechanism by which parties can access specific documents or classes of documents when it has been demonstrated that they are in the possession or control of a non-party and are relevant to an action. With the exception of the specific documents ordered to be produced at paras. 1(b), (c) and (d) of the Order, evidence supporting the application was lacking. Master Baker did not consider the need for such evidence.
- [Emphasis in original]
- [43] In *Mann v. Jagpal*, 2020 BCSC 1919 at paragraph 48, Justice Giaschi found that the wording in Rule 7-1(18) suggested that a higher level of specificity is required when seeking documents from a non-party:
- [48] It is to be noted that this rule refers to "a document" and "the document". The use of these terms is suggestive of a higher level of specificity than is required when seeking documents from a party. This was recognized by Smith J. in *Centura Building Systems Ltd. v. Blackcomb Mountain Development Ltd.*, 2007 BCSC 939, at para. 9:
- [9] It is significant that Rule 26(1) refers to "all documents", while Rule 26(11) refers to "a document." Parties are expected to know the pleadings and the issues in the litigation and to make a thorough review of their documents in order to provide discovery of all relevant material. A stranger to the litigation has no such knowledge or obligation. It is up to the party seeking production to identify the specific document or documents being sought.
- [44] In *Yen v. Ghahramani*, 2023 BCSC 229 at paragraphs 67 and 68, I rejected an exceptionally broad demand for production of documents from a non-party, even in circumstances where the non-party was alleged to have had some involvement in the events underlying the claim:
- [67] In my view, the form of this demand is still unacceptably broad, keeping in mind that it is directed towards a non-party. It would require Mr. Chan to review broadly framed categories of documents, including ones not only in his possession or control but also in his power. It would also require him to review and analyze the pleadings so he can assess whether each document he reviews relates to matters in question in the action. It also appears to seek apply a very broad "Peruvian Guano" standard of relevance to this review.
- [68] It appears that airG seeks to impose on a non-party a proactive discovery burden which is consistent with what one might expect of a party to the action. Counsel did not refer me to any authority for the proposition that a higher standard of production can or should be imposed on a non-party based on allegations that they participated in alleged misconduct which underlies the litigation. As noted in *Northwest Organics*, sub-rule (18) permits access to specific documents or classes of documents when it has been demonstrated they are in

the possession or control of a non-party and are relevant to an action. The demand in this instance is not specific.

[Emphasis in original]

See also Justice Fitzpatrick's reasons in *British Columbia (Director of Civil Forfeiture) v. PacNet Services Ltd.*, 2023 BCSC 1113.

[45] Even if the plaintiffs had referenced Sub-rule (18) in their application, I would still have dismissed this aspect of their application on the basis that the scope of the documents and classes of documents demanded from the non-parties is unreasonably broad and seek confidential information from a non-party competitor.

[46] This item is dismissed.

Conclusion

[47] The following documents and classes of documents are to be listed and produced within 21 days:

- a) Any source documents Ms. Guo has in her possession or control relating to the 2020 and 2021 payroll for the VLDFD Academy instructor "Samantha";
- b) Any lists in her possession or control for adult VLDFD Academy students for 2019 dance competition, July 2019 Dance World, and adult classes for the period relevant to the partnership, which is January 2019 to end of August 2021;
- c) Copies of her personal income tax returns for 2021 and 2022, assuming she has filed returns.

[48] The balance of the application for documents from Ms. Guo is dismissed. The application for documents from Crystal Inc. and Crystal Society is also dismissed.

[49] With respect to the costs, the results of the application have been mixed and, as such, the costs of the application will be in the cause.

[50] That concludes my reasons.

[51] CNSL F. LIN: Thank you, Your Honour. May I ask that the requirement for the defendant's signature on the order be dispensed with?

[52] THE COURT: What he is asking is that normally when I make an order, there will be a formal paper version of the order prepared and entered with the court registry. Normally when it is drafted, you would have the right to review it and make sure you agree that it reflects what my order is. And there can be difficulty when you have a self-represented litigant, because sometimes they do not appreciate that by signing the order, it does not mean agree you with what I decided, it just means that what is in the document fairly reflects what order I made, and that can cause a lot of expense and delay to get a formal order entered. So sometimes parties will ask that a self-represented litigant's signature approving the form of the order be dispensed with. That is what he is asking.

- [53] What I am going to say is that you should provide Ms. Guo with a draft of the order. If she has any concerns about it, she is to communicate those to you. If she does have any concerns, then I am going to direct that the draft order be sent to me for final approval, and I will make sure that it says what it should say. If you are happy or have no comments about it, then it can be entered without being forwarded to me.
- [54] THE INTERPRETER: Your Honour, due to the complication of this matter, I just would like to know -- and the decision is made just now is such a lengthy one, I would like to know, will you -- will you send -- you know, will you -- how the decision made for all those document required, be known in -- with the lawyer, the lawyer will send us --
- [55] THE COURT: Given the -- normally there is a process, when it is oral reasons, parties can order a transcript of my reasons. In this case, because of Ms. Guo's difficulties with English, I am going to order a transcript myself, and I will ask that it be produced promptly, and that way I will release it to the parties and then you will be able to help her with any translation.
- [56] THE INTERPRETER: Yes.
- [57] THE COURT: And for -- in terms of the -- maybe I should perhaps extend the time for production of the documents from 21 days after the written reasons are available, just so that Ms. Guo has the reasons before she has to comply with the order, or if she has concerns about what the order is, she will have the reasons available to help guide her in what her obligations are. I will order a transcript immediately and we will get it issued quickly, but I am going to make my order 21 days from when the reasons are released.
- [58] THE INTERPRETER: And would it be sent to the defendant?
- [59] THE COURT: If you make sure that -- give your email address to the clerk, both of you, and it will be emailed to you by the registry.
- [60] THE INTERPRETER: And the time -- and the time length for the production of the -- whatever document required and so that she has enough time.
- [61] THE COURT: Yes, it is 21 days from when you get the written reasons.
- [62] THE INTERPRETER: Okay.
- [63] THE COURT: Okay.
- [64] THE INTERPRETER: Yes, thank you.
- [65] CNSL F. LIN: Your Honour, just one quick question. If we were to send you a draft order, in what form would you prefer the communication to come in? By email, by letter, by fax, is there any preference?
- [66] THE COURT: You just send it through the registry.
- [67] THE INTERPRETER: Thank you, Your Honour.

"Master Bilawich"

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