

CANADA / JUDGMENT

Wang v. Wang

2024 BCSC 622

COURT

Supreme Court of British Columbia

DECIDED

22 March 2024

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2024 BCSC 622 Wang v. Wang IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wang v. Wang, 2024 BCSC 622 Date: 20240322 Docket: S115265 Registry: Vancouver Between: Ying-Hsiang Wang and Yu Shu Wang Plaintiffs And Lon-Wei Wang aka Lon Wei Wang aka Danny Wang, Yi-Lin Chiang aka Yi Lin Chiang aka Ellen Chiang and Yung Tien Chiang Defendants And Ying-Hsiang Wang, Yu Shu Wang, Lon Chin Wang aka Robert Wang and Lon Pao Wang aka Paul Wang Third Parties Before: Associate Judge Bilawich Oral Reasons for Judgment In Chambers Counsel for the Plaintiffs and Third Parties Ying-Hsiang Wang and Yu Shu Wang: G.F.T. Gregory K. Chopra, A/S Counsel for the Defendants Lon-Wei Wang aka Danny Wang and Yi-Lin Chiang aka Ellen Chiang: S.K.J. Chen No other appearances Place and Date of Trial/Hearing: Vancouver, B.C. March 22, 2024 Place and Date of Judgment: Vancouver, B.C. March 22, 2024

Introduction

- [1] THE COURT: Before me is an application by the plaintiffs seeking production of various classes of documents and responses to discovery requests.
- [2] There is an indication in the application response that the application respondent, Danny Wang ("Danny") and his spouse, Ellen Chiang ("Ellen"), are prepared to consent to:
- a) Firstly, within 10 days after the date of this order, the defendants Danny and Ellen will apply their best efforts to search for documents and, if such are found, serve on counsel for the plaintiffs a further amended list of documents that includes:
 - i. A(a) - All documents that support Danny's claim of loans [and I understand that to be loans he made to family members or family businesses]; and
 - b) Secondly, that within 10 days after the date of this order, Danny will serve on counsel for the plaintiffs written responses to the following requests:

- i. B(b) - Danny advise about every occasion on which he had a discussion with either of his brothers about the fact that are in issue in the action [Q#214]; ii. B(d) - Danny attend for discovery at a time and place to be reasonably agreed between his counsel and plaintiffs' counsel, either in Vancouver upon being tendered proper conduct money or by video-conference, for a continuation of his discovery.
- [3] I have made minor edits to these reasons to improve readability. The reasoning and outcome have not changed.

Background

- [4] The factual background is that there is a family business, as it is described by some parties, Long Shong Times Investment Co., Ltd. ("LSI"). Essentially, it was formed in 2005 and became essentially an umbrella company for a number of family businesses. At that point in time, the plaintiffs, who are the parents of three children who include Danny and two other brothers, gave each of the brothers 30 percent of the shares and kept 10 percent of the shares for themselves, in LSI.
- [5] There is evidence or allegations, as well, that the parents gave Danny a power of attorney and were allowing him and Ellen to live in a house (the "Hudson Street Property") that was registered in their names in Vancouver.
- [6] At some point in around 2011, there was a breakdown in the relationship between Danny and his father and which resulted in the father taking steps to have an accountant, who had power of attorney, to reverse registration of Danny's shares in LSI. Danny's reaction to that was to use the power of attorney he had for his parents to transfer title to the Hudson Street Property, initially to his wife Ellen and then Ellen, in turn, transferred title to her father. "Sale proceeds" were generated from that. Danny has acknowledged that he took steps to remove those funds from the country. He is holding them somewhere and is refusing to disclose where they are and what he has done with them. Analysis and Decision
- [7] I was taken to a paragraph from an affidavit of Danny where he has indicated at paragraph 40, I am assuming of an affidavit:
 - 40. I have retained the sale proceeds because my parents have denied me my stake in the family business, despite my efforts, and stolen my shares which are worth much more than the Hudson [Street] Property. I do not believe I owe them anything; as the sale proceeds are a fraction of what they owe me.
- [8] There was an examination for discovery held, I believe on June 3 or June 8, 2023, with counsel for the plaintiffs examining Danny. There were numerous difficulties during the examination, with Danny's counsel on the one hand suggesting that some of the questions were not appropriate. Among the objections raised were that they were seeking to elicit legal opinions or legal analysis in formulating the answer. Plaintiffs' counsel complains that Danny's counsel inappropriately interfered with the questioning and inhibited his ability to

conduct a proper examination for discovery.

- [9] Based on the examination for discovery excerpts that I have been taken to, it is fair to say there was a lot of difficulty, and some of the fault for that can be laid at the feet of both sides to some extent; but it is quite clear that there was not an effective discovery that was being carried out.
- [10] For the orders that Danny and Ellen have been indicated are by consent, I am content to make those orders and those can go. The ones that are in dispute are under the notice of application, Item A - Document Requests:
- b. All documents touching upon or relevant to dealings with the money Danny received from the sale of the Hudson [Street Property], including the present location of these funds;
 - c. All documents that indicate what Danny did with the proceeds of the sale of the Hudson [Street] Property;
 - d. All communications not already listed that demonstrate the family breakdown [QQ 207-209] and
 - e. Documents evidencing the sale of the Long Shong Investment company.
- [11] Under Item B - Discovery Requests, what is being sought are written responses to:
- a. Danny advise counsel of every fact of which he is aware or of which he can properly inform himself that would speak to whether his interest in the family business was a partnership [at Q 206], all of his conversation about the issues in this lawsuit that are not privileged; and
 - c. Danny produce all communications (or identify them in his document disclosure) that demonstrate the family breakdown [QQ 207-209].
- [12] I will start with discovery request B(a), the request for every fact Danny is aware of that would speak to whether his interest in the family business was a partnership, I have a fundamental issue with that form of question, which is, firstly, that it is exceedingly broad and I do not think it is possible to answer in the form in which it was posed, particularly when we are talking about a business that appears to have been going on from around 1991 or 1993 through to 2011. Secondly, it requires that the witness to exercise legal judgment or give a legal opinion about whether the facts which he is being asked to elicit are supportive of a legal conclusion that this was a partnership. I do not think it is appropriate for a question that requires the elicitation of a legal opinion is a proper question to be answered by a witness who has no particular expertise in legal matters. Certainly, it is my understanding that he is not a lawyer and has not practised law. So, just on the basis that the request is exceptionally unacceptably broad and seeks a legal opinion, I decline to order request B(a).

- [13] On the second, request B(c), producing all communications or identify them in his document disclosure about the family breakdown. In response, counsel for Danny indicated there are three key emails that were the focus of the breakdown of the relationship between Danny and his father. Technically, this is a document request. Counsel for Danny has indicated that these three emails are the full answer to that particular request, and so for purposes of this application, I do not think there is a basis for me to order more. It is certainly something that can be explored in more detail on examination for discovery. I am just saying that as far as it is a document request, the assertion by Danny's counsel that these are all the documents he is relying on is binding on Danny and --
- [14] CNSL G. GREGORY: Excuse me, Your Honour, the intention of that is for him to tell us about these conversations. I don't know, if you steal your brother's partnership interest, you expect there to be a conversation or two.
- [15] THE COURT: I am giving reasons. I am not inviting further submissions.
- [16] CNSL G. GREGORY: Very well.
- [17] THE COURT: The request is framed as asking that Danny produce all communications, it does not ask that he describe all of his discussions with his brothers about those communications. I am going by what you put in your notice of application as the relief that is sought. My reasons address that.
- [18] CNSL G. GREGORY: I apologize.
- [19] THE COURT: I am not foreclosing you from asking questions about those communications on a continuation of your discovery of Danny.
- [20] So that deals with the two items that I understand to be in issue on the written responses under B.
- [21] Under Item A, Danny is resisting providing any documents relating to what he did with the proceeds of sale of the Hudson Street Property on the basis -- he is relying on two different cases, one is *Waxman v. Waxman*, [2002] O.J. No. 3533, 2002 CanLII 20932 (ONSC) and the second is *Tracy v. Instalogs Financial Solutions Centres (B.C.) Ltd.*, 2010 BCCA 357, a decision of the B.C. Court of Appeal. He relies on these for the proposition that the court should treat the issue of a tracing of funds as being a separate and distinct process that would follow an initial process seeking a determination of whether there was a partnership and whether an accounting is appropriate at all.
- [22] The cases I was taken to were relying on the proposition that, largely for reasons of judicial economy, it was preferable that you deal with the primary issue of the rights as between the parties before you get to a tracing exercise, in part to avoid a potentially extensive document production and discovery exercise that would be disproportionate, if it turns out that the initial determination rendered it unnecessary to pursue the tracing.

- [23] The case before me is distinguishable on its facts, in that here it is not entirely clear whether Danny is alleging that the Hudson Street Property is part of the partnership assets that he is saying that he is entitled to a share of or whether, from the passage I read earlier in these reasons, it sounds like he was basically pursuing a self-help collection remedy against an asset of his parents and views this as a quid pro quo or security he was taking from them as a precaution, or perhaps a form of revenge for what his parents had done to him.
- [24] In this case, it is not clear whether the Hudson Street Property is going to be considered a partnership asset or an LSI asset or simply an asset of the parents. There is not such a broad and diverse set of financial records sought in this instance that it is necessary to be concerned about the volume of the discovery involved being disproportionate or excessive. I think the taking of these "sale proceeds" and what he has done with them is something that appears to be relevant to a number of different allegations that are raised in the action. I am inclined to agree with the applicants that those are documents which ought to be produced. I would characterize them as a "first-tier" discovery item, or Rule 7-1(1) level of discovery, which ought to have been produced in the original list of documents.
- [25] So, I am inclined to order Item A(b), so documents that relate to his dealings with the money received from sale of the Hudson Street Property, be produced. My understanding from counsel's description of the evidence is that Danny took the proceeds and shipped them offshore, and presumably they are sitting in an account somewhere. It sounds like a simple exercise of providing copies of account statements showing where those funds have been resident at various times between the time he took them and present day. I order that those be produced.
- [26] Under Item A(c), I think it is premature to be ordering what he did with the proceeds of the sale of the Hudson Street Property. I think you will get a good picture of that initially from what I have ordered under Item A(b), and if it turns out from an analysis of bank statements that he sent them out or spent them all or whatever, you will at least have some indication from the production under Item A(b) that will allow you to pursue follow-up questions and pursue further document discovery, if it is appropriate. I do not really have a sufficient factual basis at this point to order Item A(c) and I am going to adjourn it.
- [27] Last is Item A(e), documents evidencing sale of Long Shong Investment company. I do not recall being taken to any particular facts or argument regarding how that is relevant to issues in dispute. I do not think any time was spent on it. I am going to adjourn that one.
- [28] Those are the orders I am prepared to make today. Costs [SUBMISSIONS ON COSTS]

[29] THE COURT: I am inclined to say that the plaintiffs get costs for today's hearing. Not knowing the equities, in terms of the previous day, I will say the parties bear their own costs of the previous day which was carried over for me to decide costs on. So, the plaintiffs get costs for today, they do not get them for the previous day; or everybody bears their own for the previous day. I am ordering normal party-and-party costs which are payable at the conclusion of the proceeding, not forthwith. "Associate Judge Bilawich"

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Prepared on 28 October 2026 · Esheria