

CANADA / JUDGMENT

Wu v. Zhou

2025 BCSC 2701

COURT

Supreme Court of British Columbia

DECIDED

11 July 2025

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2025 BCSC 2701 Wu v. Zhou

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wu v. Zhou,

2025 BCSC 2701

Date: 20250711

Docket: S255141

Registry: Vancouver

Between:

Stacey Yu Wu

Plaintiff

And

Shaomei Zhou aka Shao Mei Zhou

Defendant

Before: The Honourable Justice Latimer

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiff:

J.T. Hatfield

C. Chiu

Place and Date of Hearing:

Vancouver, B.C.

July 9, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 11, 2025

- [1] THE COURT: These oral reasons have been edited. All references to currency in this judgment is in US dollars.
- [2] The plaintiff applies without notice for a freezing order against the defendant.
- [3] The parties are both businesswomen and former personal friends. The plaintiff lives in Beijing, China, and is not proficient in English. The defendant lives in Vancouver, Canada, and is proficient in English.
- [4] The plaintiff is suing the defendant, alleging that the defendant:
 - (a) breached fiduciary duties owed to the plaintiff, abusing her authority under certain powers of attorney granted by the plaintiff;
 - (b) intentionally and wrongfully interfered with the plaintiff's property by making certain unauthorized transfers of funds amounting to almost \$12 million owned by the plaintiff;
 - (c) enriched herself by making such transfers into accounts controlled by the defendant or third parties for the defendant's own benefit, thus depriving the plaintiff of those funds without juristic reasons.
- [5] For the reasons that follow, I find it is just and equitable in all the circumstances to issue the freezing order on slightly different terms than those sought by the plaintiff.

Applicable Legal Principles

- [6] While a freezing order is an extraordinary remedy, it may be granted where it is just and reasonable to do so in all the circumstances of the case. The test is a flexible one that considers the interests of both parties, citing *Kepis & Pobe Financial Group Inc. v. Timis Corporation*, 2018 BCCA 420, at paras. 17-18.
- [7] The legal test requires an applicant to establish:
 - a) First that the threshold issue has a strong prima facie or good arguable case; and
 - b) Second, the balance of convenience in light of all the relevant factors.

- [8] The difference between a strong prima facie case and a good arguable case is without practical consequence in this case. The standard is more than an arguable case but does not require the case to meet the bound to succeed threshold: *Ratanshi v. Kalra*, 2024 BCSC 283 at para. 20.
- [9] A "Model Order" for a Mareva injunction has been developed and is posted on the Court's website. The order does not alter the law regarding Mareva injunctions and it acknowledges that its terms may not be appropriate for all types of cases.

Background Facts

- [10] This action was started by way of notice of civil claim filed July 9, 2025.
- [11] As noted, the causes of action pleaded against the defendant include:
- a) breach of fiduciary duty,
 - b) the tort of conversion, and
 - c) unjust enrichment.
- [12] The facts underlying the claim are briefly as follows.
- [13] The parties met approximately 20 years ago and developed a close friendship.

The Defendant's Offer to Assist the Plaintiff

- [14] The Plaintiff deposes:

8. In or around April and May 2024 Ms. Zhou told me about an individual named Liang who had political connections who could assist me, including in respect of - my son who was and remains in prison in China as of the date of my affidavit. I was not provided with information about what Liang would specifically do.
9. I am unaware of the nature of the relationship between Ms. Zhou and Liang.
10. Specifically, Ms. Zhou told me that Liang could
 - (a) assist in securing my son's release from prison and arranging for him to be returned to Canada (the "Criminal Case") and that this work would be done on a success fee basis, with no payments being due until and unless my son was released and returned to Canada, and
 - (b) assist me with tax related civil litigation in China and that this work would be done on a success fee basis, with no payments being due until and unless a successful outcome was achieved at The First Intermediate People's Court of Beijing.

11. Initially and at Ms. Zhou's insistence, I agreed to allow Liang to assist with both the Criminal Case and the tax related civil litigation in China, which were complex matters. However, in or around late April or May 2024, I changed my mind and instructed Ms. Zhou to terminate Liang's involvement with the Criminal Case although Liang could continue to assist me with the tax related civil litigation.
12. Notwithstanding my instructions, in or around late October 2024, Ms. Zhou told me that my son had been released from prison and would return to Canada by on or around October 28, 2024. I did not know how this could have happened since I instructed Ms. Zhou to terminate Liang's involvement in respect of the Criminal Case in or around late April or May 2024, but I was happy at the prospect of my son being released and returned to Canada.
- [15] The plaintiff goes on to explain that the defendant's statement about the plaintiff's son being released from prison was false. When the plaintiff confronted the defendant about this falsity in or around the end of October 2024, the defendant ceased communicating with the plaintiff directly.
- [16] The plaintiff deposes that she continued to communicate with certain of the defendant's intermediaries after October 2024. She deposes that she continued investigating whether her son had been released from prison and would be returning to Canada. She learned conclusively that he had not been released and was not returning to Canada in or around the end of November 2024.
- [17] The plaintiff deposes that in April 2025 the defendant indicated through an intermediary that she was cutting off all contact with the plaintiff and that she had not heard from the defendant since then, either directly or indirectly. However, later in her affidavit she deposes that she did have further communications with the defendant through intermediaries until the middle of May 2025, when the defendant indicated that she would end all contact with her.

The Defendant's Authority With Respect to the Plaintiff's Banking, Property, and Affairs

- [18] A couple of months before the defendant's offer of assistance with respect to the Criminal Case and the tax case, on or around February 5, 2024 the plaintiff provided the defendant with a written power of attorney empowering the defendant as follows:

My attorney shall have the power in my name and place and on my behalf to deal with Wells Fargo for handling my bank account with the account number [account number redacted]. My attorney shall have the power to deposit cash and cheques into my bank account, to apply bank cheques to draw from the bank accounts for investment, paying all required costs, expenses, fees, and taxes.

[19] On the same date, the plaintiff provided the defendant with a second written power of attorney empowering the defendant in substantially similar terms except that the second power of attorney empowered the defendant to deal with Wells Fargo for handling all of the plaintiff's bank accounts.

[20] On or around March 8, 2024, the plaintiff provided the defendant with a third written power of attorney empowering the defendant as follows:

My attorney shall have the power in my name and place on my behalf to deal with Chase for handling my bank account FLAG LLC [account number redacted]. My attorney shall have the power to deposit cash or cheques into my bank account, to apply bank cheques to draw from my bank account into my attorney's account or into any bank account at the attorney's discretion for investment, paying all required costs, expenses, fees, and taxes.

[21] On or around April 4, 2024, with the plaintiff's authorization, the defendant opened a joint bank account in the parties' names at TD Bank (the "Joint Account"). No other individuals or parties were provided with authorization to administer or otherwise deal with the Joint Account. The plaintiff deposes that the defendant was only permitted to draw on her Wells Fargo and Chase bank accounts "with her express instructions and for the sole purpose of capitalizing and replenishing the funds in the Joint Bank Account (the "Funds") which would be used for my sole benefit and with my instructions."

[22] Although this evidence is uncontested because the defendant did not have notice of this application, the affidavit evidence is somewhat at odds with the timing of the execution of the powers of attorney and the wording of the powers of attorneys which I have set out above. Specifically:

- (a) The Wells Fargo powers of attorney were given two months before the creation of the Joint Account. The Chase power of attorney was given a month before the creation of the Joint Account.
- (b) The Wells Fargo and Chase powers of attorney set out the purposes for which the attorney may draw from the Wells Fargo and Chase bank accounts. Those purposes include: "investment, paying all required costs, expenses, fees, and taxes." They do not refer to capitalizing and replenishing funds in the Joint Account.
- (c) The Chase power of attorney specifically provides that the attorney may draw from the Chase bank account into the attorney's account or into any bank account at the attorney's discretion. Thus, it is not limited to drawing funds into the Joint Account; nor does it contemplate the necessity of express instructions from the plaintiff.

[23] On July 30, 2024, the plaintiff provided the defendant with a written general power of attorney which provided that the defendant would:

be my attorney for handling all my properties in the territory of Canada. I authorize my attorney for property to do on my behalf any and all acts except for making a will. My attorney shall have the authority to act as my litigation guardian if one is required to commence, continue, defend, or represent me in any court proceeding.

[24] Coincident with the termination of their communications on May 20, 2025, the plaintiff revoked all the powers of attorney which were granted by her and which appointed the defendant.

Discovery of Transactions

[25] In April 2025, the plaintiff obtained bank records regarding the Joint Account.

[26] The plaintiff deposes that this is the first occasion on which she learned of various unauthorized transactions made by the defendant in 2024.

[27] The plaintiff has provided the Joint Account statement with her affidavit together with supporting documentation. Those documents show the following series of transactions. On April 5, 2024, the plaintiff deposited \$500,000 into the Joint Account. On April 30, 2024, the plaintiff deposited \$9 million into the Joint Account. The plaintiff deposes that these are the only two transactions she authorized.

[28] However, there are several transactions made in which funds held in the plaintiff's personal bank accounts with Wells Fargo, Chase, and other bank accounts controlled by the plaintiff at TD Bank were transferred into the Joint Account. The transfers occurred on June 6, 2024; August 6, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, September 3 and 12, 2024. One of these transfers was reversed on September 13, 2024. In total, these unauthorized injections of funds resulted in an additional \$2,456,392.38 net being transferred to the Joint Account from the plaintiff's accounts. In total, then, the plaintiff had therefore contributed \$11,956,392.38 to the Joint Account.

[29] Between April 29, 2024 and October 18, 2024, the plaintiff deposes there were a series of additional transfers by the defendant and third parties that she did not authorize.

[30] In particular, the plaintiff deposes that funds held in the Joint Account were transferred by the defendant to accounts owned by the defendant.

a) On April 19, 2024, \$500,000 was transferred from the Joint Account into an account ending in 067. There is evidence that this account ending in 067 is a personal bank account belonging to the defendant. There are several additional transfers from the Joint Account to the account ending in 067, including on June 3, 2024, August 21, 2024, August 27, 2024, September 9, 2024, and October 18, 2024. In total, including the initial \$500,000, these transfers amount to \$1,926,000.

- b) On May 23, 2024, by way of wire payments showing the defendant as both the sender and the recipient, two transactions totalling \$8 million were made to accounts held in the defendant's name.
 - c) On June 30, 2024, the defendant transferred a further \$760,000 into an account held in her name.
- [31] As well, the plaintiff deposes that funds held in the Joint Account were transferred to accounts owned by third parties or third parties who the plaintiff does not know and who she believes are associated with the defendant:
- a) On May 23, 2024, a transfer of \$200,000 was made to an account held in the name of So. The first name is not indicated.
 - b) On July 24, 2024, a transfer of \$90,000 from the Joint Account was made to an account held in the name of So, K.
- [32] The plaintiff deposes that she does not know these individuals. She argues, however, that through a personal property registry search she has learned that the defendant is associated with an individual or individuals with the last name So. In particular:
- a) In respect of a debt owed to Toyota Credit Canada Inc., the defendant and a numbered company are listed as debtors. The BC company summary for that numbered company lists So, Ting Four as a director and lists the defendant's home address as the registered and records office.
 - b) In respect of a debt owed to Accountable Mortgage Investment Corporation, the defendant and So, Alston are both listed as debtors.
- [33] As well, the plaintiff deposes that funds held in the Joint Account were transferred to and from unknown third parties in the net amount of \$610,018.12.
- [34] No deposits to the Joint Account were made from accounts held in the defendant's name.
- [35] There is no evidence that any of the transfers made from the Joint Account were for investment, paying all required costs, expenses, fees, and taxes.
- [36] With respect to the possibility that the defendant might say that some of the funds were used to pay Liang on behalf of the plaintiff in respect of either the Criminal Case or the civil tax litigation in China, the plaintiff says all this work was to be done on a success fee basis. There were to be no fees due unless and until a successful outcome was achieved and no such outcome was ever achieved in either case. She further deposes that she has never received any demand to be paid.
- [37] The plaintiff acknowledges that the defendant loaned her \$2,327,800 in or around 2024. However, she says they never discussed repayment. The plaintiff has not repaid the defendant because of her discovery of the wrongly transferred funds from the Joint Account.

First Inquiry: Merits

- [38] As set out above, Mareva orders may be issued upon the applicant demonstrating first evidence of a strong prima facie and/or good arguable case and, second, that the balance of convenience favours granting the injunction. At the first stage, I am satisfied that the plaintiff has satisfied the merits test.
- [39] I will deal first with the claim for breach of fiduciary duties. Certain categories of relationships are presumptively fiduciary in nature because they have at their essence discretion, the influence over interests, and an inherent vulnerability. In these types of relationships, there is a rebuttable presumption arising out of the inherent purpose of the relationship that one party has a duty to act in the best interest of the other: *Shen v. West Continent Development Inc.*, 2020 BCSC 5, at para. 87.
- [40] The caselaw confirms that the features of a fiduciary relationship are present when an attorney acts pursuant to a power of attorney: *Shen*, at para 88.
- [41] While courts have refused to articulate a fixed set of rules and principles that apply, powers of attorney do have a duty to account, to exercise reasonable care as would a typically prudent person managing his or her own affairs, and not act contrary to the interests of the donor: *Shen*, at para. 91.
- [42] Here, the plaintiff deposes that the defendant made a series of unauthorized transactions without her knowledge or instructions. Those transactions include replenishing the Joint Account through the authority granted to the defendant by the plaintiff pursuant to the various powers of attorney. Those funds were then further transferred from the Joint Account to accounts owned or controlled by the defendant and the various third parties. The plaintiff has a good arguable case that such secret, unauthorized transfers for unknown purposes were in breach of the defendant's fiduciary duty as an attorney acting under a power of attorney.
- [43] Turning secondly to the tort of conversion, conversion is established when there is a positive wrongful act of dealing with goods, including funds, in a manner and with an intention inconsistent with the owner's rights. The same facts that ground a good arguable case for a breach of fiduciary also ground a good arguable case for conversion. Specifically, if there was a wrongful breach of fiduciary duty that resulted in the disposition of the plaintiff's funds and intentionally denied the plaintiff's right to those funds the tort of conversion would be made out.
- [44] Lastly, addressing unjust enrichment, the plaintiff has a good arguable case that the defendant was enriched by the plaintiff's funds and that the plaintiff was correspondingly deprived and in these transfers in breach of the defendant's fiduciary duties there was no juristic reason for same: *Kerr v. Baranow*, 2011 SCC 10, at paras. 36-40.

Second Inquiry

Balance of Convenience

[45] This Court in *567 Hornby Apartments Ltd. v. Le Soleil Hospitality Inc.*, 2009 BCSC 711, at para. 16 provides a useful non-exhaustive list of considerations in weighing the balance of convenience:

- (a) evidence showing the existence of assets within British Columbia or outside;
- (b) evidence showing a real risk of the disposal or dissipation of assets to render a judgment nugatory;
- (c) evidence of irreparable harm;
- (d) the strength of the plaintiff's case;
- (e) the nature of the transaction giving rise to the action;
- (f) the risks inherent in the transaction;
- (g) the amount of the claim;
- (h) the defendant's assets; and
- (i) the history of the defendant's conduct.

[46] Informed by these factors, in the overall balancing exercise two considerations, in particular, tilt the balance of convenience in favour of granting the relief sought by the plaintiff on slightly different terms:

- a) First, the limited evidence of assets held by the defendant within British Columbia or at all;
- b) Second, the risk of dissipation of assets based on the defendant's prior conduct.

Existence of Assets Within British Columbia

[47] The only evidence I have in respect of the defendant's assets are that she owns a house in Vancouver with an assessed value of \$1,902,000. There is a mortgage on the house for an unknown amount.

[48] There is also evidence that the defendant had sufficient assets to make a loan of \$2,327,800 to the plaintiff in 2024, but I have no evidence about what assets she has remaining after the loan.

[49] There is also evidence that the defendant's personal property is encumbered by three debtors.

The Risk of Dissipation of Assets

- [50] The defendant's prior conduct gives rise to a real risk that she will dispose of or dissipate the funds at issue in this litigation. There is also a risk that the defendant will transfer the funds to third parties putting them out of reach of the plaintiff.
- [51] Within weeks of the Joint Account being opened and capitalized, and apparently unknown to the plaintiff, the defendant transferred \$500,000 from the Joint Account to an account held in her name.
- [52] One day later the plaintiff replenished the Joint Account with \$9 million. The defendant engaged in a series of transactions which completely depleted the Joint Account of those funds within a month.
- [53] Once the Joint Account had been completely depleted, the defendant made a series of large transfers of funds from other accounts held by the plaintiff. These transfers were made without the plaintiff's knowledge and, arguably, in breach of the defendant's fiduciary duties. There were then additional transfers in rapid succession siphoning those additional funds out of the Joint Account and into accounts held by the defendant or held by third parties unknown to the plaintiff. Although the evidence is not conclusive, there is some evidence that one of the parties, So, may be closely affiliated with the defendant.
- [54] Within weeks of the plaintiff confronting the defendant about the falseness of the representations that had been made about her son's return to Canada, the transactions abruptly stopped.
- [55] When the plaintiff discovered these transactions, she demanded to be repaid. She also demanded that the defendant make sure she was not transferring the money to any other person. The first demand for repayment was refused. Later demands were simply ignored by the defendant, who did not even respond, and eventually ceased all contact, direct or indirect, with the plaintiff.

Risk of Irreparable Harm to the Plaintiff

- [56] For the reasons set out above, I am satisfied that if an order is not granted the plaintiff could face irreparable harm in the sense of a dry judgment through the defendant's dissipation of assets.
- [57] There are serious questions about whether the defendant has the financial means to satisfy any judgment and whether the defendant will agree to cease the transfer of funds in question, including to third parties, putting them out of reach of the court.

Absence of Clear Evidence of Prejudice to the Defendant

- [58] The balance of convenience requires the Court to consider the harm inflicted by the freezing order on the defendant, if granted.

- [59] This order was sought without notice, so it is unsurprising that there is little evidence about the harm that will be inflicted on the defendant in the record before me.
- [60] I am satisfied, however, that the draft order as presented, and as I will issue, contains protections and exemptions that will greatly minimize the risk of prejudice to the defendant.
- [61] A further protection is that the order I will make will be time limited and, further, that the defendant may seek to overturn the order on two days' notice to the plaintiff.

Security

- [62] The plaintiff has provided an undertaking for damages in the form under the model order.
- [63] The plaintiff acknowledges that the undertaking is not accompanied by evidence of her financial resources.
- [64] The failure to provide clear evidence that the undertaking is supported by real financial resources may be fatal to a Mareva injunction: *Trucut Logging v. Moyie River Campground*, 2003 BCSC 441, at para. 6.
- [65] The plaintiff argues that in this case the Court can infer that the plaintiff has substantial means given the large value of the transfers she made into the Joint Account, the large value of the transfers made from her other accounts into the Joint Account, and the fact that she did not even notice that the Joint Account had been depleted of almost \$12 million until months after it had occurred.
- [66] I agree that this evidence provides some reassurance of the undertaking. However, I am going to give a time limited order to further mitigate any risk of damage to the defendant while this order is in place. I am also going to include a direction that should the parties return to court seeking to vary or renew this order the plaintiff must provide clear evidence that the undertaking is supported by real financial resources.

Order

- [67] The Court will grant a modified version of the order handed up at the hearing of this application, which is itself based on the model order of this Court. As is appropriate, the plaintiff has provided a blackline version showing departures from the court model order.
- [68] In paragraph 2 of the draft order the value set out is \$11,614,592. However, it is the plaintiff's own evidence that she has retained \$2,327,800, which was loaned to her by the defendant in 2024. That sum has not been accounted for in this draft order. The value set out in the draft order should reflect the risk to which the plaintiff is actually exposed, so I consider it should be lowered to \$9,286,792 to account for the funds loaned to the plaintiff by the defendant and that the plaintiff has retained possession of. The figure of \$9,286,792 should be used at paragraphs 2, 7, 12, and at Schedule B, paragraph 1.

[69] Paragraph 3 of the draft order sets out exceptions to the order so that the defendant is able to access funds for ordinary living expenses and legal fees. It is suggested, however, without explanation, that there should be no exception for ordinary and proper business expenses. In light of the fact that the defendant is described as a businesswoman in the materials before me, and that I do not have any information about the nature of her business or the impact that a freezing order will have on her business, I consider that paragraph 3 should include an exception for ordinary and proper business expenses.

[70] Order 3 will read:

This order does not prohibit the defendant from spending up to \$10,000 a month on ordinary living expenses and reasonable amounts on ordinary and proper business expenses and legal advice and representation.

[71] I will replace paragraph 6 with the following:

This Order will remain in force up to and including August 11, 2025 (the "Return Date") unless before then it is varied or discharged by further order of this Court. The application in which this order is made shall come back to the Court for further hearing on the Return Date.

[72] A term should be added that sets out that should the parties return to court on the Return Date, or otherwise, seeking to vary or renew the order the plaintiff must provide clear evidence that the undertaking is supported by real financial resources.

[73] I will delete paragraph 9. Given the complexity of scheduling counsel, along with my own judicial schedule, I am not seized of this matter. I expressly confirm that contrary to the convention of bringing applications to set aside or vary injunctions back to the issuing judge as per *Gulf Islands Navigation Limited v. Seafarers' International Union of North America* (Canadian District), 18 D.L.R. (2d) 625, 1959 CanLII 272 (B.C.C.A.), counsel may go straight to chambers. If they wish, they may request that I hear the matter if I am available.

"Latimer. J"

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