
CANADA / JUDGMENT

Wei v. Mei

2018 BCSC 157

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 157 Wei v. Mei

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wei v. Mei,

2018 BCSC 157

Date: 20180201

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

Reasons for Judgment

Counsel for the Plaintiff:

Rong (Lauren) Liang

Michael Larsen

Counsel for the Defendant Mei:

Sampson Pun

Adele Sun

Counsel for the Defendant Li:

Peter A. Spencer, Q.C.

Julie R. Facchin

Place and Dates of Hearing:

Vancouver, B.C.

December 18-21, 2017

Supplementary Evidence and Submissions

from Mr. Wei:

January 11, 2018

Response Submissions from Ms. Li:

January 22, 2018

Place and Date of Judgment:

Vancouver, B.C.

February 1, 2018

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INTRODUCTION

- [1] Mr. Wei made two loans, in China, to a company named Tang Shan Fenghui Real Estate Development Co. Ltd. ("Fenghui Ltd.", or, "the Company"). The Defendants, Mr. Mei and Ms. Li, were the sole shareholders, and both were officers, of Fenghui Ltd. They each guaranteed Mr. Wei's loans to Fenghui Ltd. Mr. Mei and Ms. Li are husband and wife.

- [2] Mr. Wei obtained judgments in China on the loans and the guarantees. Now he seeks judgment here, by summary trial, to enforce the Chinese Judgments. All the facts of the case took place in China, but Ms. Li, at present, resides here, in British Columbia, and she and her husband directly or indirectly own three properties here.
- [3] On February 3, 2017, I granted Mr. Wei a Mareva injunction, which was varied slightly on February 24, 2017. The Defendants eventually applied to have the injunction either set aside or varied. I dismissed their applications on August 15, 2017, in reasons indexed as 2017 BCSC 1542. Ms. Li then applied, in September 2017, to have this action dismissed as being out of time. I denied that application on September 27, 2017, indexed as 2017 BCSC 1864.
- [4] There have been other appearances in this action from time to time, but they are not important for the present application except to the limited extent I refer to them below.
- [5] In these reasons, the sums involved will normally be expressed in Chinese currency, the Yuan, using the "RMB" designation. (One Canadian dollar is worth approximately RMB 5.) Mr. Wei claims the Canadian dollar equivalent of RMB 25,071,460.90, representing what he refers to as the remaining balance of the principal debt under the Chinese Judgments. He also claims the Canadian dollar equivalent of RMB 89,169,166.90, representing what he refers to as the judgment penalty on the balance of the principal debt from June 14, 2014 to December 18, 2017. In the alternative to claiming RMB 89,169,166.90, Mr. Wei advances smaller claims, as interest, first, at just under the Canadian "criminal rate" of interest as defined in s. 347 of the Criminal Code, R.S.C. 1985, c. C-46, and, alternatively, pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79.

WHETHER THE CASE IS SUITABLE FOR SUMMARY TRIAL

- [6] Mr. Wei submits that a summary trial is the appropriate vehicle for resolving the claim. Ms. Li does not oppose proceeding by summary trial. Mr. Mei is largely in agreement with the Plaintiff and his wife. He made only brief submissions on the suitability question. He acknowledged that a conventional trial would occupy at least 30 court days. (In my view, that estimate is conservative.) Mr. Mei's only qualification in supporting a summary trial was that perhaps conflicts in the expert handwriting evidence might call for a conventional trial. A court, however, can, in appropriate circumstances, proceed by summary trial where there is a dispute between experts. See for example, *British Columbia Society for Prevention of Cruelty to Animals v. Sudweeks*, 2002 BCSC 1892; and *Pecek v. Fedun*, 2007 ABQB 133.
- [7] Mr. Mei also acknowledged that every witness but one would need to testify through an interpreter, from Mandarin to English. The need for evidence to be given through interpreters informs the suitability analysis in two ways.
- [8] First, testimony tendered through an interpreter approximately doubles the required time for a witness to testify.

- [9] Second, and perhaps of greater importance, a judge who does not speak Mandarin, and receives the evidence of Mandarin-speaking witnesses only through an interpreter, loses, for the most part, the ability to assess credibility based on demeanour. No matter how capable an interpreter may be, a judge receiving interpreted evidence is receiving it second-hand. Cross-examination, the so-called engine for getting at the truth, is inhibited substantially when it is conducted through an interpreter. It usually amounts to not much more than the equivalent of written questions and written answers, allowing little room for credibility to be assessed. Courts have cautioned that a trier of fact should not rely too much on the assessment of credibility based on demeanour. See for example, *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.); and *Pacheco v. Antunovich*, 2015 BCCA 100. I simply observe that whatever value such assessments do bring to the fact-finding exercise is largely eroded when the testimony needs to come in through an interpreter.
- [10] Perhaps the strongest point in this case against proceeding by summary trial would have been that certain key facts are directly in dispute. I will address those facts, and the related evidence, later in these reasons. However, in my view, the factual disputes are not reason enough in this case to reject proceeding summarily. I say that because, where there are factual differences between the parties, I believe they can be resolved in nearly every instance by testing them against objective evidence, by which I mean evidence which is a matter of record and not authored by either side.
- [11] To summarize my finding that the case should proceed by summary trial: Proceeding summarily largely reflects the wishes of the parties. In matters of civil procedure, common positions should be given great weight wherever possible. Second, the need for translating the evidence of every witness but one speaks against the value of having a conventional trial. Finally, where there are factual disputes in this case, they can be resolved through recourse to what I have called the objective evidence.

THE ADMISSIBILITY OF THE CHINESE COURT DOCUMENTS

- [12] Mr. Wei's application is for an order enforcing the Chinese Judgments.
- [13] In the afternoon of the third day of the four-day hearing of Mr. Wei's application, on December 20, 2017, Ms. Li said she was objecting to the admissibility of the Chinese Court documents. That was a fundamentally important objection, and its late announcement caused prejudice to Mr. Wei.
- [14] The application to set aside the Mareva injunction, argued August 4 and 11, 2017, proceeded on the basis that the Chinese Court documents were properly before this Court.
- [15] A Case Management Conference was held September 21, 2017. I addressed all the case management issues raised there in reasons indexed as 2017 BCSC 1864. No one raised in that conference that the admissibility of the Chinese Court documents was in issue. Their admissibility was not brought to the Court's attention as an issue until December 20.

[16] Mr. Wei attached many of the Chinese Court documents as exhibits, which he described as "true copies", in his affidavit filed in this action on February 3, 2017. In his affidavit filed on July 14, 2017, he again attached the Chinese Court documents he relies on, and testified as follows, at paragraphs 31-36:

The Chinese Action

31. On March 4, 2014, I commenced a lawsuit against Fenghui Ltd., Mr. Mei and Ms. Li (collectively, the "Chinese Defendants") in the Intermediate People's Court of Tangshan City, Hebei Province (the "Chinese Court"), for breach of the Loan Agreements (the "Chinese Action").
32. Attached as Exhibit "E" to this Affidavit is a true copy of the Complaint of Civil Action dated March 4, 2014 that I submitted to the Chinese Court.
33. I am a party to the Chinese Action. As such, I have personal knowledge of the following that occurred in the Chinese Action:
 - (a) Yajun Dong, also known as Ya Jun Dong ("Ms. Dong"), who claimed to be an employee of Fenghui Ltd., acted as an attorney for all of the Chinese Defendants under a Power of Attorney which bears the stamps of all of the Chinese Defendants and dated March 12, 2014 to participate, on behalf of them, in all the legal proceedings and other activities relating to the Chinese Action, including admission of facts, admission of claim, defence of claim, and participation in settlement negotiations. Attached as Exhibit "F" to this Affidavit is a true copy of the Power of Attorney dated March 12, 2014, which was filed in and accepted by the Chinese Court. The Power of Attorney dated March 12, 2014 was provided to me by the Chinese Court and it bears the official stamp/seal of the Chinese Court.
 - (b) On March 14, 2014, the Chinese Court conducted a pre-hearing mediation. I was represented by Mr. Zhiyi Wang, also known as Zhi Yi Wang, through a Power of Attorney that I granted to him, and Fenghui Ltd., Mr. Mei and Ms. Li were represented by Ms. Dong at the pre-hearing mediation.
 - (c) At the pre-hearing mediation, the parties in the Chinese Action reached an agreement with the following pertinent terms:
 - (i) Fenghui Ltd., Mr. Mei and Ms. Li must make a lump sum payment of RMB 38,326,400.00 (the "Principal Debt") to me prior to June 14, 2014, which sum includes the principal of the Loans, all interest and default penalties accrued under the terms of the Loan Agreements to March 14, 2014, as well as economic losses suffered by me and other expenses incurred by me;
 - (ii) If Fenghui Ltd., Mr. Mei and Ms. Li fail to make full payment prior to June 14, 2014, then the remaining balance of the Principal Debt is subject to default penalties calculated at 0.2% of the remaining balance for each day that the remaining balance remains outstanding; and

- (iii) Fenghui Ltd., Mr. Mei and Ms. Li are jointly and severally liable for the aforementioned payment obligations.
- (d) The default penalty rate as set out in paragraph 33(c)(li) was agreed upon with the promise from Mr. Mei and Ms. Li, through their attorney Ms. Dong, that the Principal Debt would be paid prior to June 14, 2014 or shortly after that.
- (e) The settlement reached by the parties in the Chinese Action was documented in the Pre-Hearing Mediation Records dated March 14, 2014. Attached as Exhibit "G" to this Affidavit is a true copy of the Pre-Hearing Mediation Records dated March 14, 2014 endorsed by all parties to the Chinese Action, which was provided to me by the Chinese Court and bears the official stamp/seal of the Chinese Court.
- (f) On April 21, 2014, the Chinese Court issued a Civil Mediation Paper (the "April 2014 Chinese Judgment"), confirming the terms as outlined in paragraph 33(c)(i) to (iii). Attached as Exhibit "H" to this Affidavit is a true copy of the April 2014 Chinese Judgment, of which I made a copy from the Chinese Court and which bears the official stamp/seal of the Chinese Court.
- (g) On May 14, 2014, the Chinese Court issued a Civil Ruling (the "May 2014 Chinese Judgment") confirming that the April 2014 Chinese Judgment was fully enforceable once the parties in the Chinese Action acknowledge receipt of it. Attached as Exhibit "I" to this Affidavit is a true copy of the May 2014 Chinese Judgment, of which I made a copy from the Chinese Court and which bears the official stamp/seal of the Chinese Court.
34. I was provided by the Chinese Court copies of the Certificates of Service which show that Mr. Zhiyi Wang, my attorney, was served with the April 2014 Chinese Judgment on April 21, 2014 and Ms. Dong, the attorney for the Chinese Defendants, was served with the April 2014 Chinese Judgments on April 22, 2014. Attached as Exhibit "J" to this Affidavit are true copies of the Certificates of Service dated April 21, 2014 and April 22, 2014 respectively.
35. Fenghui Ltd., Mr. Mei and Ms. Li failed to make any payment to me prior to June 14, 2014.
36. I have made inquiries to the Chinese Court for "court certified" copies of the documents or records filed to or issued by the Chinese Court. I was informed by officers of the Chinese Court that a document or record provided by a Chinese court with a red stamp/seal of the said court on the document or record means it is a true copy of the document or record that the court has in its file. I was told that the Chinese courts typically do not certify a true copy by specifically stating on the copy something to the effect that the court certifies that it is a true copy of the original document held in the court's file.

- [17] Subject to what is set out below, prior to December 20, 2017, Ms. Li did not contest the admissibility of the Chinese Court documents. Mr. Wei filed his Notice of Civil Claim in this Court on February 3, 2017. It referred to the Chinese Judgments. Ms. Li, in her Response to Civil Claim, filed April 5, 2017, filed a so-called "general denial" in Part 1, Division 1, paragraph 2, and Part 1, Division 2, paragraph 1, making no express reference to the Chinese Court documents or their admissibility.
- [18] It was Ms. Li's husband, the Defendant Mr. Mei, who objected to the admissibility of the Chinese Court documents, on August 1, 2017, in his Application Response to Mr. Wei's summary trial application. He said there, in Part 4, paragraph 8, that the Chinese Court documents were not exemplified or certified by the Chinese Court, and said in Part V, paragraphs 6 and 7, that the Chinese Court documents were inadmissible for not complying with s. 26 of the Evidence Act, R.S.B.C. 1996, c. 124.
- [19] However, Mr. Mei did not take that position when the application to set aside the Mareva injunction was heard later in August, or when the summary trial application was heard December 18-21, 2017. Mr. Mei proceeded in the summary trial on the express basis that he consented to the admissibility of the Chinese Court documents.
- [20] In a pre-hearing phone conference among counsel, in December 2017, counsel for Mr. Wei asked Mr. Mei's counsel whether the admissibility of the Chinese Court documents was in issue. Counsel for Mr. Mei replied that it was not. Counsel for Ms. Li in the December phone conference was silent about the admissibility of the Chinese Court documents. He advised me on December 20 that if the topic was raised in the December phone call, it just "went over my head", so he apparently was not alive to the question at that time. Counsel for Mr. Wei, as a result of the pre-hearing phone conference, thought that there was no issue, and took no further steps, in regard to the Chinese Court documents being admitted.
- [21] Ms. Li, in her August 3, 2017 Application Response to Mr. Wei's summary trial application, had adopted Mr. Mei's position concerning the admissibility of the Chinese Court documents. She did so in a footnote, found at the bottom of page 4 of her Response, reading as follows:

Ms. Li adopts Mr. Mei's submissions regarding the inadmissibility of the records of the Tangshan Court, including the Chinese Judgments. Nonetheless, this application response proceeds on the basis that the records of the Tangshan Court are found to be admissible.

[Emphasis added.]

- [22] She repeated her link to Mr. Mei's position, at page 10, paragraph 21 of her Response, saying: Ms. Li adopts the submissions of Mr. Mei regarding the inadmissibility of the Chinese Judgments.

- [23] That was the full extent of Ms. Li stating her position regarding the admissibility of the Chinese Court documents prior to December 20, the second last day of the hearing. In summary, she had said in the footnote that her response position proceeded on the basis

that the Chinese Court documents were admissible, and in the footnote and paragraph 21 of her Response, that she adopted Mr. Mei's submissions against admissibility. As I noted earlier, counsel for Mr. Mei advised Mr. Wei's counsel in December, prior to the start of the hearing, that he agreed to the admissibility of the Chinese Court documents. In his written argument at the summary trial, Mr. Mei's counsel wrote:

The Chinese Court documents have been agreed by all parties [sic] that it is admissible evidence.

As I noted earlier, Mr. Mei maintained before me in the course of the December hearing his position that the Chinese Court documents are properly before this Court.

[24] To repeat, counsel for Ms. Li said nothing at the Case Management Conference in September, or during the pre-hearing phone conference among counsel on this question. I also note that despite the parties having submitted extensive expert evidence on several points of Chinese law, there was no evidence before me to suggest that the Chinese Court documents are not authentic. Moreover, the parties presented expert evidence addressing several aspects of the Chinese Judgments and Chinese Court documents, and in all of that analysis, the admissibility of those documents was never raised.

[25] In my view, in those circumstances, counsel for Mr. Wei was right to conclude, as she did, that she would not have to address the admissibility of the Chinese Court documents when the summary trial application was heard in December. When Ms. Li objected to the admissibility of the Chinese Court documents, on December 20, I considered that Mr. Wei was unfairly prejudiced. I granted him leave to file further evidence and submissions on the topic, with Ms. Li having the right to make submissions in response. Mr. Wei presented his evidence and submissions on January 11, 2018. Ms. Li responded with her submissions on January 22, which I considered with her written and oral submissions presented in the December hearing.

[26] In the December hearing, Ms. Li relied upon s. 26(2) of the Evidence Act, R.S.B.C. 1996, c. 124. Section 26 provides as follows:

Evidence of proceedings in courts in Canada and elsewhere

26(1) In this section, "evidence of a proceeding or record" refers to evidence of a proceeding or record of, in or before

- (a) a court in the United Kingdom,
- (b) the Supreme or Federal Courts of Canada,
- (c) a court, justice or coroner in a province of Canada,
- (d) a court in a British Colony or possession,
- (e) a court of record of the United States,
- (f) a court of record of a state of the United States, or

- (g) a court of record of any other foreign country.
- (2) Evidence of a proceeding or record may be given in any action or proceeding in British Columbia by an exemplification or certified copy of it, purporting to be under the seal of the court or under the hand or seal of the justice or coroner, as the case may be, without any proof of the authenticity of the seal or of the signature of the justice or coroner or further proof.
- (3) If a court, justice or coroner referred to in subsection (2) has no seal, and so certifies, evidence of a proceeding or record may be given by a copy purporting to be certified under the signature of a judge or presiding magistrate of the court or of the justice or coroner, without any proof of the authenticity of the signature or further proof.

[Emphasis added.]

[27] Ms. Li also brought to my attention in December, ss. 63 and 67 of the Evidence Act, which respectively address affidavits sworn out of British Columbia and the receipt of affidavits despite defects they may contain. Ms. Li made no reference to s. 54 of the Evidence Act. It provides:

Act gives additional powers

54 This Act is deemed to be in addition to and not in derogation of any powers of proving documents given by any other law.

[28] Ms. Li conceded, in her reply submissions on January 22, having seen s. 54 when it was quoted in Mr. Wei's submissions on January 11, that s. 54 allows resort to the common law for proving a foreign judgment.

[29] It can be seen in the first sentence of s. 26(2) of the Evidence Act that subsection (2) does not set out the only way for admitting evidence of a foreign proceeding. The subsection sets out only how that may be done, without the need for further proof. Section 54 serves to corroborate that s. 26(2) was not intended to state that evidence of a foreign proceeding can only be given by an exemplification or certified copy of it. Section 54 provides that any other law can be employed. That includes the common law, which, of course, includes the common law of evidence.

[30] In *R. v. Bailey*, 2014 ONSC 5477, the Ontario Superior Court of Justice interpreted ss. 23 and 36 of the Canada Evidence Act, R.S.C. 1985, c. C-5, which are the federal counterparts to s. 26 and 54 in the B.C. Evidence Act, as follows:

20 In summary, and for present purposes, s. 23 essentially provides for the admission of any court proceeding or record in any "proceeding" by means of "an exemplification or certified copy" of the proceeding or record, under the seal of the court, without any further proof of authenticity. ... Importantly, however, s. 36 makes it clear that this statutory mechanism for the admission of court proceedings or records is "in addition to and not in derogation of" any powers of proving documents "existing at law." In other words, such documents may be tendered under

the common law rules of admissibility or under the statutory rules of admissibility outlined in the Canada Evidence Act.

[Emphasis added.]

[31] Mr. Wei has submitted an affidavit fully explaining how the Chinese Court documents, in evidence before me, were obtained. I set out here his affidavit in full, apart from the exhibits:

I, Tong Wei, of 313-3-201, Jian Kang Jia Yuan, Le Ting County, Tangshan City, Hebei Province, People's Republic of China, SWEAR THAT:

1. I am the Plaintiff in these proceedings, and as such have personal knowledge of the facts and matters herein deposed to.
2. I do not speak or read English. The content of this Affidavit has been translated to me sentence by sentence in Mandarin and I fully understand and approve its content as translated.
3. Except as specified otherwise, I adopt the same terms as defined in my Affidavit #3 sworn on July 11, 2017 ("My Affidavit #3") in support of my summary trial application.
4. I swear this Affidavit pursuant to the Order made by Mr. Justice Macintosh on December 21, 2017. In order to comply with the said Order, it is necessary that I disclose some of the communications between me and my legal counsel, both Chinese and Canadian, with respect to documents issued by the Chinese Court. I do not intend to waive any solicitor-client privilege between me and my Chinese legal counsel and between me and my Canadian legal counsel. Potential privileged communication is disclosed for the sole purpose of providing details as to how and why I obtained the documents from the Chinese Court in compliance with the Order made by Mr. Justice Macintosh.
5. Since I was a party to the Chinese Action and subsequently the petitioner in the enforcement action of the Chinese Judgments by the Chinese Court, between 2014 and January 2017, I received copies of various documents issued by the Chinese Court, including the enforcement bureau of the Chinese Court (the "Chinese Court Enforcement Bureau"). The Chinese Court Enforcement Bureau is part of the Chinese Court and it is in charge of the enforcement of the judgments rendered by the Chinese Court upon application by a judgment creditor.
6. When I use the term "Chinese Court" in this Affidavit, I intend it to mean the Intermediate People's Court of Tangshan City, Hebei Province generally, which includes the enforcement department of the said Court when applicable.
7. Some of those documents were provided to me directly from the Chinese Court and some of those documents were provided to me through my legal counsel in China.

8. Given the passage of time and the many court documents involved over a number of years, I now do not recall exactly how and when I received some of the court documents that have been used in the within proceedings (the "Canadian Action").
9. On January 4, 2017, I learned that Mr. Mei and Ms. Li had real properties in Canada and they were in the process of selling their real properties with the intention to transfer the sale proceeds away from my reach.
10. As I have never been to Canada and I did not know any lawyers in Canada, I immediately retained Mr. Xuegang Wang ("Mr. Wang") of Dentons (Beijing), an international law firm, to assist me to find a lawyer in Canada for the purpose of freezing the properties of Mr. Mei and Ms. Li before they were transferred away, and enforcing the Chinese Judgments in Canada.
11. As a result of Mr. Wang's recommendation, I retained Ms. Rong (Lauren) Liang of Clark Wilson LLP in middle January 2017.
12. On or about February 3, 2017, I commenced the Canadian Action, including bringing an application for a Mareva Injunction order (the "Mareva Injunction Application").
13. In preparation for the Mareva Injunction Application, which was brought on an emergency basis, I provided to Ms. Liang, through Mr. Wang, copies of documents, including documents issued by the Chinese Court, which I believe were relevant to my case.
14. Over the years, I had misplaced or lost some of the documents that I received from the Chinese Court as I did not anticipate that I would have to commence a lawsuit in a foreign country on this matter and that I would need those documents for that purpose. As a result, on or about January 11, 2017, I made a trip to the Chinese Court in Tangshan City to make copies of court documents that I believed I did not have in my possession.

January 11, 2017 Trip to the Chinese Court in Tangshan City

15. I reside at Le Ting County, which is one of the counties under the governance of the Tangshan City. Le Ting County is about a one hour drive to the downtown area of Tangshan City.
16. On or about January 11, 2017, I drove to the Chinese Court located in Tangshan City. After I went through security check, I was directed to the second floor file room. At the reception of the file room, I was told by the receptionist that I must fill out an application form, and the application must be approved by the presiding Judge of the case before I could access the file.
17. It took me approximately one hour to get a hold of the presiding Judge Dongling Chen ("Justice Chen") for her approval as she was not in her office located on the first floor of the building of the Chinese Court. I informed Justice Chen that I needed copies of some court documents from my case file (2014) T.M.C. Zi. No. 247, and she signed my application form.

18. With the signed application form from Justice Chen, a court clerk accessed the electronic file of the case file (2014) T.M.C. Zi. No. 247 in my presence, and printed upon my request, amongst other documents, a copy of the following documents for me:
 - (a) The First Power of Attorney dated March 12, 2014;
 - (b) Inquiry Record of March 14, 2014 of the inquiry conducted by Justice Chen of my previous legal counsel Mr. Zhiyi Wang;
 - (c) The Pre-Hearing Mediation Records dated March 14, 2014;
 - (d) The April 2014 Chinese Judgment;
 - (e) Certificate of Service of the April 2014 Chinese Judgment on Ms. Dong on April 22, 2014; and
 - (f) Certificate of Service of the April 2014 Chinese Judgment on Mr. Zhiyi Wang on April 21, 2014;
19. Attached as Exhibit "A" to this Affidavit are true copies of the documents listed in the above paragraph.
20. After the court clerk printed the documents from the electronic file, she applied cross-seals on the right edge of the documents. As such, each of the documents has part of the cross-seal on the right edge of the page. Since those documents were printed from the electronic file, they all bear the Chinese Court's watermark across each page.
21. I asked the court clerk to print documents based on my memory as to what I might already have in my possession, and what I might not have and based on my own judgment as to what documents might be important. I do not recall exactly what I received from the Chinese Court during the January 11, 2017 trip to the Chinese Court. However, I do recognize the court documents identified in paragraph 18 to be amongst the copies of court documents that I obtained on January 11, 2017. This is because those documents identified in paragraph 18 typically only have part of a cross-seal on the right edge of the documents, which are different from the documents that I obtained on July 5, 2017. I will discuss in detail my July 5, 2017 trip to the Chinese Court in Tangshan City and the documents I obtained from that trip.
22. During my January 11, 2017 trip, I also asked the court clerk about documents regarding the enforcement of the Chinese Judgments. As I am the petitioner in the enforcement action of the Chinese Judgments, I have dealt with the enforcement branch of the Chinese Court, and I know that it was the enforcement branch in Le Ting County (the "Le Ting Enforcement Branch") that had been in charge of the enforcement of the Chinese Judgments. I thought the systems were all connected electronically and I would be able to access the enforcement documents from the Chinese Court in Tangshan City and determine whether I needed to print some of those documents.

23. I was told by the court clerk that they do not have documents in the enforcement action in their electronic system because the enforcement action is a separate action from case file (2014) T.M.C. Zi. No. 247, and the enforcement file is with the local enforcement branch of the Chinese Court.
24. I do not know the name of the court clerk who assisted me on January 11, 2017.
25. As soon as I returned to Le Ting County, I provided to Mr. Wang by email copies of the documents that I believe are relevant to my case, including copies of some of the documents that I obtained from the Chinese Court on January 11, 2017.
26. Mr. Wang subsequently called me and asked me about the Second Power of Attorney as he did not see that document amongst the documents that I provided to him. I could not find a copy of the Second Power of Attorney at my home or my office.

Subsequent January 2017 Trip to the Le Ting Enforcement Branch

27. A couple of days after the January 11, 2017 trip to the Chinese Court in Tangshan City, I drove to the Le Ting Enforcement Branch for the purpose of obtaining a copy of the Second Power of Attorney. I do not recall the exact date. The Le Ting Enforcement Branch is just about 15 minutes' drive from my home, so I was able to drive over without making prior arrangements to take time off.
28. I had been to the Le Ting Enforcement Branch a number of times from 2014 to 2016 due to the ongoing enforcement of the Chinese Judgments.
29. At the Le Ting Enforcement Branch, I got hold of Judge Wei Rong ("Justice Rong"), who has been the Judge who handles the enforcement of the Chinese Judgments. I have met him a few times before in the enforcement process.
30. I informed Justice Rong that I would like to access the enforcement file regarding the private debt dispute case between me and Fenghui Ltd., Mr. Mei, and Ms. Li, and Justice Rong retrieved the file for me. At the Le Ting Enforcement Branch, I was not asked to fill out an application form in order to access the file.
31. In the enforcement file, I found the Second Power of Attorney, together with a certificate of service for service of the Notice of Enforcement on Ms. Dong on August 25, 2014.
32. When I asked Justice Rong's permission to make a copy of the Second Power of Attorney and the certificate of service, Justice Rong advised me that since the enforcement procedures of this case have not been completed yet, they typically do not allow photocopies to be made from their file, partly because some of the documents on file were not bound yet and some of the documents do not bear the court seals yet.

33. I pled for permission on the basis that I am the petitioner in the enforcement action, not just anybody who wanted a copy from the court file. In response, Justice Rong indicated that I could not make a copy from the file on that day, but he would consult with his superior at the Chinese Court Enforcement Bureau in Tangshan City and he would let me know.
34. As such, I left the Le Ting Enforcement Branch without a copy of the Second Power of Attorney on that day, but I did identify for Justice Rong the documents of which I would like a copy.
35. After a day or two, I received a phone call from the Le Ting Enforcement Branch asking me to pick up the documents that I requested. I recall that I immediately went to the Le Ting Enforcement Branch to pick up the following documents so that I could provide them to Mr. Wang as soon as possible:
 - (a) Certificate of Service regarding service of the Notice of Enforcement on Ms. Dong on August 25, 2014; and
 - (b) The Second Power of Attorney, which consists of three separate Powers of Attorney dated August 25, 2014 appointing Ms. Dong as attorney by each of Fenghui Ltd., Mr. Mei and Ms. Li in the enforcement action.
36. Attached as Exhibit "B" to this Affidavit are true copies of the documents listed in the above paragraph.
37. I understand that Mr. Wang provided to Ms. Liang electronic copies of the documents that he deemed to be relevant to the Mareva Injunction Application, which included some of the documents I obtained on January 11, 2017 from the Chinese Court in Tangshan City and the ones I subsequently obtained from the Le Ting Enforcement Branch. I know some of those documents were used as exhibits in my Affidavit #1 sworn on January 26, 2017 in support of the Mareva Injunction Application.
38. I subsequently mailed the originals of the documents I obtained in January 2017 from the Chinese Court in Tangshan City and the Le Ting Enforcement Branch to Mr. Wang. I do not recall when I mailed them to Mr. Wang. I also do not know when Mr. Wang mailed the originals to Ms. Liang.

June/July Trip to the Enforcement Branch in Le Ting County

39. Sometime in June 2017 (I do not recall the exact date), I was informed by Mr. Wang that the summary trial of the Canadian Action had been scheduled to August 2017. Mr. Wang further informed me that Ms. Liang requested that I provide copies of the Chinese Court documents that bear the Chinese Court's original red seal.

40. I did not fully understand the request as I thought all parties in the Chinese Action and the Canadian Action know the Chinese Judgments and know that the Chinese Judgments have been enforced by the Chinese Court against the Chinese Defendants for years, and that none of the parties in the Chinese Action ever questioned that the Chinese Court documents were true court documents from the Chinese Court.
41. Mr. Wang explained to me that Canada has certain rules as to how to prove a case, and I cannot just provide copies of the Chinese court documents and ask the Canadian Court to believe that the copies are the same as those kept in the files of the Chinese Court. Mr. Wang told me that Ms. Liang initially requested that each Chinese Court document should contain some wording from the Chinese Court to the effect that the copy is a true copy from the original in file with the Chinese Court and that there should be a seal of the Chinese Court on top of such wording. Mr. Wang told me that he had explained to Ms. Liang that it is very unlikely that the clerks or Judges of the Chinese Court will agree to do that, and that the Chinese courts typically would apply a red seal on a copy of a court document to show that the copy was made from the original they maintained on file, and when there are multiple documents, the court may apply a cross-seal at the edge of the documents so that each page will bear a part of the seal to show that the copies were made from the originals they maintained on file.
42. As a result of Mr. Wang's request, in late June or early July 2017, I went to the Le Ting Enforcement Branch and looked for Justice Rong. I do not recall the exact date on which this happened.
43. After I explained to Justice Rong the purpose of my visit, Justice Rong asked me why I did not make all copies I needed last time I went to see him (I believe he referred to my trip in January 2017 to the Le Ting Enforcement Branch). I explained to him that at that time, I was only looking for important enforcement documents that I believed I did not have, but I did not know that I was required to provide documents that bear the Chinese Court's original red seal. I informed Justice Rong that those documents are required in my enforcement action in Canada and the Canadian Court requires that the Chinese Court apply a red seal on photocopies of any Chinese Court documents to prove that such copies are copied from the case file maintained by the Chinese Court.
44. Justice Rong informed me that the Le Ting Enforcement Branch does not have a seal and they also do not have authority to apply a seal of the Chinese Court because the Le Ting County Enforcement Branch is just an enforcement branch that carries out the orders of the Chinese Court, including the Chinese Court Enforcement Bureau. He further informed me that the Chinese Court Enforcement Bureau in Tangshan City has a seal and has the authority to apply the seal, and that an officer from Le Ting Enforcement Branch would have to go to the Chinese Court Enforcement Bureau in Tangshan City to apply the seal. He told me that they sent an officer to the Chinese Court Enforcement Bureau in Tangshan City last time when I requested copies of some enforcement documents.

45. I tried to be helpful and to mitigate any inconvenience to the Le Ting County Enforcement Branch, so I asked Justice Rong whether I could bring the copies to the Chinese Court Enforcement Bureau in Tangshan City to have the copies red sealed. Justice Rong rejected that option as it has to be an officer from the Chinese Court who must bring the copies to Tangshan City to ensure that the copies being sealed are true copies from their file.
46. Justice Rong eventually agreed that they would send an officer to Tangshan City to have copies of the enforcement documents I selected stamped by the Chinese Court Enforcement Bureau in Tangshan City. He told me that it might take a few days.
47. After a few days, I received a phone call from the Le Ting Enforcement Branch asking me to pick up the documents that I requested. I subsequently picked up the following documents:
 - (a) The April 2014 Chinese Judgment;
 - (b) The May 2014 Chinese Judgment;
 - (c) My Petition for Enforcement dated June 16, 2014;
 - (d) Notice of Acceptance of Petition for Enforcement dated June 16, 2014;
 - (e) Notice of Enforcement dated June 19, 2014 to the Chinese Defendants;
 - (f) Notice of Enforcement Cooperation to the Tangshan Police Bureau dated August 8, 2014 issued by the Chinese Court restricting Mr. Mei and Ms. Li from leaving China and cancelling their passports;
 - (g) Notice of Notification Filing of Personnel Not Legally Authorized to Leave the Country with respect to Ms. Li dated August 8, 2014;
 - (h) Enforcement Order (2014) T.Z.Z. No. 167-1 dated July 7, 2014;
 - (i) Enforcement Order (2014) T.Z.Z. No. 167-2 dated August 8, 2014;
 - (j) Enforcement Order (2014) T.Z.Z. No. 167-6 dated September 18, 2014;
 - (k) Enforcement Order (2014) T.Z.Z. No. 167-8 dated February 16, 2016;
 - (l) Enforcement Order (2014) T.Z.Z. No. 167-9 dated June 22, 2016;
 - (m) Enforcement Order (2014) T.Z.Z. No. 167-10 dated July 1, 2016; and
 - (n) Enforcement Order (2014) T.Z.Z. No. 167-11 dated August 3, 2016.
48. Attached as Exhibit "C" to this Affidavit are true copies of the documents listed in the above paragraph.
49. I do not recall the exact date on which I picked up those documents.
50. The documents identified at paragraph 47 all bear a round red seal which says "Hebei Tangshan Intermediate People's Court Enforcement Bureau".

51. Since those documents were not printed from the electronic system, none of the documents bear the Chinese Court's watermark across each page.
52. I subsequently emailed electronic copies of the documents identified at paragraph 47 to Mr. Wang and mailed the originals to him.
53. I do not know when Mr. Wang provided copies of those documents and mailed the originals of those documents to Ms. Liang.

July 5 Trip to the Chinese Court in Tangshan City

54. On or about July 5, 2017, I drove to the Chinese Court in Tangshan City. I again was asked to fill out an application form, and then to seek Justice Chen's approval of my application.
55. Once I had the approved application form, I went back to the second floor file room, and asked the court clerk to access the electronic file of the case file (2014) T.M.C. Zi. No. 247 and print the following documents for me:
 - (a) The First Power of Attorney dated March 12, 2014;
 - (b) The Pre-Hearing Mediation Records dated March 14, 2014;
 - (c) The April 2014 Chinese Judgment;
 - (d) The May 2014 Chinese Judgment; and
 - (e) Certificate of Service of the April 2014 Chinese Judgment on Ms. Dong on April 22, 2014;
56. Although I do not know the name of the court clerk, I recognized her to be the same lady who assisted me during my January 11, 2017 trip.
57. After the court clerk printed the documents from the electronic file, I specifically asked her whether she can apply, in addition to the cross-seal on the right edge of the documents, the red rectangular seal of the Chinese Court that bears the wording that the document was copied from the original file maintained by the Chinese Court and the date the copy was made. I knew the Chinese Court had such a seal because I saw a seal like that was applied to one of the documents I obtained on January 11, 2017. However, on January 11, 2017, the clerk did not apply the rectangular seal on each of the documents, but only on a couple of the documents.
58. The court clerk accommodated my request and applied the red rectangular seal on each document (on the last page of the document if the document contains multiple pages) and marked the date of July 5, 2017 in the rectangular seal area. She also applied the cross-seal on the right edge of any document that has multiple pages.
59. Since those documents were printed from the electronic file, they all bear the Chinese Court's watermark across each page.

60. Attached as Exhibit "D" to this Affidavit are true copies of the documents listed at paragraph 55, and each document bears a red rectangular seal of the Chinese Court indicating that the document was copied from the original file maintained by the Chinese and the date it was copied was on July 5, 2017.
61. I subsequently emailed electronic copies of the documents identified at paragraph 55 to Mr. Wang and mailed the originals to Mr. Wang.
62. I do not know when Mr. Wang provided copies of the documents and mailed the originals of those documents to Ms. Liang.
63. In the process of preparing this Affidavit, I spoke to Ms. Liang, who advised me that she has the originals of all the documents I identified in this Affidavit in her possession at Clark Wilson.
64. I want to emphasize that for any particular Chinese Court document that I provided to Ms. Liang, through Mr. Wang, and that was used as an exhibit in my various affidavits, regardless of whether the document was a copy that I already had in my possession or a copy with a red seal that I obtained in January 2017 from my trips to the Chinese Court in Tangshan City and the Le Ting Enforcement Branch or a copy with a red seal that I obtained in July 2017 from my trips to the Chinese Court in Tangshan City and the Le Ting Enforcement Branch, the content of the document remains exactly the same. The only differences might be the existence, shape and location of the subsequent red court seals to certify that the document was copied from the file maintained by the Chinese Court because each time the Chinese Court applied the seals in a different location and the red seal from the Chinese Court in Tangshan City for the purposing of certifying true copies is a red rectangular seal and the seal from the Chinese Court Enforcement Bureau is a red round seal.
65. I want to provide a few examples to illustrate the above:
 - (a) the Pre-Hearing Mediation Record attached as Exhibit "G" to My Affidavit #3 is a copy of the document I obtained on January 11, 2017. However, because of a few of the scanning and photocopying processes when the document was passed from me to Ms. Liang, through Mr. Wang, part of the already faint cross-seal at the right edge of each page became invisible. The original that I passed to Ms. Liang, through Mr. Wang, has the faint cross-seal at the right edge of each page of the document. The content of the document is exactly the same as the same document I obtained on July 5, 2017, the original of which is with Ms. Liang. The only difference is that the July 5, 2017 document has a more prominent cross-seal on the right edge of each page, and on the last page of this document, the court clerk applied a red rectangular seal indicating that this document was copied from the file maintained by the Chinese Court and it was copied on July 5, 2017;
 - (b) the April 2014 Chinese Judgment and the May 2014 Chinese Judgment attached as Exhibits "H" and "I" to My Affidavit #3 are copies of the documents that I had in my possession (meaning, the documents were previously provided to me prior to 2017 through the service

process). As such, either of these documents bears only one round seal of the Chinese Court, which was the seal fixed by the Chinese Court when the judgments were released. Since the two documents, especially the April 2014 Chinese Judgment, is the foundation of my enforcement action in Canada, during my January 2017 trips and July 2017 trips to the Chinese Court, I obtained red sealed copies of the two documents from both the Chinese Court in Tangshan City and the Le Ting Enforcement Branch. The content of the documents attached as Exhibits "H" and "I" are exactly the same as the same documents I obtained in January 2017 and July 2017, the originals of which are with Ms. Liang. The only difference is that the documents from the Le Ting Enforcement Branch bear the additional red round seal (and part of the red round cross-seals) from the Chinese Court Enforcement Bureau as proof that the documents were copied from the file maintained by the Le Ting Enforcement Branch, and the documents from the Chinese Court in Tangshan City bear part of the red cross-seal and also the red rectangular seal as proof that those documents were copied from the file maintained by the Chinese Court and they were copied on July 5, 2017;

- (c) Exhibits "L" to "Q" of My Affidavit #3 are various enforcement orders issued by the Chinese Court. They are copies of documents that I already had in my possession. Again, each of those documents bears only one round seal of the Chinese Court, which was the seal fixed by the Chinese Court when the orders were made. The content of those documents are exactly the same as the same documents I obtained from the Le Ting Enforcement Branch in June/July 2017. The only difference is that the documents I obtained in June/July 2017 bear the additional red round seal of the Chinese Court Enforcement Bureau as proof that the documents were copied from the file maintained by the Le Ting Enforcement Branch.
66. As My Affidavit #3 was sworn on July 11, 2017, I understood from Mr. Wang that documents I obtained in June/July 2017 were not provided to Ms. Liang on time to replace the previous ones provided to her.
67. I subsequently learned from Mr. Wang that Mr. Mei and Ms. Li obtained the same court documents from the Chinese Court and they had provided the court documents they obtained to Ms. Liang in the Canadian Action.

[32] As Mr. Wei said, at paragraph 40 of his affidavit, quoted above:

I did not fully understand the request as I thought all parties in the Chinese Action and the Canadian Action know the Chinese Judgments and know that the Chinese Judgments have been enforced by the Chinese Court against the Chinese Defendants for years, and that none of the parties in the Chinese Action ever questioned that the Chinese Court documents were true court documents from the Chinese Court.

Mr. Wei was correct in his thinking. The parties before me were parties in the proceedings in China. They all knew what the Chinese Courts had determined at each stage. Mr. Mei, who admits the authenticity of the Chinese Court documents, and his wife, Ms. Li, who does not, sought a re-trial within the Chinese legal system. They were both eventually subject to collection proceedings on Mr. Wei's loans by one of the Chinese Courts. There has never been any dispute

that the Chinese Court documents accurately record the steps and decisions of the Chinese Courts at every stage. Furthermore, Mr. Mei and Ms. Li appeared in this Court when both of them accepted the application of the Chinese Court documents to what this Court had to decide, at several preliminary stages. Moreover, as affidavit evidence shows, Ms. Li assisted her husband, Mr. Mei, in obtaining the Chinese Court documents by contacting one of the Chinese Courts to arrange access to the documents for use in this proceeding.

[33] It would, in these circumstances, be unjust for this Court to prevent Mr. Wei from relying on the Chinese Judgments and the related Chinese Court documents in this proceeding. His affidavit, quoted above, satisfies me that the Chinese Court documents are properly before this Court as evidence of the Court proceedings in China. They are before me either as an exemplification, or certified copy of it, within the meaning of s. 26(2) of the B.C. Evidence Act (see *Boyle v. Victoria Yukon Trading Co.*, [1902] 9 B.C.R. 213, at para. 17; *R. v. Caplette*, [1993] B.C.J. No. 727 (Prov. Ct.); and *R. v. Wingert* (1992), 136 A.R. 193 (Prov. Ct.)); or pursuant to the common law, or both. Under the common law analysis, I adopt what was said in *Eli Lilly Canada Inc. v. Mylan Pharmaceutical ULC*, 2015 F.C. 17 (TD). There, the Federal Court permitted the admission of documents from a European patent opposition proceeding which were attached to an affidavit, and not certified in any manner, notwithstanding the plaintiff's argument that they needed to be proved in accordance with s. 23 of the Canada Evidence Act. The Court wrote, as follows, at para. 65:

Despite speculative submissions by Lilly to the effect that the documents may not be complete copies and may not form a "complete picture" of the record on the opposition, there is no reason to doubt the authenticity and accuracy of the impugned exhibits. Lilly has offered no evidence that the documents are incomplete, modified or anything other than what they purport on their face to be. The Register is a matter of public record, and Lilly could have determined if the documents were true and complete copies. It was also open to Lilly to call witnesses with first-hand knowledge of the impugned documents, either to question their authenticity or to explain the statements made in them. The evidence is that they were authored by the parent company of Lilly, and as the Supreme Court noted in *Evans*, "a party can hardly object that he had no opportunity to cross-examine himself": *R v Evans*, [1993] 3 SCR 653, at 664. As for Lilly's argument that Mylan could have introduced the impugned documents pursuant to section 23 of the Canada Evidence Act, RSC 1985, c C-5, it is of no merit. That provision allows for the evidence of any proceeding or record to be given by way of exemplification or certified copy if it originates from courts in Canada, Great Britain, the United States "or of any other foreign country". No argument has been presented in support of the proposition that the EPO is a court of record of a foreign country. In any event, it is clear that section 23 of the Canada Evidence Act is not the only procedure by which foreign evidence can be proven, and Lilly has not successfully impugned the authenticity of the material to which it now objects.

[Emphasis added.]

See also *Can. v. Betterest Vinyl Mfg. Ltd.* (1989), 42 B.C.L.R. (2d) 198 (C.A.).

THE FACTS, INCLUDING THE PROCEEDINGS IN CHINA

- [34] Mr. Wei, Mr. Mei and his wife, Ms. Li, all lived in Tangshan City, Hebei Province. Ms. Li, at present, resides in British Columbia. All three parties are business people. Ms. Li has endeavoured to play down her business acumen and experience, in order to detach herself from Mr. Wei's claims, but the evidence shows her to have held numerous corporate positions over the years, and participated in business matters both in China and here.
- [35] On August 7, 2012, pursuant to a loan agreement made in Tangshan, between Mr. Wei, as the lender, and Fenghui Ltd. as the borrower, with Mr. Mei and Ms. Li serving as guarantors, Mr. Wei lent a total of RMB 23.2 million. That sum included the amount of a previous loan by Mr. Wei to Fenghui Ltd. in December 2010, in the amount of RMB 11 million. Mr. Wei, Mr. Mei and Ms. Li signed the relevant lending and guarantee documents. Ms. Li signed when she was in Tangshan.
- [36] Under the loan agreement, dated August 7, 2012, Fenghui Ltd. was to repay the RMB 23.2 million by August 31, 2012. Mr. Mei and Ms. Li were jointly and severally liable if Fenghui Ltd. failed to pay.
- [37] On August 8 and 9, 2012, Mr. Wei advanced to Fenghui Ltd. RMB 12.2 million, which, with the RMB 11 million, advanced in December 2010, totalled the RMB 23.2 million.
- [38] On August 9, 2012, Fenghui Ltd. issued a receipt to Mr. Wei confirming that it received the second amount, RMB 12.2 million. Mr. Mei and Ms. Li were the only shareholders of Fenghui Ltd. and they were also officers of the Company. Nonetheless, Mr. Mei maintained the position before me, in the present application, that the Company never received the second loan; that is, the RMB 12.2 million. Both Mr. Mei and Ms. Li had taken that position in the application to set aside the Mareva injunction (2017 BCSC 1542) i.e., that the Company did not receive the second loan. But there was no fact to justify them denying the second loan. The documentary evidence supporting the second loan is overwhelming. (Regarding the second loan, see also para. [65] below in these reasons.) Their positions in this Court with respect to the second loan, when they have denied that it was made, undermine the credibility of Mr. Mei and Ms. Li. Time and again in this proceeding, the documentary evidence corroborates Mr. Wei's position and undermines that of the Defendants. In some instances, the Defendants assert, or at least Mr. Mei asserts, that documents which go against them were forged by Mr. Wei. The allegations of forgery are very recent. The evidence, taken as a whole, does not support such allegations.
- [39] Fenghui Ltd., Mr. Mei and Ms. Li defaulted in the repayment of the loans and in honouring the guarantees. Mr. Wei demanded payment, without success. Approximately 19 months after the default, on March 4, 2014, Mr. Wei commenced a lawsuit by filing a civil claim against the Company and the Defendants in the Intermediate Peoples' Court of Tangshan City, Hebei Province (the "Chinese Court"). Mr. Wei claimed a total of RMB 36.279 million, including the principal amount of RMB 23.2 million, interest of RMB 8,719,33.33, and default penalties in the amount of RMB 4,359,666.67.

- [40] Mr. Mei and Ms. Li attorned to the jurisdiction of the Chinese Court. On March 12, 2014, Fenghui Ltd., Mr. Mei and Ms. Li authorized Ms. Yajun Dong, an employee of Fenghui Ltd., to act as their attorney, pursuant to a power of attorney (the "First Power of Attorney"), to participate on their behalf in all legal proceedings and discussions relating to the Chinese action, including the: "Full authorization to acknowledge, waive and change claims, enter into settlement and participate in legal proceedings and other activities on [behalf of Fenghui Ltd., Mr. Mei and Ms. Li]." For the first time before me, in a Conference on September 21, 2017, three years and six months after the First Power of Attorney was given, Mr. Mei, and I believe Ms. Li, alleged that a lawyer for Mr. Wei forged the First Power of Attorney. For reasons which were not explained, that argument was not advanced in the earlier proceedings before me, including the "set aside application" indexed as 2017 BCSC 1542. The fluctuating positions of Mr. Mei and Ms. Li on fundamentally important facts in the dispute, both in the Chinese Courts and here, are such that Mr. Mei and Ms. Li lack credibility. Their inconsistent positions cascade upon one another. Ms. Dong, an employee of Fenghui Ltd., fares no better with respect to credibility. She appears to swear to whatever Mr. Mei asks her to. Her protestation that she was not an authorized agent is wholly inconsistent with her conduct.
- [41] On March 14, 2014, the Chinese Court conducted a mediation, which the Court had initiated. Representatives of all parties attended. Ms. Dong attended on behalf of Fenghui Ltd., Mr. Mei and Ms. Li. Ms. Dong was not a lawyer, but she was qualified under Chinese law to be the Defendants' attorney for mediation. During the mediation, Ms. Dong communicated with Mr. Mei by phone for instructions, and read the proposed settlement terms to Mr. Mei before they were concluded. A phone call in which Ms. Dong participated on June 9, 2017, makes clear that Ms. Dong participated in the mediation with authority and was on the phone with Mr. Mei at that time. Mr. Mei instructed Ms. Dong to agree to the settlement terms reached at that time. The settlement included a lump sum payment being made by the Company, Mr. Mei and Ms. Li before June 14, 2014, in the amount of RMB 38,326,400, which included the principal amount of the loans, interest and default payments, as well as economic losses suffered by Mr. Wei and other expenses incurred by him. Further, if the agreed-to amount was not paid in full before June 14, 2014, the remaining balance was subject to default payments calculated at 0.2% of the unpaid balance for each day the balance remained outstanding. (The loan agreement dated August 7, 2012 had employed a penalty of 0.3% per day.)
- [42] The settlement reached by the parties was documented in the Mediation Record dated March 14, 2014, which was prepared by the Chinese Court. Fenghui Ltd., Mr. Mei and Ms. Li endorsed the Mediation Record. The Mediation Record, dated March 14, 2014, shows Ms. Dong as the agent of the Company, Mr. Mei and Ms. Li. (The record shows that she did not bring her "agent formalities" on March 14. She said at that time that she would submit them later.) There was no suggestion from her on March 14 that she was not the authorized agent.

[43] After the mediation was conducted on March 14, 2014, the Chinese Court, on April 21, 2014, issued a Civil Mediation Paper (the "April 2014 Chinese Judgment") in the Chinese action. Mr. Wei seeks to enforce that Judgment in this proceeding. The Chinese Judgment of April 21, 2016 contains the following:

The Court finds, after investigation, that on August 7, 2012, the Plaintiff Tong Wei entered into a loan agreement with the Defendant Tangshan Fenghui Real Estate Development Co., Ltd. (hereinafter referred to as "Fenghui Real Estate"), stating that the Plaintiff Tong Wei would lend RMB 12.20 million yuan to the Defendant Fenghui Real Estate. The principal and interest on the loan should be repaid in full prior to August 31, 2012. If the loan was not repaid on time, Fenghui Real Estate would pay Tong Wei, on the first day of each month, interest at a rate four times the interest rate on bank loans of corresponding and similar nature, as well as 0.3% penalty per day for the amount overdue. Zijie Mei and Guilian Li were jointly and severally liable for the aforementioned loan. The agreement also confirmed that Fenghui Real Estate borrowed RMB 11.00 million yuan from Tong Wei on December 20, 2010 but failed to repay the loan on the due date. On August 9, 2012, Tong Wei remitted the full amount of the loan to the account designated by Fenghui Real Estate as promised. Fenghui Real Estate failed to repay the loan on the due date. As of June 24, 2014, Fenghui Real Estate owed Tong Wei RMB 38326400 yuan in total, including the principal and interest on the loans provided by Tong Wei and the economic loss incurred by Tong Wei, caused by Fenghui Real Estate's failure to repay the loan in a timely manner.

...

The aforementioned agreement is in compliance with relevant laws and regulations and is hereby confirmed and approved by the Court.

[Emphasis added.]

[44] On May 14, 2014, the Chinese Court issued a Civil Ruling (the "May 2014 Chinese Judgment") which confirmed that the April 2014 Chinese Judgment was fully enforceable once the parties in the Chinese action were served with the Judgment, which they were on May 15, 2014. The April 2014 Chinese Judgment and the May 2014 Chinese Judgment are the two Chinese Judgments Mr. Wei seeks to have enforced in this proceeding.

[45] Fenghui Ltd., Mr. Mei and Ms. Li failed to make any payment to Mr. Wei by June 14, 2014. From that, and related facts, Ms. Li argued before me that this proceeding in British Columbia was statute barred. In reasons indexed as 2017 BCSC 1864, I rejected that argument.

[46] On June 16, 2014, Mr. Wei applied to the Chinese Court to enforce the Chinese Judgments. On the same day, he received from the Chinese Court a Notice of Acceptance of Petition for Enforcement, indicating that his case met all the requirements for lawful enforcement. On June 19, 2014, the Chinese Court issued a Notice of Enforcement to Fenghui Ltd., Mr. Mei and Ms. Li. It confirmed that they must pay to Mr. Wei the principal debt in the amount of RMB 38,326,400 and penalty on the unpaid balance until the debt was paid in full. The

Chinese Court served the Notice of Enforcement on Fenghui Ltd., Mr. Mei and Ms. Li on August 25, 2014, by serving their attorney, Ms. Dong. On the same day, the Company, Mr. Mei and Ms. Li each executed a Power of Attorney (the "Second Power of Attorney") authorizing Ms. Dong to participate, on behalf of each of them, in all steps associated with the enforcement steps of the Chinese Court.

- [47] There is no dispute that from June 19, 2014, to the present, the Chinese Court has taken enforcement measures against Fenghui Ltd., Mr. Mei and Ms. Li to enforce the Chinese Judgments, and that a number of enforcement orders have been issued against them. In particular, the Chinese Court suspended Mr. Mei and Ms. Li's Chinese passports, restricted Mr. Mei and Ms. Li from leaving China, placed them on the list of dishonest persons subject to enforcement, froze real property in China held in the name of Fenghui Ltd., Mr. Mei or Ms. Li, and sold some of those real properties, in partial satisfaction of the Chinese Judgments.
- [48] There is no dispute that, to date, payments have been received by Mr. Wei in China in partial satisfaction of the Chinese Judgments, either through voluntary payment from the Company, Mr. Mei or Ms. Li, or through the enforcement actions of the Chinese Court. On October 22, 2014, the Company, Mr. Mei and Ms. Li repaid RMB 990,000 to Mr. Wei. They paid that money to him by first paying it into the Chinese Court in September 2014. That payment was made in exchange for Mr. Wei agreeing to apply to the Chinese Court to temporarily remove the restriction on Ms. Li leaving China. On November 14, 2016, Mr. Wei received a further payment of RMB 878,281.90 from the Chinese Court, through the enforcement measures it had taken. On February 6, 2017, Mr. Wei received a further payment of RMB 1,046,657.20 from the Chinese Court. On April 5 and April 14, 2017, Mr. Wei received two payments in the total amount of RMB 10.34 million from the Chinese Court. As of today, Mr. Wei has received RMB 13,254,939.10 through a combination of the Chinese Court enforcement measures and voluntary payments. The remaining balance of the principal debt under the Chinese Judgments is RMB 25,071,460.90. Mr. Wei has not received any payment of default penalties.
- [49] Fenghui Ltd., Mr. Mei and Ms. Li filed a Petition for Retrial, probably in March of 2017. The reviewing court, the Hebei Supreme People's Court, sent a notice to Mr. Wei dated March 20, 2017, advising him of the Petition.
- [50] The Hebei Supreme People's Court conducted a hearing of the Petition for Retrial on May 8, 2017. Mr. Wei and Mr. Mei and Ms. Li were represented by legal counsel at the hearing of the Petition.
- [51] On May 10, 2017, the Court, sitting in a panel of three judges, issued a judgment dismissing the Petition for Retrial. The Court made specific findings of fact as follows, against arguments advanced by the Company, Mr. Mei and Ms. Li:

- (a) Ms. Dong, as the attorney of the Chinese Defendants, received the April 2014 Chinese Judgment on April 22, 2014, and the May Chinese Judgment on May 15, 2014;
- (b) The First Power of Attorney contained the personal seals of Mr. Mei and Ms. Li;
- (c) Mr. Mei and Ms. Li are husband and wife. Mr. Mei did not dispute the First Power of Attorney granted to Ms. Dong;
- (d) After the April 2014 Judgment became enforceable, and during the enforcement action of the Chinese Action, Ms. Li on August 25, 2014, granted Ms. Dong full authorization to participate in the enforcement action and settlement of the enforcement action;
- (e) The Second Power of Attorney signed on August 25, 2014 contained Ms. Li's signature and fingerprint. Based on Ms. Li's passport record, she was in China at the time when the Second Power of Attorney was signed;
- (f) Ms. Li's allegation that she did not know about the Chinese Judgments and that she did not authorize Ms. Dong to participate in the pre-hearing mediation contradicts her own conduct and is simply not possible given the facts of the case.

[52] Those findings run directly against arguments Ms. Li made before me, both in preliminary applications and in the summary trial application. The Hebei Supreme People's Court was in a better position than I am to make the findings of fact stated above in para. [51]. That said, the voluminous evidence before me leads me to make the same findings.

[53] When Mr. Mei and Ms. Li applied in this Court to set aside the Mareva injunction, they applied in the alternative for an order that the injunction be stayed. Their main ground for seeking the stay was that the Tangshan City Police Bureau ("Bureau") was investigating Mr. Wei for criminal fraud against Fenghui Ltd. Ms. Li swore affidavit on June 9, 2017. In that affidavit, she deposed that the complaint against Mr. Wei to the police was made on April 12, 2017. That was a ploy by Mr. Mei and Ms. Li in an effort have the Mareva injunction stayed. On October 27, 2017, the Bureau issued a Notice for Not Filing a Case, stating that the complaint made on April 12, 2017 was not accepted for filing because there was no evidence to support it. The stay application before me was argued and decided in August 2017 (2017 BCSC 1542). At that time, the Defendants were able to say that the criminal fraud complaint had been made but unresolved. Fortunately, the complaint to the police did not result in a stay (see 2017 BCSC 1542 at para. 13). The voluminous evidentiary record makes it clear that Mr. Wei lent the money to Fenghui Ltd., giving rise to his present application, and that there was no basis for alleging fraud against him.

LEGAL ANALYSIS, INCLUDING FURTHER RELATED FACTS, AND CONCLUSIONS

[54] The parties tendered extensive expert evidence about Chinese law. Most of the opinions expressed in that evidence were not in dispute. Chinese law leads to the following conclusions on the facts before me:

- (a) The April 2014 Chinese Judgment took legal effect on April 22, 2014, and the May 2014 Chinese Judgment took legal effect on May 14, 2014;
- (b) The Chinese Judgments are not appealable pursuant to the Civil Procedure Law of the People's Republic of China because the April 2014 Chinese Judgment is in the form of a consent order, and the May 2014 Chinese Judgment is a ruling of the court to correct a clerical error in the April 2014 Chinese Judgment;
- (c) The Chinese Judgments are conclusive and final under the Chinese law, as evidenced by the enforcement measures taken by the Chinese Court from June 2014 to the present;
- (d) A Petition for Retrial is not an appeal procedure. The filing of a Petition for Retrial does not affect the enforceability of the Chinese Judgments;
- (e) A Petition for Retrial can only be made on the ground that the mediation violated the principle of voluntary participation or that the content of the mediation agreement violated the Chinese law;
- (f) A Petition for Retrial with respect to the April 2014 Chinese Judgment, which was a Civil Mediation Paper, can only be brought within six months after it took effect. The limitation period for the Chinese Defendants to petition for a retrial expired on October 22, 2014;
- (g) The Hebei Supreme People's Court Dismissal Order dismissing the Chinese Defendants' Petition for Retrial is final and conclusive of the Chinese Action. There is no further petition for retrial available for the Chinese Defendants.

[55] A court enforcing a foreign judgment is enforcing the obligation created by that judgment. In principle, the enforcing court should not look beyond the judgment to the merits of the case. See *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52. Chief Justice McLachlan elaborated as follows at para. 89 of *Pro Swing*:

Before discussing the considerations applicable in this case, it may be useful to reiterate the theoretical basis for the recognition and enforcement of foreign judgments. While established in the context of money judgments, the theory also applies to the enforcement of non-money judgments. The foreign court order is seen as creating a new obligation on the defendant. In the case of a money judgment, this is a debt. In the case of a non-money judgment, it is a different sort of obligation. A court enforcing a foreign judgment is enforcing the obligation created by that judgment. In principle, it should not look beyond the judgment to the merits of the case. It enforces the obligation created by the foreign judgment by its own machinery. As confirmed in *Beals*, as long as the foreign court properly has jurisdiction to adjudicate the dispute, absent evidence of fraud or a judgment contrary to natural justice or public policy, the enforcing court is not interested in the substantive or procedural law of the foreign jurisdiction. All the enforcing court needs is proof of the foreign order; its own legal mechanisms take over from there. This can be understood as the principle of the separation of judicial systems.

The Chief Justice was writing in dissent, but the views she expressed, quoted above, are consistent with the majority reasoning in *Pro Swing*.

[56] A foreign judgment is recognized and enforceable in British Columbia if three requirements are met:

- (a) the foreign court had jurisdiction over the subject matter of the foreign judgment;
- (b) the foreign judgment is final and conclusive; and
- (c) there is no available defence.

See *Beals v. Saldanha*, 2003 SCC 72.

[57] The foreign court will be found to have had jurisdiction if there is a "real and substantial connection" between the cause of action and the foreign court. See *Beals* at para. 19. A defendant can reasonably be brought within a foreign court's jurisdiction if he or she was actively involved in the relevant events in the foreign jurisdiction. See *Beals* at para. 32. There can be no dispute in this case that the Chinese Court had jurisdiction over the matter. The two loans were made in China. The guarantees were signed in China. Fenghui Ltd. is a Chinese company registered in accordance with Chinese law. Mr. Mei resided and conducted his business primarily in Tangshan. Ms. Li, although she resides at present in Vancouver, at least partly to be here for her children's school terms, has held positions in numerous Chinese companies and had many personal and business ties to Tangshan. There is no dispute that she signed her guarantee in Tangshan. Furthermore, Fenghui Ltd., Mr. Mei and Ms. Li attorned to the jurisdiction of the Chinese Court, participating at every stage, including commencing the Petition for Retrial.

[58] It is clear that the Chinese Judgments are final and conclusive. No appeal is available under the Civil Procedure Law of the People's Republic of China because the April 2014 Chinese Judgment is a consent order based on a mediated settlement. The fact that the Chinese Judgments are final and conclusive is also evidenced by the enforcement measures taken by the Chinese Court from June 2014 to the present. The Defendants only step to challenge the Chinese Judgments was their Petition for Retrial. As noted earlier, that Petition was heard on May 8, 2017 and dismissed on May 10, 2017.

[59] The third issue in determining whether a foreign judgment is enforceable here is whether there are available defences with respect to that judgment. It is common ground that a foreign judgment is unenforceable only if:

- (a) it is inconsistent with a prior judgment;
- (b) it was obtained by fraud;
- (c) it is based on a foreign penal, revenue or other public law; or

(d) it is based on a foreign proceeding that was conducted in a manner contrary to natural justice.

[60] Clearly the Chinese Judgments are not inconsistent with any prior judgment and clearly they were not based on a foreign penal, revenue or other public law.

[61] As for fraud, Ms. Li abandoned fraud in the course of the summary trial application. Quoting from her written submission:

In particular, Ms. Li does not advance a defence based on fraud, whether intrinsic or extrinsic. That defence and supporting expert evidence are advanced entirely by Mr. Mei, her husband.

Frankly, I have sometimes found it difficult to keep up with the fluctuating positions of the Defendants. Ms. Li relied on Mr. Wei's alleged criminal fraud against Fenghui Ltd. when she sought a stay of the Mareva injunction. She joined her husband earlier in this proceeding in arguing that Fenghui Ltd. did not obtain the second loan. Both those positions now appear to be abandoned. Similarly, Ms. Li had testified that the first Power of Attorney for Ms. Dong was something she never authorized. Again, she asks this Court to simply ignore that she testified to that effect, but no longer takes that position.

[62] However, Mr. Mei continues to allege fraud.

[63] Courts in Canada have drawn a distinction between "intrinsic fraud" and "extrinsic fraud". Intrinsic fraud goes to the merits of the case and the existence of a cause of action. Extrinsic fraud goes to the jurisdiction of the issuing court, including fraud which misled the issuing court into mistakenly believing that it had jurisdiction over the cause of action.

[64] There is no foundation for Mr. Mei's fraud allegations, whether they be viewed as instances of extrinsic fraud or intrinsic fraud.

[65] Mr. Mei persists in advancing his two main allegations of fraud, one that Ms. Dong was not authorized to act as the Defendants' agent in the mediation, the other that the second loan was never made. (It was unclear at times whether Mr. Mei's position was that the second loan was not made in any form, or instead that it was in substance intended to be only the payment of additional interest. Also, sometimes his position was that he repaid the amount of the second loan to the Plaintiff's uncle. His position on that question fluctuated in the course of the submissions. The Chinese Court found the money to be a second loan, which was advanced and not repaid, and the evidence supports that finding.)

[66] His new argument for saying that Ms. Dong was not the Defendants' agent in the mediation is that the First Power of Attorney, appointing Ms. Dong as agent, was a forgery concocted by Mr. Wei. The evidence against that proposition is overwhelming. Both a transcript of the mediation proceedings, and a transcript of Ms. Dong in a later telephone conversation, make it plain that Ms. Dong was attending the mediation as the Defendants' agent. Among the other defects in this new argument is that Mr. Mei offers no explanation for how his and Ms. Li's seals were placed on the First Power of Attorney.

- [67] The Defendants giving Ms. Dong the Second Power of Attorney, on August 25, 2014, to represent them in connection with the Chinese Court's enforcement proceedings, is consistent with the conclusion that Ms. Dong had also been their representative at the time of the First Power of Attorney. Ms. Dong was the Defendants' agent throughout, both in mediation and in the post-judgment enforcement stage.
- [68] Prior to withdrawing her allegation of fraud against Mr. Wei at the summary trial hearing in December, Ms. Li had sworn that Ms. Dong was not her authorized agent for the First Power of Attorney, and later swore the same with respect to the Second Power of Attorney. Later, she swore that the Petition for Retrial was brought without her husband consulting her. However, the Petition for Retrial contained her signature and her fingerprint affixed to her signature. Ms. Li's denial that she authorized the Petition for Retrial is simply a further example of her swearing to what she considers convenient.
- [69] The Defendants, in October 2014, made a payment of RMB 1 million as partial satisfaction of the Chinese Judgments, and wrote, on February 2, 2015, to the Chinese Court acknowledging that the Chinese Judgments were enforceable against them, and that they intended to settle the Chinese Judgments with Mr. Wei.
- [70] I should add that in the Defendants' Petition for Retrial in China, they only advanced the argument that the fixing of Ms. Li's seal to the First Power of Attorney did not comply with the Civil Procedural Law of China, and therefore should not have been accepted by the Chinese Court. That argument was rejected. Notably, in the Petition for Retrial, the Defendants made no suggestion that either Power of Attorney was obtained by fraud. The findings of the Hebei Supreme People's Court in the Petition hearing are summarized above in para. [51] of these reasons.
- [71] In his argument that the First Power of Attorney was forged, Mr. Mei presented expert evidence about the handwriting in the body of the First Power of Attorney. It is astounding that such an allegation was first raised more than three years after the Chinese Judgments were made. I also observe that the expert evidence in no way addressed the seals of the parties on the First Power of Attorney. Further, Mr. Mei's expert report was based on an examination and comparative analysis of only an electronic copy of the First Power of Attorney. The limitations from examining photocopies of documents for forgery has been the subject of judicial comment. See *Vilamar, S.A. v. Sparling*, [1987] Q.J. No. 2708 (Q.S.C.), at para. 165. Mr. Wei tendered expert handwriting evidence in response, which led me to conclude that the person who wrote the body of the First Power of Attorney cannot be identified. I note that Mr. Wei's experts based their conclusions on a comparison of original handwriting, as opposed to photocopies. It is not important to determine who else may have written the body of the First Power of Attorney. It may have been a person employed by Fenghui Ltd., although that is speculation. The main point is that there is no legitimate dispute on the evidence that the Defendants placed their seals on the First Power of Attorney. The expert evidence on handwriting was, in my view, a spurious attempt by Mr. Mei, raised very late in the day, to invent another unfounded defence. The only witness in

the entire case whose first language is English and not Mandarin, was a Canadian handwriting expert, who questioned Mr. Mei's signature on the Second Power of Attorney. However, that expert had no knowledge of the difference in signatures between simplified Chinese and traditional Chinese, and was in no position to opine by comparing Mr. Mei's signature written sometimes in simplified Chinese and at other times in traditional Chinese. Whatever the opinions of the handwriting expert as to the writing or signatures on the Powers of Attorney, placed in evidence as a result of Mr. Mei's allegation on the eve of the summary trial, the Hebei Supreme People's Court, on May 10, 2017, was satisfied as to Ms. Dong's status as the Defendants' attorney (see para. [51] in these reasons).

- [72] The only other fraud allegation, maintained only by Mr. Mei, is that the second loan was not advanced. I have addressed that earlier in these reasons. There is no evidentiary support for that allegation, and it is contradicted by all the relevant documentary evidence, the conduct of the Defendants throughout, and the findings of the Chinese Court (see para. [43] above in these reasons.)
- [73] Finally, in examining the arguments for not enforcing a foreign judgment, I consider Ms. Li's argument that the Chinese Judgments are not in compliance with natural justice.
- [74] The Chinese Judgments were based on a mediated agreement, voluntarily made between Mr. Wei and the Defendants. The transcript of the mediation demonstrates that Ms. Dong participated as the Defendants' representative. The evidence also demonstrates that she received instructions from Mr. Mei in the course of the mediation.
- [75] The mediation transcript shows that the mediators explained that the Defendants were entitled to acknowledge or refute the claims, to debate, provide evidence, refuse mediation, apply for an extension of the mediation period, request mediation for only part of the claims, and other rights. The parties were also told that they had the right to apply for recusal of a mediator. Ms. Dong identified herself as the agent for Fenghui Ltd., Mr. Mei and Ms. Li. The transcript shows that the mediators included a judge and two acting judges. The parties waived the right to apply for recusal. In my view, the Defendants are unable to establish any breach of natural justice. The modern notion of comity requires deference and respect for foreign judgments: *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077 at 1095 and 1096, cited in *Lasersight Inc. v. Wiese*, 2001 BCCA 345 at paras. 10-12.
- [76] Ms. Li has endeavoured to characterize herself as an innocent and uninformed housewife, caught in a dispute between her husband, Mr. Mei, and Mr. Wei. That is not a fair representation. She is a businesswoman. She has been involved to some extent in many business endeavours in Hebei Province and Beijing City in China, including the operation of at least 12 companies in various capacities. She deposes that she ceased any business involvement in 2006. However, since then, she has been a director and shareholder, with Mr. Mei, of a numbered company in British Columbia, which owns an operating farm in British Columbia. I am not prepared to believe Ms. Li when she seeks to distance herself from this matter. Her credibility is low, as I have found earlier in these reasons. She denied that she

knew about the claim by Mr. Wei, including the Chinese Judgments, until February 2017. I do not believe that. In August 2014, her Chinese passport was cancelled because the Chinese Judgments had not been paid. She was prevented from leaving China at that time for the same reason. She was only able to leave China, upon Mr. Wei's agreement that she could leave China, after RMB 1 million was paid to the Chinese Court in September 2014, in partial satisfaction of the Chinese Judgments. Real properties owned by Ms. Li, or by her and her husband, were frozen by the Chinese Court and put up for sale. Ms. Li's protestations of innocence and detachment were not accepted by the Hebei Supreme People's Court hearing the Petition for Retrial, as seen above at para. [51] of these reasons.

[77] In summary, the Chinese Court had jurisdiction over the matter which is the subject of the foreign judgment, the foreign judgment is final and conclusive, and there is no valid defence. The available defences would be that the Chinese Judgments were inconsistent with a prior judgment; they were obtained by fraud; they were based on a foreign penal, revenue, or other public law; or the proceedings were conducted in a manner contrary to natural justice. I have found above that none of those defences apply to the facts of this case.

REMEDY

[78] From my conclusions above, the Chinese Judgments are to be enforced by this Court, subject to the following. If the Chinese Court Judgments, which verify and uphold the mediated settlement of Mr. Wei's claim, result in interest on the two loans exceeding 60% (i.e., exceeding a criminal rate of interest as defined in s. 347(2) of the Criminal Code), the interest Mr. Wei can recover through this Court's judgment will not exceed the 60% rate. That ceiling on the allowable interest conforms with the reasoning of the Supreme Court of Canada in *Transport North American Express Inc. v. New Solutions Financial Corp.*, 2004 SCC 7. In that decision, the majority of the Court applied notional severance to an agreement between the parties in which the interest rate agreed to exceeded 60%. In my view, the four considerations the Court applied in *Transport* to permit notional severance have application here (see *Transport* at para. 42), and should be applied to reduce to 60% the maximum allowed interest on Mr. Wei's two loans.

[79] I note that Mr. Mei conceded in argument that the concept of notional severance as applied in *Transport* has application here.

[80] However, there are several issues which remain to be settled for determining the quantum of the award in this Court. Some of those issues were argued briefly at the end of the hearing in December, others were not. The outcome from resolving those issues could alter the size of the judgment here by more than the principal amount of the two loans. In the result, I ask the parties to set a full day to argue the following issues, and the question of costs. The list below is intended to be illustrative, not exhaustive:

- (1) What have been the total payments to date by Fenghui Ltd. and the Defendants, both voluntarily and through the collection process of the Chinese Court?

- (2) What is the total principal outstanding on the two loans?
- (3) What is the correct interest rate to be applied to the two loans? Is it 60%, or lower?
- (4) When does the interest begin to run on each of the loans or on the Chinese Judgments?
- (5) What is the total interest payable?
- (6) Apart from the principal amounts owing on the loans, and the interest, are there any other heads of compensation payable to Mr. Wei pursuant to the Chinese Judgments? If there are, what is their value?
- (7) In what denomination is the judgment to be stated?
- (8) If it is in Canadian dollars, what is the conversion date?
- (9) Applying the answers to the questions posed above, what is the correct amount of the judgment in this Court?
- (10) Costs.

"MACINTOSH J."

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