

CANADA / JUDGMENT

Zhang Estate v. Yin

2025 BCSC 1185

COURT

Supreme Court of British Columbia

DECIDED

23 June 2025

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2025 BCSC 1185 Zhang Estate v. Yin IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Zhang Estate v. Yin, 2025 BCSC 1185 Date: 20250623 Docket: S2010412 Registry: Vancouver Between: Junjie Tao, Executor of the Estate of Tong Zhang aka Tony Zhang, Deceased Plaintiff And: Hang Yin, Yan Chun Liu, Yu Yin, 1011066 B.C. Ltd., 1079770 B.C. Ltd., 1032734 BC Ltd., 1085842 B.C. Ltd., 1079775 B.C. Ltd, and 1084960 B.C. Ltd. Defendants And: Chunli Zhang and Junjie Tao, Executor of the Estate of Tong Zhang aka Tony Zhang, Deceased Defendants by way of Counterclaim Before: The Honourable Justice Funt Reasons for Ruling Re Rule 12-5(53) of the Supreme Court Civil Rules Counsel for the Plaintiff: M.J. Hewitt Counsel for the Defendants: V. Pappas R. Gagnon Place and Date of Application within Trial: Vancouver, B.C. June 19, 2025 Place and Date of Judgment: Vancouver, B.C. June 23, 2025

1. introduction

- [1] The defendants make application asking the Court to consider certain parts of an August 31, 2023 pre-trial examination conducted under Rule 7-5 of Mr. Feng Luan.
- [2] The August 31, 2023 pre-trial examination occurred at the plaintiff's request.
- [3] At trial, the defendants called Mr. Luan as a witness.
- [4] In the course of Mr. Luan's examination-in-chief at trial, defendants' counsel asked Mr. Luan about his answer to a question asked by plaintiff's counsel of him at his August 31, 2023 pre-trial examination. In this regard, Mr. Luan testified as to his understanding of the subject August 31, 2023 question.
- [5] Mr. Luan's answer to the August 31, 2023 question did not change but his apparent understanding of the question did. The transcript reads: Q You recall that you -- or do you recall that you sat for an examination for discovery with my friends in about August 2023? A Yes, I recall. Q At that examination, one of the plaintiff's counsel, and it might have been Mr. Hewitt, who's there -- oh, no, it was Mr. Yaverbaum, for your recollection, sitting right here. He asked you if, following a meeting where you had taken Tong Zhang and Mr. Yin on site to view the No. 3 Road project -- he asked if you recalled they were approaching you as equal partners to purchase the No. 3 Road project. Okay. And then in answer to that question at that time, Mr. Luan, you said, "Yes." So my question is: Do you understand why you said "yes"

to this question in August 2023? A My understanding of his question is whether or not I took both Tong Zhang and Yin to see the No. 3 Road project, and that's why I said, "Yes."

- [6] In cross-examination at trial, plaintiff's counsel challenged Mr. Luan's apparent understanding of the August 31, 2023 question. Plaintiff's counsel described Mr. Luan's apparent understanding to be based on a "strained" interpretation.
- [7] At trial, in re-examination, defendants' counsel sought to put to Mr. Luan further questions and answers from the August 31, 2023 pre-trial examination. I ruled against such a course of action - answers would clearly be being suggested to Mr. Luan, contrary to the rules of re-examination.
- [8] Defendants' counsel now wish to have certain questions and related answers from the August 31, 2023 pre-trial examination tendered in evidence under Rule 12-5(53) of the Supreme Court Civil Rules.
- [9] Rule 12-5(53) reads: Court may consider whole pre-trial examination
- (53) If part of an examination of a person taken under Rule 7-5 is tendered in evidence, the court may review the whole of that examination and if, following the review, the court considers that another part of the examination is so closely connected with the part tendered in evidence that the last mentioned part ought not to be used without the other part, it may direct that the other part be tendered as evidence.
- [10] For the parties to an action, the sister provision is Rule 12-5(49), which reads: Court may consider whole examination
- (49) If part of an examination for discovery is tendered in evidence, the court may review the whole of that examination and if, following the review, the court considers that another part of the examination is closely connected with the part tendered in evidence, it may direct that the other part be tendered as evidence.
- [11] Rule 12-5(53) is stricter than Rule 12-5(49). Rule 12-5(53) requires that the "part" to be added must be "so closely connected" with the part tendered in evidence that it "ought not to be used" without the part proposed to be added. (Emphasis added.)
- [12] In *Foote v. Royal Columbian Hospital*, 1982 CanLII 789 (B.C.S.C.), 38 B.C.L.R. 222, Chief Justice McEachern considered an earlier Rule of Court. In *Foote*, one party had read-in a significant number of questions and related answers from the examination for discovery of one of the parties. One of the other parties wished to put in evidence other parts of the examination for discovery.
- [13] The test in the earlier Rules of Court was whether "the other part is so connected with the part given that the last-mentioned part ought not to be used without the other part, []".

- [14] As may be seen, the earlier Rule of Court had a wider ambit in that it only required matters to be "connected" as opposed to "closely connected". For the application at bar, as will be seen, the difference does not come into play.
- [15] The Chief Justice in Foote summarized matters this way:
- [12] In my view it is appropriate for the court, on its own motion, or on the request of any party, to put into evidence any other parts reasonably connected to portions of an examination already put into evidence. In determining whether parts of the examination are connected, the court may consider continuity of thought or subject matter, the purpose of introducing the evidence in the first instance, and fairness in the sense that the evidence should, so far as possible, represent the complete answer of the witness on the subject matter of the enquiry so far as the witness has expressed it in the answers he has given on his examination for discovery. In this way the court strives to ensure that the evidence of the witness on each subject matter is complete, but the court must, of course, be careful also to ensure that answers are not admitted into evidence which, upon a consideration of the course of the trial, ought to be adduced, if at all, by viva voce evidence.
- [16] Returning to the case at bar, in short, Mr. Luan, in examination-in-chief at trial, was invited by the defendants' counsel to explain his answer to the subject question from his August 31, 2023 pre-trial examination. He then gave his understanding of the subject question and stood by his answer from the pre-trial examination.
- [17] In cross-examination at trial, Mr. Luan was challenged by plaintiff's counsel as to his understanding of the subject question from the August 31, 2023 pre-trial examination. The transcript reads: Q You were asked yesterday about one of these specific questions, specifically the one where I asked whether you agreed that at this meeting, Tong Zhang and Mr. Yin were approaching you as partners. Do you remember that? A Yes, I recall. Q And your evidence yesterday was your understanding of my question was, 'Whether or not I took both Tong and Yin to see the project, and that's why I said 'yes"'? A Yes, right. Q So I'm just going to reread back to you those specific questions and see if you still agree that you understood, in 2023, when I was asking you those questions, that I was asking you whether you had taken both Tong Zhang and Yin to see the project -- the No. 3 Road project. So question 206: Q And did you have an understanding of the business deal on the Yin/Zhang side with respect to the purchase of that property? A I don't know at that point at that meeting. I didn't know. Q Okay. A But the only thing I know is that they were in partnerships to purchase this project. Q Okay. What you recall from that meeting is that Tong Zhang and Mr. Yin were approaching you to purchase the Number 3 Road project as equal partners? Or as partners, I should say? A Yes. Q And, sir, I'm going to suggest to you that in 2023, you did not understand that sequence of questions as me asking whether or not you had taken both Tong Zhang and Yin to see the No. 3 Road project. A What do you mean? I don't understand, I don't understand. Q Well, you told me -- you told -- you testified yesterday -- A Yeah, yeah. Q -- that you understood the question about whether Mr. Yin and Tong Zhang were approaching as partners to be me asking you whether you had -- whether or not Tong Zhang

and Yin -- you had taken Tong Zhang and Yin to see the No. 3 Road project. A Right, right.

- [18] I find that a particular purpose of counsel for the defendants in examining in chief Mr. Luan at trial was to reframe Mr. Luan's earlier testimony at the August 31, 2023 pre-trial examination respecting the question and answer which defendants' counsel had identified in advance of an anticipated line of questioning in the forthcoming cross-examination of Mr. Luan.
- [19] For the examination-in-chief of Mr. Luan, defendants' counsel had, in hand, the transcript of the August 31, 2023 pre-trial examination. They were in a position and had the opportunity to raise any "so closely connected" aspect (if there were such) related to the specific question and answer from the August 31, 2023 pre-trial examination they had raised.
- [20] Having regard to "the purpose of introducing the evidence in the first instance", it would be an unfair process to allow Mr. Luan's testimony to be effectively split so that matters that could have been addressed in examination-in-chief are allowed to come into evidence after cross-examination has been completed under the guise of Rule 12-5(53).
- [21] The application is dismissed. "Funt J."

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