

CANADA / JUDGMENT

Wang v. Jiang

2020 BCSC 901

COURT

Supreme Court of British Columbia

DECIDED

17 June 2020

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2020 BCSC 901 Wang v. Jiang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Jiang,

2020 BCSC 901

Date: 20200617

Docket: E152456

Registry: Vancouver

Between:

Yi Meng Wang also known as Sharon Wang

Claimant

And

Jun Cheng Jiang also known as John Jiang, Xiao Ling Jiang, Wingsum International Trading Inc., Wingsum Food Inc., W&W Food Inc., Wingsum Produce Corp., Tian Qi Jiang and Jun Shan Jiang also known as Grace Jiang

Respondents

Corrected Judgment: The front page was corrected on June 22, 2020

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Claimant:

L. MacLean Q.C.

S. Chen

Counsel for Pryke Lambert Leathley Russell LLP:

R.W. Mostar

Counsel for CNS Law Corp.:

S. Pun

Place and Date of Hearing:

Vancouver, B.C.

June 11, 2020

Place and Date of Judgment:

Vancouver, B.C.

June 17, 2020

- [1] This action was heard together with two civil claims by Mr. Justice McEwan over 31 days in 2018. McEwan J. released one set of reasons for judgment in the three cases, indexed at 2020 BCSC 145.
- [2] In his reasons for judgment at para. 793, McEwan J. issued a declaration that:
- the remaining amounts held by Pryke Lambert Leathley Russell LLP of \$128,876.78, and by CNS Law Corporation of \$19,676.69, be paid to MacLean Law in trust for Sharon, and which amounts further may be disbursed to Sharon and credited towards the Company Compensation Payment.
- [3] I will refer to Pryke Lambert Leathley Russell LLP and CNS Law Corporation as "the two law firms". They seek orders to essentially vary the declaration concerning the funds that they hold in trust.

Background

- [4] I will refer to Sharon Wang as "Sharon" and to her ex-husband John Jiang as "John" to avoid confusion over the various claimants in the three actions dealt with by McEwan J.
- [5] Sharon and John started cohabiting in a marriage-like relationship at the end of July or beginning of August 2011, they married on October 21, 2012 and separated on August 21, 2015.
- [6] Their daughter, Nuohan Julia Jiang ("Julia"), was born on October 22, 2014, and is now five years old.
- [7] Sharon commenced proceedings for divorce and related relief on September 2, 2015.

- [8] On September 2, 2015, Mr. Justice Blok granted an ex parte order pursuant to s. 91 of the Family Law Act, S.B.C. 2011, c. 25 that provided, in part:
1. Pursuant to s. 91 of the Family Law Act, s. 39 of the Law and Equity Act, and Rules 12-4 and 12-1 of the Supreme Court Family Rules, the Respondent, Jun Cheng Jiang aka John Jiang in his personal capacity and in his capacity as director of Wingsum International Trading Inc., Wingsum Food Inc., and Westin International Trading Inc., and the Respondent, Xiao Ling Jiang, in her capacity as director of W & W Food Ltd., be restrained and enjoined from disposing of, encumbering, assigning, or in any similar manner dealing with family property, or of any property in which the Applicant has, or may have, an interest, pending final determination of this action, except in the ordinary course of business with liberty to apply to further define what expenses can be paid in the ordinary course of business
 - a. [various properties]
 - b. All bank accounts, savings, investments, stock options, RRSPs, RESPs, pensions, annuities, shares and other financial instruments, held in the personal name of the Respondent, Jun Cheng Jiang aka John Jiang or held jointly by the Respondent and another party, including but not limited to bank accounts at CIBC, TD, and RBC, with the sole exception set out in paragraph 4 below;
 - c. [various shareholdings]
 - g. All income and assets of Wingsum International Trading Inc., Wingsum Food Inc., W & W Food Ltd., and Westin International Trading Inc.;
 - h. All bank accounts, savings, investments, stock options, RRSPs, RESPs, pensions, annuities, shares and other financial instruments, held in the name of Wingsum International Trading Inc. or Wingsum Food Inc. (collectively, the "Corporate Respondents"), or held jointly by any of the Corporate Respondents and another party, except in the usual and ordinary course of business as defined in paragraph 2 below, as allowed by paragraph 3 below, or as jointly agreed by the parties in writing with liberty to apply to further define what expenses can be paid in the ordinary course of business and by the signing jointly on any cheques to be paid in the ordinary course of business, including but not limited to TD bank account no. 5225642;
 - i. Any and all property held by the Respondent Jun Cheng Jiang aka John Jiang or Corporate Respondents, or over which any of them have a legal or beneficial interest
 4. Notwithstanding paragraph 1 above, the Respondent Jun Cheng Jiang aka John Jiang, in his personal capacity, shall be entitled to use TD bank account no. 6494721, held jointly with the Applicant, without restriction, for deposits and withdrawals.
 10. Paragraph 1 of this order shall expire at 4 p.m. on September 16, 2015 unless renewed by the Applicant.

- [9] On September 16, 2015, the order of Mr. Justice Blok was renewed until the close of business on September 18, 2015, by the order of Mr. Justice Funt.
- [10] As John's financial circumstances were examined, it was apparent that he had been less than candid about them. In the result, on May 19, 2016, Master Harper granted an order which included provisions pursuant to s. 91 of the Family Law Act:
3. Pursuant to s. 91 of the Family Law Act and Rules 12-1 of the Supreme Court Family Rules, the Respondent, Jun Cheng Jiang aka John Jiang in his personal capacity and in his capacity as director of Wingsum International Trading Inc., Wingsum Food Inc., and Westin International Trading Inc., and the Respondent, Xiao Ling Jiang, in her capacity as director of W & W Food Ltd. and Win Sum Produce Corp., be restrained and enjoined from disposing of, encumbering, assigning, or in any similar manner dealing with family property, or of any property in which the Claimant Yi Meng Wang aka Sharon Wang has, or may have, an interest, pending final determination of this action; except in the ordinary course of business with liberty to apply to further define what expenses can be paid in the ordinary course of business; property including but not limited to:
 - a. Real properties acquired after the date of this Order in the name of W&W Food Ltd. and Win Sum Produce Corp. or any one of them, or over which any of them have a legal or beneficial interest;
 - b. All bank accounts, savings, investments, stock options, RRSPs, RESPs, pensions, annuities, shares and other financial instruments, held in the personal name of the Respondent, Jun Cheng Jiang aka John Jiang or held jointly by the Respondent and another party or held beneficially for the Respondent, Jun Cheng Jiang aka John Jiang.
 - c. The shares of Win Sum Produce Corp.;
 - d. Any shares in any companies held beneficially for the Respondent, Jun Cheng Jiang aka John Jiang; and
 - e. All income and assets of Win Sum Produce Corp.

without the consent in writing of the Claimant pending final determination of this proceeding by this Honourable Court.

[11] Sharon and John were divorced on September 22, 2016.

[12] On June 29, 2018, Mr. Justice McEwan again varied prior orders in the following terms:

2. The Respondent Junshen Jiang aka Grace Jiang, in her capacity as director of Win Sum Produce Corp., be restrained and enjoined from disposing of, encumbering, assigning, or in any similar manner dealing with family property, or of any property in which the Claimant has or may have an interest, save as otherwise described in this Order, and pending final determination of this action.

3. Pursuant to s. 91 of the Family Law Act, Rule 12-1(1) of the Supreme Court Family Rules, and the inherent jurisdiction of the court, the Respondents JUN CHENG JIANG also known as JOHN JIANG, XIAO LING JIANG, JUN SHAN JIANG also known as GRACE JIANG, WINGSUM INTERNATIONAL TRADING INC., WINGSUM FOOD INC., W FOOD INC., and WINGSUM PRODUCE CORP. are prohibited from making an assignment for bankruptcy or filing a proposal under the Bankruptcy and Insolvency Act, without further order of this Honourable Court.

The Role of the Law Firms

- [13] Prior to the trial in this action, the law firm of Pryke Lambert Leathley Russell LLP ("PLLR") represented John, and the law firm of CNS Law Corporation represented John's sister Jun Shan Jiang, to whom I will refer for ease of reference as "Grace".
- [14] Each of these firms accepted funds from their clients that were placed into their respective trust accounts, and each of these two firms wish to retain those funds and to apply them to outstanding accounts for legal services rendered to their respective clients.
- [15] Neither law firm appeared before McEwan J. to protect the funds in their trust accounts from Sharon's claims. Once the two law firms were advised by counsel for Sharon that she intended to apply to McEwan J. for a declaration that the remaining amounts in their trust accounts be paid in trust to Sharon's lawyers for disbursement to her, PLLR wrote to Sharon's counsel on September 6, 2018, on their own behalf, and on behalf of CNS Law Corp., stating:

We have been advised that you intend to apply, during argument, for an order that the court direct the funds held in trust by PLLR and Samson Pun against legal fees incurred in the conduct of this matter be released to your client. These sums are monies in trust charged with a solicitors lien for work done and disbursements expended in connection with the handling of the matter by the two firms, not funds in trust for work that was yet to be done. You were of course provided with the accounts that made up the sums retained in trust.

The order that you seek, with respect, raises an issue in which the two law firms have an entitlement to notice in form of a specific application and should be allowed an opportunity to present evidence and receive in advance, the written application of your client, and the legal basis upon which the order is being sought, and a summary of the evidence upon which you rely to justify the order. In reply we should be permitted to present our own evidence and argument.

The writer is not available to do this next week. We are not presently aware of Mr. Pun's schedule.

We suggest that this is an issue that should be (and could easily be) segregated from the issues in the trial itself and scheduled to accommodate not only your own calendar, but that of the two firms from whom your client seeks these funds.

- [16] Counsel for Sharon did not accede to the request to segregate the issue to deal with it at a mutually agreeable date, and thus it was dealt with by McEwan J., without any submissions on behalf of the two law firms.
- [17] On January 14, 2020, I assigned myself by order ex mero motu to deal with any outstanding issues in this action, pursuant to Rule 22-2(10) of the Supreme Court Family Rules.
- [18] Despite the declaration by McEwan J., I afforded the two law firms the opportunity to attempt to persuade me to vary his unentered order so that they could retain the funds in their respective trust accounts. I did so without any clear entitlement on their part to challenge the declaration, or if they wished to do so, to appeal it.
- [19] Given my decision, I find it unnecessary to resolve the standing of either of the two law firms.

Discussion

- [20] Sharon's position is straightforward. Monies were paid into the trust accounts of the two law firms. Some of it has been disbursed, but she wants to recover what is left, on the basis that the payments to the two law firms were in breach of the various s. 91 orders.
- [21] I have decided that she is correct.
- [22] In all, some \$250,000 was paid to the two law firms, however McEwan J. ordered that \$109,923.22 of that amount should be paid to Sharon's lawyer on July 5, 2019.
- [23] Although McEwan J. permitted the two law firms to retain amounts in their respective trust accounts sufficient to satisfy their accounts for services rendered, he did so before determining the source of those funds. Once he determined the source of the funds, he directed that the funds in the two law firms' trust accounts should be paid to counsel for Sharon.
- [24] It is abundantly clear from his reasons for judgment that McEwan J. formed a very unfavourable impression of John, his mother and his sister, finding at para. 15 that "[t]he defences, such as they are, are all steeped in lies that the Defendants stuck to with unreasonable persistence throughout this proceeding."
- [25] At para. 428, McEwan J. found:
- I accept Sharon's submission that John is clearly lying regarding every significant issue in this case, in a concerted effort to defraud Sharon of her claims to property division, and child support and spousal support. She enumerates various pieces of evidence to support this claim.
- [26] Later, at paras. 699 - 700, McEwan J. revisited the credibility of John, and added adverse comments concerning the credibility of his mother and sister:

699 In the circumstances of this case, John made concerted efforts, also involving his mother and sister, to mislead the court. He lied continuously. After contempt proceedings he was jailed. During the trial, he was specifically ordered several times to stop lying and to tell the truth. This made no difference to him. Unless an admission was specifically extracted from him by counsel he persisted in attempting to mislead the court. Sharon argues, and I agree, that this has left the state of the evidence in poor shape with much left to be inferred.

700 Sharon contends, in my view correctly, that John and his mother, and Grace, to a lesser extent, must bear the responsibility for this. The Jiangs were no help in coming to a fair determination. They obstructed it at every turn.

[27] McEwan J. continued at para. 735:

735 However, from the evidence of the Jiang Family's Draws, it is clear that Ms. Jiang and Grace Jiang were in receipt of money from the companies since 2016 in amounts that were far more than they should have received based on their contributions to the business. Sharon says this was to divert income from the companies and John.

[28] The funds paid to the two law firms were said by John, his mother and his sister, to have come from three sources; an alleged loan to John from his first wife, alleged loans to John from his mother, and alleged loans from Grace to John.

[29] McEwan J. rejected the evidence as to these three sources.

(a) Loans to John from his First Wife, Xiao Ying Wu ("Jessie")

[30] At para. 126, McEwan J. found:

126 From the evidence adduced at trial, it appears as though this is not the only instance in which John has issued salary to persons who provided no services to WIT. For instance, WIT paid a salary to John's first wife, Jessie Wu, who apparently never worked on WIT premises, and who provided contradictory evidence of the nature and duration of her purported positions

[31] Insofar as the loan alleged from John's first wife, Xiao Ying Wu ("Jessie"), McEwan J. found her evidence not to be credible, and that she was not entitled to any of the income attributed to her by John or any of his companies.

[32] Although he did not refer to the evidence in an affidavit sworn by Jessie dated June 14, 2018; that evidence was before McEwan J. I have referred to the excerpts of that affidavit in Sharon's closing statement, and am satisfied that Jessie's evidence of making a loan of \$50,000 to John is untrue.

(b) Loans to John from his Mother Xiao Ling Jiang ("Ms. Jiang")

[33] McEwan J. went through and rejected as untrue what Ms. Jiang asserted to be the various sources from which Ms. Jiang said she derived the wherewithal to provide loans to her son, John.

[34] At para. 67 of his reasons for judgment, McEwan J. found:

I conclude that there were no loans from Ms. Jiang to John. I accept the Claimant's position that the entire allegation is simply a ruse on the part of mother and son to defeat the claims of Mr. Wang and Sharon by misleading the Court.

(c) Loans to John from his Sister, Jun Shan Jiang ("Grace")

[35] Grace was alleged to be the source of a loan of \$140,000 to John, of which \$130,000 was allegedly paid to PLLR.

[36] At para. 443 of his reasons, McEwan J. found:

At trial, Grace claimed she did not know WIT was not reporting cash income to CRA; claims, she did not know of double invoicing scheme; and claims she did not see drivers coming in and leaving cash on desk. Given the above high level involvement and her education, I accept Sharon's submission that it is highly unlikely that Grace, with a diploma in accounting, and working in the accounting department, could have somehow missed the vast, at least \$2,700,000, unreported cash scheme.

[37] As I have already set out above, McEwan J. found that the monies paid to Grace were far more than that to which she was entitled.

Solicitor's Lien

[38] Section 79 of the Legal Profession Act, S.B.C. 1998, c. 9 provides:

79(1) A lawyer who is retained to prosecute or defend a proceeding in a court or before a tribunal has a charge against any property that is recovered or preserved as a result of the proceeding for the proper fees, charges and disbursements of or in relation to the proceeding, including counsel fees.

[Emphasis added]

[39] In order to support a claim for a solicitor's lien over funds, the claiming solicitor must prove that he or she recovered or preserved the property against which the lien is claimed:
Hosseini v. Oreck Chernoff, 1999 BCCA 386.

[40] In this case, no property was recovered by either of the two law firms, nor were they able to preserve the property from which the monies they hold in trust were derived.

[41] I have no doubt that the two law firms provided valuable services to their clients, but their services cannot be remunerated from funds that did not belong to their clients.

[42] I agree with the view expressed in similar circumstances by Madam Justice Loo in *M.R.P. v. S.R.P.*, 2014 BCSC 51 at para. 24, where, in rejecting a claim for a solicitor's lien she wrote:

24 I do not find that the husband's counsel recovered or preserved property for him as a result of the proceeding. It would also be totally unfair for the husband to prefer his lawyer's fees ahead of his obligation towards the wife and the children. He continues to not properly provide for them, and if the husband were to satisfy his lawyer's fees ahead of him, they would be left with little, if anything.

[43] For the same reason I conclude that neither of the two law firms are entitled to solicitor's liens against the funds they hold in trust, and I decline to vary the direction of McEwan J. that those funds be paid to MacLean Law in trust for Sharon; which amounts may be disbursed to Sharon and credited towards the Company Compensation Payment.

"The Honourable Chief Justice Hinkson"

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