

CANADA / JUDGMENT

Wei v. Mei

2017 BCSC 1864

COURT

Supreme Court of British Columbia

DECIDED

27 September 2017

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2017 BCSC 1864 Wei v. Mei IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wei v. Mei, 2017 BCSC 1864 Date: 20170927 Docket: S171046 Registry: Vancouver Between: Tong Wei Plaintiff And Zijie Mei also known as Zi Jie Mei, and Guilian Li also known as Gui Lian Li Defendants Before: The Honourable Mr. Justice Macintosh Oral Reasons for Judgment Addressing the Limitations Argument and Case Management In Chambers Counsel for the Plaintiff: Rong (Lauren) Liang Counsel for the Defendant Mei: Matthew S. Parsons (as Agent for Sampson Pun) Counsel for the Defendant Li: Peter A. Spencer, Q.C. Julie R. Facchin Place and Date of Hearing: Vancouver, B.C. September 21, 2017 Place and Date of Judgment: Vancouver, B.C. September 27, 2017

- [1] These reasons first address a limitations argument and then address case management matters.
- [2] Ms. Li argues that this action is brought out of time. The action was brought February 3, 2017. She says it had to be brought by June 14, 2016. She relies on s. 7 of the Limitation Act, S.B.C. 2012, c. 13, which provides:
7. Subject to this Act, a court proceeding must not be commenced to enforce or sue on a judgment for the payment of money or the return of personal property,
- (a) if the judgment is a local judgment, more than 10 years after the day on which the judgment becomes enforceable, or
- (b) if the judgment is an extraprovincial judgment, after the earlier of the following:
- (i) the expiry of the time for enforcement in the jurisdiction where the extraprovincial judgment was made; (ii) the date that is 10 years after the judgment became enforceable in the jurisdiction where the extraprovincial judgment was made.
- [3] Mr. Wei's action was commenced to enforce or sue on a judgment he obtained in China for the payment of money. Reading s. 7(b), quoted above, he therefore had to commence his action here before "the expiry of the time for enforcement" in China. The words quoted are from s. 7(b)(i). (Section 7(b)(ii) is not in issue on the facts at bar.)

- [4] Mr. Wei had two years in which to commence enforcement proceedings in China on the Chinese judgment. Lawyers in China for each side who gave opinion evidence by affidavit are on common ground on that point. It is also common ground that the two-year period ended in June 2016. Mr. Wei commenced enforcement proceedings at the first opportunity. That is, in June 2014, as soon as he had obtained judgment and the designated date for repayment had passed.
- [5] The Chinese court has been taking enforcement steps on the Wei judgment since 2014. It continues today in its enforcement steps. Mr. Wei's expert witness for Chinese law advises that the time for enforcement of the judgment in China has not expired.
- [6] Ms. Li's argument that this action is statute-barred would require this Court to find that the words "the expiry of the time for enforcement" in China mean the expiry of the time for commencing enforcement proceedings in China. However, that is not what the words in the section say. The words in the section would prevent an action being brought in British Columbia only when the time permitted for the Chinese court to continue with enforcement steps was at an end. That time has not yet come.
- [7] In my view, the words in 7(b)(i) are clear on this point and my conclusion complies with the statutory interpretation principles expressed by the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at para. 21. Although I do not find ambiguity here, if I did, I would rely on the Supreme Court of Canada's recognition that statutory provisions creating limitation periods are to be strictly construed in a plaintiff's favour: see *Berardinelli v. Ontario Housing Corp.* (1978), [1979] 1 S.C.R. at p. 280.
- [8] Finally, on the limitations question, I observe that it would be an odd result if a court or a plaintiff in China had only two years from the day of judgment, or two years from the date of the defendant's payment obligation arising in, which to enforce the judgment, after which the defendant could keep whatever it had not yet paid. That interpretation of s. 7(b)(i), which is implicit in Ms. Li's argument, would reward a defendant who succeeded in evading for two years the obligation to pay. The legislature does not intend to produce such absurd consequences: see *Rizzo* at para. 27.
- [9] In conclusion, Ms. Li's limitation argument is dismissed with costs in any event of the cause, but not assessed or payable forthwith.
- [10] I turn now to case management matters.
- [11] The summary trial was to be heard September 21 and 22, 2017. That was rendered impossible because the Defendants had brought interlocutory applications to cross-examine the Plaintiff on his affidavits, or examine the Plaintiff for discovery, to obtain documents, and to file handwriting expert reports. Counsels' schedules and court unavailability did not permit those applications to be heard before September 21. It may be that at least some of the applications should have been started earlier than they were. However, I reach no conclusion on the matter of timing, because that question has been overtaken by the

practical point that the summary trial application could not have been fully argued, in any event, in the time that was available. As a result, there is now time before the summary trial application in which interlocutory steps can be taken.

- [12] The summary trial has now been rescheduled to occupy four days and is reset to be held December 18-21, 2017. Those days are pre-emptory on all parties.
- [13] However, I give leave to apply to vary the order with respect to the hearing dates, and to apply to vary the other orders and directions contained in this portion of these reasons, devoted to case management.
- [14] I have seized myself of the file for all purposes until further order. Incidentally, I will retain all the materials I received from the parties for the September 21-22 hearing, and those materials should not be reproduced for me.
- [15] In case it may assist, I will be available by telephone at 9:15 a.m. on days when I am sitting, in the hope of being able to informally decide smaller matters which may arise between now and December.
- [16] I will permit examinations for discovery of any party as set out below. The party seeking discovery will bear all the related costs and pay a party's travel or other costs before that party's discovery is held. From my viewpoint, it does not matter where a discovery is held. Counsel for the party to be discovered will give all reasonable cooperation to have the discovery arranged and proceed.
- [17] Ms. Liang for Mr. Wei can examine Mr. Mei for up to one day and Ms. Li for up to one day. There will only be one discovery in total of Mr. Wei. However, it can be for up to one and a half days, if the days are consecutive. Examining counsel will be representing both Defendants in that examination for discovery. I will not be permitting two separate discoveries of the Plaintiff because I want to reduce the risk of scheduling difficulties giving rise to further delay, and because the Defendants' interests are sufficiently aligned for purposes of discovering the Plaintiff. I wish to stress that if, for whatever reason, discoveries are not concluded in time for trial, it will not follow automatically that the trial is adjourned.
- [18] Counsel will need to schedule now a date for a conventional trial in case the summary trial does not proceed as a result of a suitability application.
- [19] If any party challenges the suitability of the case for summary trial, they will need to set a day before me and can advise the registry that I hope priority can be given for scheduling that motion. Again, here, I stress that failure to get that application heard will not result automatically in the summary trial being adjourned.
- [20] Any documents any party has not already listed, or exhibited in an affidavit which has been exchanged, need to be listed and exchanged within 30 days.

- [21] Any expert report a party wishes to tender will be delivered within 40 days. There can only be a single expert report on behalf of both Defendants and a single expert report for the Plaintiff on any one issue. A response expert report can be delivered up to 14 days before trial.
- [22] I am not making an order here addressing money either Defendant seeks that is caught by the Mareva order. That will need to be addressed by agreement or in a 9:15 a.m. phone meeting or in chambers before me, if necessary. If I am to adjudicate that issue, I will need to be directed to the terms of the Mareva order addressing the Defendants' access to the frozen funds.
- [23] Those are my orders and directions. "MACINTOSH J."
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