

CANADA / JUDGMENT

Wang v. Wang

2025 BCSC 2414

COURT

Supreme Court of British Columbia

DECIDED

5 December 2025

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2025 BCSC 2414 Wang v. Wang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Wang,

2025 BCSC 2414

Date: 20251205

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 Yun 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 Robertson

Reasons for Judgment

Counsel for the Plaintiff and Third Parties Ying-Hsiang Wang and Yu Shu Wang:

G. Gregory

Counsel for Defendants Lon-Wei Wang aka Lon Wei Wang aka Danny Wang and Yi-Lin Chiang aka Yi Lin Chang aka Ellen Chiang, the Primary Defendants:

J. Chen

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

October 31, 2025

Place and Date of Judgment:

Vancouver, B.C.

December 5, 2025

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- [1] The plaintiffs and third parties seek an order striking out the response to notice of civil claim filed by the defendants Lon-Wei Wang, aka Lon Wei Wang, aka Danny Wang ("Danny Wang") and Yi-Lin Chiang, aka Yi Lin Chiang, aka Ellen Chiang ("Ellen Chiang", and collectively, the "Primary Defendants") and that the plaintiffs be entitled to proceed as if no response has been filed on two grounds:

- a) Pursuant to R. 22-7, due to the Primary Defendants' failure to comply with production as required by an Order pronounced March 22, 2024 (the "Disclosure Order"), and
 - b) Pursuant to R. 9-6, on the grounds that any defence as to the allegations brought by the plaintiffs as to Danny Wang's breach of trust is devoid of merit, such that the court can declare a breach of trust as alleged in the notice of civil claim, and assess damages accordingly.
- [2] The plaintiffs are husband and wife, and the parents of Danny Wang and the third parties Robert Wang and Lon Pao Wang, aka Paul Wang. Danny Wang is in a marriage like relationship with the other Primary Defendant, Ellen Chiang. The defendant, Yung Tien Chiang is Ellen Chiang's father.
- [3] The subject dispute is primarily centered around a family business dispute between the plaintiffs and Danny Wang, with the notice of civil claim being filed to address what is described as a "self help" remedy taken by Danny Wang to address what he alleges were wrongs done to him in the context of that family business,
- [4] Specifically, the notice of civil claim alleges that Danny Wang fraudulently used a power of attorney over his parents to sell their ownership of real property located on Hudson Street, in Vancouver (the "Hudson Street Property") first to Ellen Chiang, then the next day to her father, allegedly at less than fair market value, and that Danny Wang then converted the net sales proceeds of approximately \$3 million (the "Net Sales Proceeds") for his own use.
- [5] In their submissions, the plaintiffs describe this transaction as "a simple case of a son committing elder abuse by fraudulently stealing a property from his parents."
- [6] Danny Wang does not dispute this transaction, or that he did so without the specific consent of the plaintiffs, but alleges that the property, although registered in the names of the plaintiffs, was held in trust for the family business, and that he was justified in doing so to "safeguard" the "partnership" assets (although it is not clear on this application if the business structure was in fact a partnership) and to secure his claim for damages, which he seeks by way of counterclaim, to compensate him for his interest therein, relying on principles of set off, including equitable set off.

Factual Background

- [7] Much of the factual background, including how the family business at the core of this dispute is structured, is unclear with both sides providing vague or non-contextual descriptions. For the purpose of these Reasons I need not get into the precise corporate structure, and will refer to the whole of the business as "Long Shong Taiwan", without any particular definition being ascribed to that structure.

- [8] Long Shong Taiwan operates mostly in Taiwan, with businesses which include operating movie theatres, film production, and distribution of movies. There are companies within the overall structure, including companies registered in British Columbia. Danny Wang also alleges that, from time to time, some of Long Shong Taiwan's assets were held in the personal names of the plaintiffs, Danny Wang and Robert Wang, allegedly in trust for the business.
- [9] At one point Long Shong Taiwan, or some portions of it, were owned jointly by the plaintiffs (10%), with and each of the three children (30% each), including in respect of shares held in the primary parent corporation (the "Holding Co.").
- [10] In or around 1990 the plaintiffs and Danny Wang immigrated to Canada. While the plaintiffs did return to Taiwan, Danny Wang remained primarily resident in British Columbia.
- [11] In 1999 the plaintiffs purchased the Hudson Street Property for their own personal use while in Vancouver. They were, until its sale, the registered owners of the Hudson Street Property. However, the Primary Defendants also occupied that property.
- [12] In or about February 2000, the plaintiffs each appointed Danny Wang as their attorney under a power of attorney. Danny Wang alleges that this was to enable him to deal with the properties in their names, particularly the Hudson Street Property, and relies upon the strict wording of the power of attorney that granted liberal authority to him. The plaintiffs allege that it was understood that they would be consulted and agree on any decisions made notwithstanding the power of attorney, with it being granted to address logistical impediments in dealing with matters when they were not in British Columbia.
- [13] Danny Wang alleges that he worked for Long Shong Taiwan for approximately 17 years until he withdrew from the daily operations in mid 2011. He alleges that his withdrawal arose after he requested an accounting of what he understood to be his 30% interest in the business, with the business believed to be valued at approximately \$30 million at the time, which the plaintiffs refused to provide. He also alleges that he asked to be reimbursed for various outstanding expenses he had incurred for Long Shong Taiwan, which request was also denied.
- [14] As a result of that inquiry and ensuing conflict between them, there was a total breakdown in the relationship between Danny Wang and his family.
- [15] Following that breakdown, Danny Wang's 30% share interest in the Holding Co. was transferred out of his name. Specifically, a family accountant held a power of attorney over Danny Wang's shares and, at the direction of the plaintiffs, the accountant transferred Danny Wang's shares to the plaintiffs or a nominee, a transaction which was admitted by the plaintiffs in their response to counterclaim. However, the plaintiffs allege that Danny Wang's 30% interest was only held by him as nominee, a practice they say is common in Taiwan.

- [16] In further response to the relationship breakdown, the plaintiffs also stopped supporting Danny Wang financially.
- [17] As part of that withdrawal of support, on July 6, 2011, the plaintiffs demanded that the Primary Defendants vacate the Hudson Street Property by July 13, 2011. They did not do so. Instead, what appears to have transpired is that on July 8, 2011, Danny Wang transferred the Hudson Street Property as described above, namely to Ellen Chiang who immediately transferred it to her father.
- [18] The Net Sales Proceeds were eventually realized from this sale (apparently the sale closed and title was transferred prior to the sales proceeds being paid over), with those funds being taken by Danny Wang and deposited into accounts, presumably in his own name, however the particulars of such deposits have not been disclosed. This is not disputed by Danny Wang.

Litigation Chronology and Disclosure Issues

- [19] Despite this dispute arising and litigation being commenced over 14 years ago the matter has not moved forward substantively in any significant way since then with the litigation history being consumed with case planning conferences ("CPC") and procedural applications including in respect of document disclosure, and periodic changes of counsel.
- [20] While much of this history is not directly relevant to the issue of document disclosure, it does provide necessary context for the purpose of the consequences of non-compliance as being alleged.
- [21] I also pause to note that it is unclear from the pleadings as contained in the court file how the third parties are in fact third parties, as there is no third-party notice, or a response to third-party notice for that matter, listed in the court file. The parties did not provide a copy of any such pleadings in the application materials. However, I note from a review of the electronic court file that when the CPC proposal was filed in June 2013, the style of cause appears to reflect the third parties as parties to this action for the first time. I would encourage the parties to attend at the registry with any filed third party notice they have to ensure that it is properly filed and recorded in this action, or otherwise address that issue as appropriate. Nonetheless, as nothing turns on it for the purpose of this application, I am assuming the style of cause is correct and the third-party notice filed.
- [22] The plaintiffs filed their notice of civil claim on August 8, 2011, with the response being filed September 15, 2011 by the defendant, Yung Tien Chiang ("Mr. Chiang").
- [23] The plaintiffs successfully obtained default judgment against the Primary Defendants on February 6, 2012 for damages and costs to be assessed. Thereafter, despite that the court was arguably functus insofar as the claims against the Primary Defendants were concerned, the notice of civil claim was amended on April 10, 2012 to raise further allegations against all defendants, including the Primary Defendants.

- [24] Not much turns on that as ultimately, by order pronounced July 19, 2012, the default judgment against the Primary Defendants was set aside, with reasons indexed at 2012 BCSC 1077.
- [25] The only issue on the application to set aside the default judgment was whether the Primary Defendants had been properly and personally served, with the court describing the positions as follows:
- [12] The response affidavit of the process server who served Danny Wang states that service of Danny Wang occurred at a restaurant in Richmond. This is supported by photographs of Danny Wang receiving the documents and looking at them.
- [13] The process server charged with serving Ellen Chiang attached his investigative report to his affidavit, which discloses that he approached her car in traffic when she was stopped at a red light, said he had papers for her, and put the papers under the windshield wiper, just as she accelerated and drove off.
- [14] In a reply affidavit, served 2 days before this application was heard, Danny Wang says he was so drunk on the afternoon and evening of November 21, 2012 that he recalls nothing of that period.
- [15] Ellen Chiang says she recalls nothing of the incident deposed to by the process server and does not recall seeing any papers on her windshield when she got home.
- [26] The court found that service on Ellen Chiang was not properly carried out, noting at para. 29 of the reasons for judgment that if the application to set aside the default judgment was only in respect of Danny Wang it would have "had little chance of success". Nonetheless, given that the action would be proceeding against the other defendants in terms of liability with that issue remaining a live one to be determined, with Danny Wang still participating for damage assessment purposes even if the default judge remained in place against him, it was in the interests of justice that it be set aside in its entirety given the issues with Ellen Chiang's service.
- [27] On August 10, 2012, the Primary Defendants then filed their response to civil claim along with their counterclaim, and shortly thereafter a jurisdictional response, which may have been abandoned as no steps were taken further to it.
- [28] On May 1, 2013, Mr. Chiang filed an application to have the claim against him dismissed under R. 9-6(4), and the certificate of pending litigation filed against the Hudson Street Property discharged. In response to that, the plaintiffs sought a CPC which was held on July 24, 2013, at which a schedule was ordered for the filing of a further amended notice of civil claim and response to counterclaim, as well as discovery, with it being contemplated that the defendants would advise of any intention to bring a summary judgment application. No further steps were taken on the application filed by Mr. Chiang.

- [29] The response to counterclaim was then filed on August 13, 2013, with an application to further amend the notice of civil claim being filed September 12, 2013. That application was adjourned to be set for a one-day chambers application with an order then being made on December 10, 2013, for the parties to attend a second CPC. That second CPC was held January 9, 2014, and an order made for the scheduling of applications for document disclosure that each of the parties were seeking against the other.
- [30] An order was also made at the January 9, 2014, CPC allowing the plaintiffs to further amend their notice of civil claim, which was then filed on January 14, 2014, with an amended response being filed January 31, 2014, by the Primary Defendants.
- [31] The claims advanced in the pleadings, as amended and closed as of January, 2014, are in summary, are for breach of trust, breach of fiduciary duty, fraud, unjust enrichment, and wrongful conversion.
- [32] In their response, the Primary Defendants allege that Danny Wang was entitled to sell the Hudson Street Property to set-off his claims in relation to Long Shong Taiwan and his 30% interest in the business against the proceeds. The Primary Defendants each allege that the Hudson Street Property was beneficially owned by Long Shong Taiwan, and that Ellen Chiang had no knowledge of the power of attorney or particulars and that she and her father are bona fide third-party purchases for value.
- [33] In his counterclaim, Danny Wang seeks the wind up or dissolution of Long Shong Taiwan, claimed by him to be a partnership, with an accounting for all interests and profits to which he is entitled as a partner, or damages, and a declaration that the Hudson Street Property is owned by Long Shong Taiwan for that purpose.
- [34] Once pleadings were closed, the parties proceeded to file their applications for document disclosure with the Primary Defendants filing theirs on February 6, 2014, and the plaintiffs and third parties theirs on February 11, 2014. The plaintiffs' and third parties' application was then amended on April 14, 2014. The plaintiffs and third parties also sought a severance of the trial of the counterclaim issues.
- [35] By order pronounced June 3, 2014, the application for severance of claims was dismissed. In brief and succinct reasons, Justice Wong found as follows:
- [1] THE COURT: I am not satisfied that severance is necessary in this case. The elder Wangs, the plaintiffs, who are the parents, have alleged fraud and misuse of powers of attorney, and a major part of the defence of the son defendant is that it was a set-off of his claim and also a counterclaim with respect to a 30 percent interest in what I would put in quotation marks as "the family business".
- [2] I think those matters, as to a finding of liability on those two, that is on the part of the plaintiff and the defendants, should be held and tried together.

- [3] With respect to the separate issue, which is still not argued before me, as to which category of documents, if need be, I think is a separate matter and will continue tomorrow.
- [4] Accordingly, for these reasons, I would not accede to the request for severance.
- [36] As referenced, the next day, the document application proceeded and an extensive order was made on June 4, 2014 (the "2014 Order") for production of documents against all parties, with updated lists of documents. One of the specific classes of documents that the plaintiffs were seeking from Danny Wang, as relevant to this application, was "all banking records showing the whereabouts of the money allegedly tendered by Mr. Chiang to purchase Hudson". For reasons that are unclear, that was adjourned generally.
- [37] A thirty-five day trial was then scheduled to commence September 18, 2017, with the date being struck for failure to file a trial brief. No steps were taken thereafter, and a second trial date that was rescheduled to commence September 3, 2019 was again struck as no trial briefs were filed.
- [38] A third CPC was scheduled for November 19, 2019, and adjourned with the parties directed to not schedule a further one until it was determined whether the 2014 Order had been complied with.
- [39] The action appears to have stagnated thereafter, with the plaintiffs and third parties filing a notice of intention to proceed on May 5, 2022 and thereafter filing a further application for document production on August 8, 2022. In response, the Primary Defendants took issue with the plaintiffs' production of documents under the 2014 Order.
- [40] On August 22, 2022 an order was made for the Primary Defendants to provide a list of any particular documents they allege the plaintiffs failed to produce, with the remaining relief being adjourned.
- [41] Examinations for discovery took place throughout 2023.
- [42] On January 31, 2024, the plaintiffs revived their document disclosure application by filing a new application seeking both outstanding documents and requests from discovery, that being the application that led to the Disclosure Order which is the subject of today's application.
- [43] Under the terms of the Disclosure Order both of the Primary Defendants were ordered to "use best efforts" to produce within 10 days an amended list of documents to include:
- all documents touching upon or relevant to dealing with the money [Danny Wang] received from the sale of the Hudson property, including the present location of these funds.

[44] Danny Wang and Ellian Chiang appealed the Disclosure Order, arguing that these particular documents are only relevant to the tracing remedy, and were not otherwise relevant and should not have been ordered to be produced until after a determination was made as to whether the Hudson Street Property was held in trust for Long Shong Taiwan, having regard to proportionality and the difficulty with obtaining such documents. The appeal was dismissed on June 28, 2024, with reasons indexed at 2024 BCSC 1162.

[45] After the appeal of the Disclosure Order was dismissed, the plaintiffs issued a demand for the documents, in response to which counsel stated as follows by letter dated July 10, 2024:

Danny Wang says the sale proceeds have been spent over the years, as the transaction took place in 2011. He is in the process of looking for relevant bank documents that touching [sic] upon the money in question, which may involve an extensive search. As some bank documents may be older than 6-7 years, he will try to request the bank(s) to produce them, if they are available.

As I have made it clear in my submissions to Madam Justice Shergill, such documents may involve a time-consuming and extensive search, making it impossible to comply with the 10- day deadline set by Associate Judge Bilawich, who made the assumption that it would be a simple and straight-forward task in his reasons for judgment.

[46] The plaintiffs find this statement or position concerning given contrary evidence deposed to in affidavits sworn by Danny Wang. Specifically, in his affidavit #3 sworn April 18, 2013 Danny Wang deposes as follows:

13 I considered my parents' unilateral decision to sell Hudson St where I lived with Ellen and our children to be an escalation of the dispute between my parents and myself. Their attempt to eject us and deny us the use of the partnership property was a further denial of my interest in Long Shong Taiwan. To prevent my parents from shutting me out of Long Shong Taiwan entirely, I determined to sell Hudson St, and secure the proceeds of the sale until my parents and I could resolve our dispute about my interest in Long Shong Taiwan. Even though Hudson St was worth far less than the value of my interest in Long Shong Taiwan, I felt that the need for my parents to address my custody of the sale proceeds would require that they deal as well with my interest in Long Shong Taiwan, including whatever might have become of my shares in Long Shong Times Investment Co. Ltd.

14 I wanted to sell Hudson St as quickly as possible, as I wanted to get the proceeds of the sale of Hudson St into my control. I hoped that I could effect a sale to Mr. Chiang faster than would be likely if I attempted to list Hudson St for sale in the normal course

18 The sale completed shortly thereafter, and the full price was paid within weeks after that. I then directed Ellen to transfer the proceeds of sale to me, and she did so.

19 I presently have control of the funds which were paid by Mr. Chiang to purchase Hudson St.

[underlining added]

[47] Similarly, Danny Wang further deposed as follows in this affidavit #5 sworn May 23, 2014:

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 Property. I do not believe I owe them anything; as the sale proceeds are a fraction of what they owe me.
41. The funds are already offshore. I have no intention of dissipating the funds, but I also do not wish to put the monies where my parents might obtain access without a trial of my counterclaim. I will not disclose information about where the money is, and I will not put it in a place where my parents might have access to it, including court, until the court has decided my counterclaim. My parents have wrongly deprived me of my share of the family company, and they will have the resources to delay the counterclaim, including withholding production of documents, if they are not forced to deal with my counterclaim, worth about \$9 million CDN, as part of addressing the \$3 million in sale proceeds.

[underlining added]

- [48] The plaintiffs allege that despite these sworn statements that Danny Wang was holding the Net Sales Proceeds without any intention to dispose of them and never correcting that sworn assertion in the various materials filed while disclosure was being sought, along with the dismissal of the appeal and further time granted by the plaintiffs for compliance with the order, Danny Wang has simply refused to provide the necessary documents to show the deposit and current location of any of the Hudson Street Property Net Sales Proceeds.
- [49] The Primary Defendants' position on this application was, to some extent, a continuation of the arguments made when both the Disclosure Order and the appeal were argued, namely that the documents evidencing the location and treatment of the Net Sales Proceeds are too difficult to obtain, and not necessary until a tracing order is made.
- [50] Notably however, there is no evidence in response to this application as to the efforts taken to obtain the records since the Disclosure Order was pronounced on March 22, 2024, some 19 months prior to this application being brought. The only sworn evidence from Danny Wang, is that as noted above, that he does not want to disclose where the Net Sales Proceeds are, or what has happened to them.

Legal Framework

Non-Compliance with the Rules Under R. 22-7(5)

- [51] The starting point of any application brought under R. 22-7(5) is that orders are not suggestions. Compliance is mandatory whether a party agrees or not. As such, by R. 22-7(5) the court has wide discretion to remedy non-compliance, including by setting aside any step taken or document filed in the proceeding, including striking a response to civil claim and pronouncing judgment accordingly.

- [52] Pursuant to R. 22-7(5) and (6), where a defendant refuses or neglects to make discovery of documents, or comply with a direction of the court, the court may order the proceeding continue as if no response to civil claim has been filed.
- [53] In, *Breberin v. Santos*, 2013 BCSC 560, Justice Willcock stated at para 57:
- [57] Fundamental failures, such as failure to make appropriate disclosure of documents or records, must be treated as a serious default.
- [54] However, it is generally recognized that pleadings ought to be struck only in extreme cases, given the effect of such orders. Parties are generally to be afforded a "second chance" to obey, with the court to consider the explanation given, and what alternative remedies may be available with a view towards having the "punishment fit the crime" in terms of the degree of derelict and degree of sanction: *Jorgensen v. Archer Cleantech Inc.*, 2020 BCSC 977 ("*Jorgensen*"), at para. 18.
- [55] The plaintiffs argue that this is an extreme case given that Danny Wang has had over two years since his examination for discovery to respond to these requests, and approximately 19 months since the Disclosure Order was made.
- [56] The Primary Defendants rely upon *Chang v. Siew*, 2013 BCSC 1292 at para. 33 where the court confirmed that an order to strike is a draconian measure only to be granted in exceptional cases, arguing that a "lesser remedy" is appropriate having regard to the explanation.
- [57] However, they do not suggest what that lesser remedy ought to be, other than a general statement made in submissions that the documents will be produced "when they are available."

Summary Judgment Under R. 9-6

- [58] The plaintiffs seek summary judgment under R. 9-6(5) pursuant to which, if the court is satisfied there is no "genuine issue for trial" it may dismiss the claim accordingly.
- [59] "Genuine issue for trial" has also been described as "bona fide triable issue", or that the "defendant is bound to lose". Rule 9-6 is intended to prevent defences that have no chance of success from proceeding to trial.
- [60] The burden is on the applicants to establish that no such issue exists: *K.E.S. Contracting Ltd. v. Hellyer*, 2007 BCSC 1821 ("*K.E.S.*"), at para. 20.
- [61] The Primary Defendants argue that the threshold to meet that test is a high one, relying on *Northwest Organics Limited Partnership v. Maguire*, 2015 BCSC 1918, at para. 38:
- [38] The threshold that an applicant must meet under Rule 9-6 was explained by Mr. Justice Savage at para. 23 of his earlier decision in this case:

[23] As Griffin J. noted in *Sharrock v. Moneyflow Capital Corp.*, 2010 BCSC 1219 at para. 5, the summary judgment rule is not often used because the applicant must meet such a difficult threshold: the applicant must establish that there is no triable issue of fact. Evidence is generally not sworn in support of the application other than to confirm the facts pleaded by the applicant. The respondent need only then provide sufficient evidence to establish that there is a genuine issue for trial. In such circumstances, with the Court faced with oath against oath, the Court is most unlikely to grant judgment or dismiss a claim: *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 at para. 12, 61 B.C.L.R. (4th) 241, Thackray J.A., referred to by Low J.A. in *International Taoist* at para 14.

[Emphasis added]

[62] Further, in determining the issue the court is not to weigh evidence, although can consider whether there is any evidence to support a given proposition: *Atha v. Thompson*, 2008 BCSC 1075, at para. 35. However, some consideration of the quality of the evidence can be made, as a summary judgment motion cannot be defeated by mere vague references including as to what evidence may be adduced in the future if the matter is allowed to proceed. Instead, it is to be based on the pleadings and evidence, albeit minimal as noted, as put before the court: *4 Corners Properties Ltd. v. Boffo Development (Smithe) Ltd.*, 2013 BCSC 1926 ("4 Corners"), at para 23.

[63] The plaintiffs suggest that the court has a duty to dismiss claims devoid of merit, relying on *Household Trust Co. v. Golden Farms Inc.*, 1992 CanLII 420 (BCCA), where Justice Southin noted as follows:

In my opinion, the Supreme Court of British Columbia has an inherent jurisdiction and a corresponding duty to exercise that jurisdiction to protect a petitioner or plaintiff who seeks relief in that Court from proceedings by a defendant who is vexatiously abusing the process of the court. That it is a jurisdiction to be exercised with great caution, I have no doubt. But not to exercise it where there is no other way to bring reason into proceedings is, in effect, to deprive the plaintiff or petitioner of justice according to law. The court if it fails to act becomes but a paper tiger.

[64] Notably, *Household Trust* concerned a matter where the party was a vexatious litigant. Nonetheless, even in such a case, it confirmed that such jurisdiction is to be exercised with great caution.

[65] Regardless, the importance of summary procedures generally in terms of the overall administration of justice and management of the overburdened court system has, since *Household Trust*, been repeatedly emphasized by our courts including in *4 Corners*:

[20] The summary judgment rule serves an important purpose. In the civil litigation system, it prevents claims or defences that have no chance of success from proceeding to trial. As the Supreme Court of Canada noted in *Canada (Attorney General) v. Lameman*, 2008 SCC 14 [*Lameman*], "[t]rying unmeritorious claims imposes a heavy price in terms of time and cost

on the parties to the litigation and the justice system" (para.10). It is therefore essential that claims without any chance of success be weeded out at an early stage. Conversely, it is essential to justice that claims which disclose real issues should proceed to trial.

- [66] The Primary Defendants argue that the high threshold has not been met due to the issues raised regarding the family dispute, which form the basis of the counterclaim. In addition, they argue that the evidence being relied upon is inadmissible hearsay, given that this is a final order: *Willis v. Steele*, 2008 BCSC 1001, at para. 10.
- [67] As to that latter point, as to the merits of the defence, the plaintiffs rely on the pleadings and the affidavits sworn by Danny Wang. As such, there is no issue with the evidence being hearsay.
- [68] With respect to the former point, the plaintiffs rely on *K.E.S.* where the court found that an existing counterclaim was not a bar to judgment on the primary claim:
- [21] Braidwood J.A. observed that the indebtedness of the customer was not denied, and thus went on to consider the assertion that a triable issue on a cross-claim was sufficient to deprive the bank of summary judgment. In concluding that it was not, he found at para. 16:
- I cannot accede to Mr. Tahvili's submissions on this issue as it is clear from the authorities that a chambers judge has the discretion to grant summary judgment for the amount of a claim even if there is an arguable cross-claim or counterclaim offered as a defence: *Metro-Can Construction (HS) Ltd. v. Noel Developments Ltd.* (1996), 1996 CanLII 3329 (BC CA), 26 B.C.L.R. (3d) 26, 78 B.C.A.C. 61, 29 C.L.R. (2d) 47 at paras. 28-30; *First City Development Corp. Ltd. v. Stevenson Construction Co. Ltd.* (1983), 1983 CanLII 552 (BC CA), 3 D.L.R. (4th) 505 at 508, 48 B.C.L.R. (2d) 242, 40 C.P.C. 253, 3 C.L.R. 230 (C.A.).
- [69] Thus, notwithstanding that there may be a set off asserted for claims advanced under a counterclaim, it is not a bar to summary judgment.
- [70] The parties do, however, dispute whether the claims give rise to a right of set off, with the plaintiffs arguing that any right of set off cannot, as a matter of law, be asserted over trust property given the requirement for mutuality which will likely be defeated in such a scenario
- [71] The requirement for mutuality was commented upon in *Trevali Mining Corp (Re)*, 2024 BCSC 2252:
- [67] One of the requirements for legal set-off is mutuality, in that there must be "mutual cross-obligations" arising between the parties: *Citibank Canada v. Confederation Life Insurance Co.*, [1996] O.J. No. 3409 (S.C.J.), 1996 CanLII 8269 (ON SC) at para. 37; *aff'd* [1998] O.J. No. 114 (C.A.), 1998 CanLII 955 (ON CA) at para. 6. In equitable set-off, the requirement of mutuality is "relaxed", but not eliminated: *Canada Trustco Mortgage Co. v. Sugarman*, [1998] O.J. No. 114 (C.A.), 1999 CanLII 9288 (ON CA) at para. 18.

- [68] The mutuality requirement is that the cross-claims must be owed to the other party in that same right or capacity. The case law is clear that mutual debts mean debts due "from either party to the other": *Telford v. Holt*, [1987] 2 S.C.R. 193, 1987 CanLII 18 (SCC) at 295, cited in *Wilson v. Fotsch*, 2010 BCCA 226 at para. 68.
- [69] Accordingly, the mutuality condition for legal set-off is not met if the debt is not owed to the other party, but to a third person: *Re Associated Investors of Canada Ltd.*, 102 A.R. 249, 1989 CanLII 3199 (AB KB) at para. 5(1); *Canadian Imperial Bank of Commerce v. Twin Richfield Oils Ltd.*, 129 A.R. 161, 1992 CanLII 6284 (AB KB) at para. 27(1).
- [70] In that same vein, debts owed to a person in a trust situation cannot be set-off as against personal liabilities of the trustee, because the mutuality requirement is not present since the claims do not exist "in the same right": *Colonial Furniture Co. (Ottawa) Limited v. Saul Tanner Realty Limited*, 52 O.R. (3d) 539, 2001 CanLII 24148 (ON CA) at para. 16.

[emphasis added]

- [72] In noting that there is minimal law on the issue as to set off in respect of trust property the plaintiffs referred the court to *Commercial Union Life Assurance Co. of Canada v. John Ingle Insurance Group Inc.*, 2000 CanLII 50972 (ONSC), where the principle was summarized as follows specifically in respect of a trust:

330 The question of whether a trustee can set-off a debt against the trust has been considered by K. Palmer in *The Law of Set-Off in Canada* (Aurora: Canada Law Book Inc., 1993) at 230-31. Commenting on the surprisingly small number of Canadian cases dealing with the intersection of the ideas of trust and set-off, Palmer noted: A potential set-off between a trustee and a beneficiary of the trust would, at first blush, seem to run counter to the very notion of a trust. The trustee is both empowered and charged with the right and responsibility of holding the trust property on behalf of the beneficiary and cannot convert the property to his personal use. Accordingly, any debt owed by the beneficiary to the trustee in his personal capacity could not be set-off from the trust property...[E]xceptions...would include an agreement to allow such a set-off, or if the beneficiary is first required to pay into the trust fund before receiving out his share. In some cases, the satisfaction of the purpose of the trust may then allow set-off between the trustee and a beneficiary.

331 The issue was addressed by Bull J.A. in *McMahon v. Canada Permanent Trust Co.* (1979), 108 D.L.R. (3d) 71 (B.C. C.A). Bull J.A. found that a trust company that held a trust fund for a bankrupt individual could not remove money from the fund to set-off a loan due to it by the individual. Bull J.A. noted that such debts were not mutual, since the moneys in the fund were held in a fiduciary capacity, while the loan was owed to the trust company in its personal capacity. The court emphasized the basic rule that set-off is only available (short of agreement, express or implied), when the debts or accounts are mutual, between the same parties, in the same right. A person in his or her individual capacity is not in the same right as he or she is when acting as trustee for another. Bull J.A. concluded (at p.75) that:

[I]t is trite law that, subject to certain limited exceptions, [where] an amount [is] owed by a person in his capacity as trustee holding property, credits, or funds for another...[he] cannot combine them with, or set them off against, a personal debt owed to him in his personal capacity by the beneficiary...of the trust.

[73] Further:

334 Although the foregoing cases have addressed the issue of set-off against a trust in different ways, they confirm that a trustee cannot justify withholding trust funds in breach of his or her trust obligations on the grounds that the beneficiary is indebted to him or her. Simply stated, a trustee cannot use the concept of set-off, legal or equitable, to justify self-help by breach of trust. To allow setoff to operate in this fashion would have the perverse effect of encouraging trustees to deprive beneficiaries of their trust property pending a determination of whether the trustee's claim against the beneficiary is valid. A trustee, by the very nature of his or her position, must observe and comply with the trust pending the proper resolution of any disputes that may exist between trustee and beneficiary. Set-off is a defence that may be pleaded at the legal stage of a dispute, and may result in the ultimate "netting out" of entitlements. It cannot be used to justify a course of conduct by a trustee against a beneficiary in advance of any legal action.

[emphasis added]

[74] Without in any way admitting there is a valid counterclaim at all, the plaintiffs argue that this is precisely the factual scenario before the court today in that Danny Wang is using the auspices of a right to set off as a justification for his "self help by breach of trust".

[75] That argument, of course, presumes a trust to exist. On that point, the Primary Defendants argue there is a triable issue as to whether the Hudson Street Property, or the Net Sales Proceeds, are impressed with a trust, which the plaintiffs bear the burden of establishing, as noted in *Xu v. Hu*, 2021 BCCA 2:

[12] Express trusts are established when the certainties of intention, subject, and object have been established, and the property has been vested in the trustee: *Suen v. Suen*, 2013 BCCA 313 at para. 45.

[13] The onus of establishing each of the certainties lies with the party asserting the trust's existence: *McInerney v. Laass*, 2015 BCSC 1708 at para. 36. The standard of proof is the usual civil balance of probabilities: *Pavlovich v. Danilovic*, 2020 BCCA 239 at para. 27.

[76] The Primary Defendants did not, however, make submissions as to any particular defence or triable issue on the allegation that Danny Wang acted in breach of duty generally in disposing of the Hudson Street Property and retaining the net sales proceeds to which he admits to having no direct ownership right to, or that his sole motivation for doing so was protecting his own self interest.

Analysis

Non-Compliance with the Rules Under R. 22-7(5)

- [77] The Primary Defendants emphasize that an order to strike pleadings under R. 22-7(5) as being sought should only be granted in exceptional circumstances, and that no special circumstances exist, assuming that there is noncompliance.
- [78] As to compliance, there was some suggestion during submissions that since the order requires "best efforts" to be used, there had been compliance. It is simply too difficult to obtain the documents and, as such, there is no breach, but this was not particularized any further during submissions or argued with reference to case law as to what would constitute "best efforts".
- [79] Any explanation that it is too difficult to obtain the records, or any reliance on use of best efforts, when there is a complete lack of evidence as to any such efforts being taken for a period of 19 months to make the documents available, would, however, be necessary. Here, the Primary Defendants have led no such evidence. The only evidence is the letter from their counsel alluding to the difficulty. That is not sufficient to establish compliance in these circumstances. I am not satisfied that best efforts have been used to obtain these records.
- [80] Given the prior sworn evidence which shows a clear intention to not disclose any information as to the location of the funds, the Primary Defendants failure to explain the lack of progress since the order is largely determinative of this application. Once non-compliance is established, the onus is on the Primary Defendants to provide a satisfactory explanation to be taken into account in determining a remedy.
- [81] The history of this litigation provides some guidance as to whether a lesser remedy than striking of the pleadings is appropriate.
- [82] On the one hand, it is clear that document disclosure has been a live issue for all parties, with each taking dilatory approaches to advancing the litigation generally, and their document disclosure obligations specifically from time to time. I do acknowledge in this respect that the plaintiffs themselves took a long time to comply with their disclosure.
- [83] On the other hand, it has now been 19 months since the issue of Danny Wang's disclosure as to the Net Sales Proceeds themselves was clearly ordered, with an established history which shows a tendency to avoid obligations as illustrated by the basis on which Danny Wang sought to set aside the default judgment against him, and the lack of any proposal to remedy the non-compliance during this application.

- [84] Overall, I am satisfied that this is an extreme circumstance which warrants the response to civil claim being struck under R. 22-7(5), however, not as broadly as sought by the plaintiffs. Given that the noncompliance is related to the specific issue relating to the Net Sales Process, it is appropriate to strike the defence on that more limited basis, rather than strike the entirety of the defence (an issue I will address further below when discussing summary judgment).
- [85] In the event I am wrong in that analysis, I will consider the second ground for such an order, R. 9-6.

Summary Judgment Under R. 9-6

- [86] As noted, I am satisfied that the existence of a cross claim, or for that matter, a right to any set off, equitable or otherwise, is not necessarily a bar to granting summary judgment under R. 9-6.
- [87] To the extent there may be a right to set off, as is being claimed in this matter, other means can be achieved to preserve those claims such as a stay of the summary judgment itself pending resolution of the counterclaim by which any set off will be determined. The fact of those counter claims however, ought not be used as a means to prevent an efficient resolution of a claim for which there is no triable issue.
- [88] As such, I need not determine whether there is or is not such a right.
- [89] In terms of the triable issues, there is no dispute that:
- a) Danny Wang was not the registered owner of the Hudson Street Property;
 - b) Danny Wang sold the Hudson Street Property under a power of attorney;
 - c) the plaintiffs were not advised of the sale in advance, and did not consent to it (I acknowledge, however, the live dispute as to the level of authority given by the power of attorney and alleged oral terms which may have limited such authority);
 - d) Danny Wang himself had no direct entitlement to the Net Sales Proceeds. If not the property of the plaintiffs as the plaintiffs allege, then on Danny Wang's own position, they were property of the Long Shong Taiwan;
 - e) Danny Wang has not at any time delivered up the Net Sales Proceeds to either the plaintiffs or Long Shong Taiwan, and instead has retained them, using his sworn evidence, to prevent the plaintiffs from "shutting him out" of Long Shong Taiwan entirely. In other words, he admits to not having any right to the funds, but keeping them through a self help remedy outside of the litigation process.
- [90] Rather, the issues in dispute arising from the use of the powers of attorney and sale of the Hudson Street Property are simply:

- a) who the beneficial ownership of the Hudson Street Property is, namely whether it was beneficially owned by Long Shong Taiwan or the plaintiffs;
- b) the extent of the knowledge of Ellen Chiang and her father, including whether they are bona fide purchasers for value, which may affect which remedies available to the plaintiffs; and
- c) whether there is a right to legal or equitable set off as against the damages suffered from Danny Wang due to his retaining the Net Sales Proceeds to which he has no legal ownership.

[91] Many of the factual disputes are relevant only to these disputed matters.

[92] At its simplest, even if the Hudson Street Property is beneficially owned by the business (which is in dispute), Danny Wang would not have a direct interest in the Net Sales Proceeds.

[93] The Primary Defendants have no authority to advance a claim on behalf of Long Shong Taiwan, only the business can do so. Thus, even if the Hudson Street Property is beneficially owned by the business, and Danny Wang is entitled to an interest in that business, the Net Sales Proceeds must logically flow first through the business and be accounted for in that business itself (for example, payment of business debts or confirmation that payment out will not cause insolvency) before any amounts could be paid to Danny Wang for his share or equity interest therein.

[94] His claims in this action cannot be used to circumvent the corporate or business structures.

[95] Nothing in the evidence before the court establishes any triable issue on the question of whether the Primary Defendants have a direct ownership interest in the Net Sales Proceeds. The direct evidence from Danny Wang himself makes it clear that he does not and that he was aware of that when he sold the Hudson Street Property and retained the Net Sales Proceeds.

[96] In other words, there is no triable issue on that threshold question.

[97] Thus, while I agree that the plaintiffs have failed to establish that there is no triable issue on each and every allegation or ground raised by the plaintiffs, for the relief sought, the plaintiffs need not establish each and every alternative claim.

[98] As such, I am not addressing each argument in these Reasons. For example, there may be a triable issue as to whether there is an express trust, as argued and reference above.

[99] However, there is no triable issue that Danny Wang breached his duty as an attorney under a power of attorney when he used his position to advance his own self interest to "secure" his alleged damages claim against Long Shong Taiwan, when he had no direct interest in and to the Net Sales Proceeds.

Conclusion and Order Made

- [100] Given the importance of maintaining and improving the efficiency of the court process, if even a portion of the trial can be avoided, and time saved accordingly, the court ought to make such an order, provided that it does not prejudice the presider's ability to conduct the trial fairly or fetter the presider's role in any way during the trial.
- [101] In addition, when making any order to strike pleadings for non-compliance or under R. 9-6, the court must do so in a way that strikes a proper balance between providing a remedy for non-compliance and the parties rights to a fair trial on the merits (ensuring the "punishment fits the crime" as referenced) and promoting efficiency when not all claims can be determined under R. 9-6.
- [102] Balancing those interests supports a more tailored order than a broad one as sought by the plaintiffs. Specifically, the plaintiffs seek orders on the following terms:
- a) Striking out the response to the notice of civil claim in this action of Danny Wang, and Ellen Chiang's response for failure to produce documents as required by Associate Justice Bilawich's order dated March 22, 2024;
 - b) An order as if no response to civil claim or counter claim had been filed;
 - c) In the alternative, a judgment for a declaration that Danny Wang committed a breach of trust in transferring the plaintiff's house to Ellen Chiang;
 - d) In either case an order for an assessment as to damages;
 - e) Costs; and
 - f) Such other relief as to this honourable court seems meet and just.
- [103] The issue here with making a broad order as sought is that the notice of civil claim raises a number of allegations over and above the simple use of the power of attorney to sell the Hudson Street Property and retainer by Danny Wang of the Net Sales Proceeds, and that he had no right to do either. To use the vernacular, the pleadings are belts and suspender pleadings. As a result, the relief sought is not limited to the issues for which the Disclosure Order relates, or to which there is no defence worthy of investigation. As such, the response is also not limited to those issues.
- [104] It would not be proportionate to the level of non-compliance to strike the response to all claims, when the non-compliance and lack of triable issue is specific to one, particularly when it is difficult to parse out the relief being sought to that one issue. The most obvious example of how it would not be proportionate or in the interests of justice to do so relates to the defence of Ellen Chiang and her father that the sale was a bona fide sale for value.

[105] I also do not feel I can assess damages on this application. While the amount of the Net Sales Proceeds is known, given the other claims raised it would not be appropriate to split out the damages assessment.

[106] Unfortunately, that may result in an order today that does not add much to the efficiency of the trial. Ironically, the trial may only be reduced by time that is equal to the time taken to argue this application.

[107] Nonetheless, I make the following orders:

a) The amended response to civil claim filed January 31, 2014 is partially struck such that the plaintiffs may proceed as if no response was filed in respect of the claim advanced by the plaintiffs that Danny Wang has no right, title, or interest in the Purchase Proceeds, as defined in the notice of civil claim.

b) The plaintiffs are entitled to:

i. damages as sought for the wrongful detention and/or unjust enrichment in respect of the failure to remit the Purchase Proceeds in an amount to be assessed;

ii. an accounting of the Purchase Proceeds; and

iii. such other damages and remedies as may be sought at trial.

c) The order is without prejudice to any claims for set-off in respect of the counterclaim.

[108] The parties did not argue costs.

[109] On its face, the plaintiffs have been successful. However, there is some question as to the practical effect of this order in terms of trial efficiency in the bigger picture of the whole of the trial, particularly given the counterclaim issues.

[110] Unless the parties have alternative submissions, the costs of this application shall be in the cause of the action and counterclaim, as ordered by the trial judge.

[111] If the parties do have alternative submissions, or there is something that I ought to know in respect of costs, the parties may submit written submissions of no more than five pages each, with the party who disagrees with this term to submit them within 15 business days of the date of these Reasons, and the responding party 10 business days thereafter. Such submissions should be filed, as well as forwarded to me through trial scheduling. Otherwise, the order will go on these terms.

"Associate Judge Robertson"

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Prepared on 27 October 2026 · Esheria