

CANADA / JUDGMENT

Zhang v. Chen

2023 BCSC 2206

COURT

Supreme Court of British Columbia

DECIDED

14 December 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 2206 Zhang v. Chen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang v. Chen,

2023 BCSC 2206

Date: 20231214

Docket: E202085

Registry: Vancouver

Between:

Nina Zhang

Claimant

And:

Wei Chen

Respondent

Corrected Judgment: The cover page of the judgment was corrected on December 15, 2023.

Before: Master Robertson

Reasons for Judgment

Counsel for the Claimant:

F. MacLean

L. Ledesma, Articled Student

Counsel for the Respondent:

C. Ke

Place and Date of Hearing:

Vancouver, B.C.

September 28 and 29, 2023

Place and Date of Judgment:

Vancouver, B.C.

December 14, 2023

Table of Contents

Introduction. 3

Background. 3

Relationship History. 3

Financial Circumstances of the Parties. 5

(a) Respondent's Financial Circumstances. 5

(b) Claimant's Financial Circumstances. 8

The 2016 Agreement and Chinese Proceedings. 10

The SSPSE Trust Action. 11

The Enforcement Action. 12

Standard of Living. 13

Legal Framework. 15

Analysis and Conclusion. 20

Summary of Orders. 25

Introduction

- [1] The claimant brings this application for retroactive and prospective interim child and spousal support against the respondent, who the claimant alleges has an ultra-high net worth of between \$70M and \$90M.

- [2] One basis for the support being sought is that there was an agreement alleged to have been reached by the parties in 2016, following discontinued divorce proceedings in China, whereby the respondent agreed he would pay the claimant \$1M per year in combined child and spousal support. On this application the claimant is clear that she is not seeking to have that agreement enforced, but that it is a basis on which the quantum of interim support can be quantified.
- [3] Alternatively, the claimant seeks child support pursuant to the Federal Child Support Guidelines SOR/97-175 (the "Guidelines") and spousal support in the high range as set out in the Spousal Support Advisory Guidelines ("SSAG") based on an imputed income for the respondent of \$2,762,0000 per year, and \$100,000 for herself.

Background

Relationship History

- [4] By way of background the parties, who are 42 and 52 years old respectively, were married on September 25, 2008 in China. They had three children, aged 8, 10 and 12 years old (the "Children"). This is the second marriage of the respondent, who has a child from his prior marriage (the "Older Child"). It was the first marriage of the claimant.
- [5] The date of the parties' separation is in dispute. The claimant states it was March 25, 2019. The respondent, in his counterclaim, says it was March 31, 2020.
- [6] For a significant time prior to separation the parties had not lived in the same city. On March 8, 2015 the claimant left Shanghai, where the parties had lived, and moved to Suzhou with the Children. The respondent describes this as an incident of child abduction.
- [7] There are numerous allegations of family violence, and infidelity on the part of the respondent. There are numerous allegations of child abduction and harassment on the part of the claimant. None of these allegations are relevant to this application.
- [8] Following the 2015 move the claimant commenced divorce proceedings in China. She deposes that, in accordance with Chinese law, she was required to choose two of the three Children to remain in her custody, and one to be returned to the respondent's custody. Refusing to do so, she says, she discontinued the divorce proceedings. As part of that discontinuance, the parties entered into an agreement on June 15, 2016 (the "2016 Agreement") in which the respondent agreed to pay \$1M per year for combined child and spousal support.
- [9] There are many disputes as to, among other things, (a) the purpose of these 2015 divorce proceedings and reason they were discontinued, (b) whether the parties reconciled afterwards and (c) the validity of the 2016 Agreement on various bases, including the respondent's allegation that it was signed under duress due to the Children being abducted by the claimant.

- [10] In any event, after those proceedings were withdrawn, and the 2016 Agreement signed, the claimant moved to the United States where she furthered her studies in music. She had previously worked as an instructor teaching organ at the Shanghai Conservatory of Music, having obtained her master's degree from the Shanghai University. The Shanghai University sponsored the claimant while she studied in the United States, on the basis that she would return to Shanghai to teach there.
- [11] The claimant deposes that in 2018 she moved to Vancouver at the request of the respondent (the respondent says it was her idea). She moved with the Children, as well as the Older Child who was then 20 years old and looking to pursue her education in Canada. The claimant argues that the respondent promised to provide "sufficient funds for the claimant and the Children to live in Canada comfortably", when she agreed to move here. However, she argues, he ultimately neglected to do so, either under the terms of the 2016 Agreement or otherwise.
- [12] She commenced the within proceedings on October 13, 2020 with the respondent initially filing a jurisdictional response. As a result of various actions being brought in China, the property division issues with respect to the Chinese assets, which is the majority of the parties' family property, is being dealt with in China. Although, the respondent argues that the claimant's position on those jurisdiction issues is inconsistent.
- [13] The respondent deposes that he remains a committed father, and does attempt to come to Vancouver to visit with his children for two or so months per year, primarily during the school's winter and summer breaks. Travel restrictions due to the COVID pandemic, and more recently issues with his permanent residency card and travel visa, have interfered with that.
- [14] A trial date had been scheduled for September 2023, but was adjourned. No new trial date has been set.

Financial Circumstances of the Parties

(a) Respondent's Financial Circumstances

- [15] The claimant is the CEO of Shanghai Shengchang Pipeline Support Engineering Co. Ltd. ("SSPSE"), which owns shares in other corporate holdings or acts as the primary corporate entity through which the respondent operates.
- [16] In addition, the claimant alleges that the respondent has significant interests in a number of other companies in which his mother and other family members are shareholders.
- [17] The respondent's evidence is that notwithstanding his corporate interests, the gross majority of his wealth was acquired prior to the relationship with the claimant, that much of the assets in his name are held in trust for those corporate entities or family. He specifically pointed out and emphasized that, when they met, the claimant and her parents had little to no assets themselves.

[18] Based on the publicly available corporate share information as was introduced into evidence by the claimant, shortly before this litigation was commenced the respondent was listed as a shareholder in the following companies:

Company

Respondent's Shareholdings

Registered Capital Value (in approx. CDN dollars)

SSPSE

75.5%

\$4,000,000

Shanghai Runchang Guanxian

Unknown

\$2,000,000

Shanghai Yudian Power Engineering Co

95%

\$200,000

Shanghai Hongyi Power Equipment Co

80%

\$400,000

Shanghai Xinfu Industry Trade Co. Ltd.

50%

\$200,000

Shanghai Xiaolehui Healthy Management Co. Ltd.

20%

\$1,200,000

Shanghai Xihe Education Technology Co. Ltd.

100%

\$200,000

Suzhou Youchoao Education Technology Co. Ltd.

75%

\$200,000

Shanghai Houping Health Management Co. Ltd.

20%

\$1,000,000

- [19] Three months after the within notice of family claim was filed, the respondent prepared a share transfer agreement for the transfer of his shares in these companies, along with three or so others, to his mother. He deposes that this was for consideration. The translated share transfer agreement that has been exhibited to his affidavit indicates that the transfer is for the "price of" the same amount of the respondent's original capital contribution.
- [20] Notwithstanding those share transfers, in court filings the respondent has acknowledged that his assets remain in the \$70M to \$90M range (including in his response to the divorce proceedings in China), although the timing of those disclosures as compared to timing of the share transfers is not entirely clear.
- [21] In his most recent financial statement, the respondent declares that:
- a) His real estate holdings identified as family property are valued at \$13,098,000;
 - b) His excluded property claims are valued at \$28,092,443;
 - c) His business interests are "insignificant";
 - d) He owes amounts to his companies which are "unclear" and approximately \$3.7M to his mother and another family member, who I believe is his sister-in-law; and
 - e) his income is \$155,555.
- [22] In his financial statements, the respondent initially deposed that his expenses were \$763,860 per year, which included the costs of a life insurance at \$300,000 USD per year, for 20 years. The respondent now says his sister-in-law is paying that expense. As such, his expenses are now reduced and are deposed to be \$451,860.00 per year. The majority of the expenses noted relate to the Children and the Older Child, including \$5,000 per month for his Older Child's schooling (she is pursuing a masters degree at York) as well as another \$5,000 per month for her accommodations. He deposes that his own personal expenses are only \$100,000.
- [23] The respondent deposes that COVID has had a dramatic effect on the construction industry in China, and therefore his business interests. While he has majority share ownership in the companies noted above, he deposes that other than a couple of them, they are either shell companies, or are not operating. Various balance sheets and cash flow statements for the various family companies in China have also been introduced into evidence, which the respondent argues show that the businesses are not yielding any significant profit at this time, or are running at a loss.

- [24] The respondent strongly opposes any order for support based on any income other than \$155,000 as disclosed on his financial statement.
- [25] The claimant argues that the respondent's evidence as to his income is not believable, given various inconsistencies, or claims that do not accord with common sense. For example, in the 2015 divorce proceedings the Chinese court found that the respondent earned the equivalent of \$4.4M in rental income.
- [26] The claimant does not dispute that COVID has had an effect on the respondent's businesses, including that it may have caused rental income to decrease. However, she argues that even with such a drop, it offends common sense that his income would drop to \$155,000.
- [27] To that end, the claimant has introduced opinion evidence as to the market rents for the Chinese properties which the respondent currently controls, that the expected income is \$2,376,464.85. That does not appear to account for any holding costs for the properties. In addition, the respondent takes the position that this evidence should be given little to no weight as it does not comply with the rules for expert evidence both as to form, or the 84-day service requirement. Although, the author did swear an affidavit setting out the formal requirements for an expert opinion, including his qualifications as a real estate agent, and that his opinion is based on his own personal research.
- [28] The respondent also argues that he is not the beneficial owner of those properties and is not entitled to the rental income earned. Instead, he deposes, as noted on his financial statement, that he draws only an income of \$25,925 from the owners of these properties, and for the properties that are in his name alone, only \$129,620 in rental income. The companies, he says based on the cash flow statements, ran at a loss for the past three years.

(b) Claimant's Financial Circumstances

- [29] For the claimant's part, she deposes that she has suffered significant financial strain since coming to Vancouver. Prior to leaving China for the United States, she earned the equivalent of \$200,000 CDN per year, including from her tutoring. She had that income up until, it seems, 2016.
- [30] The claimant's 2021 Line 150 income as disclosed on her tax return was \$132,044.
- [31] At present, she earns income only from the investment and rental properties that she owns, which according to her most recent financial statement totals \$11,240 from investment income and \$55,235 from rental income, for a total income of \$66,476 for 2022. In addition, she received \$17,564.42 in child tax benefits.
- [32] She says that she cannot work as she is a homemaker. The tutoring that she previously undertook cannot be done now as it would, she argues, interfere with her parenting. I note, however, that there has consistently been a full time nanny employed by the parties.

- [33] For the purpose of this application, the claimant is prepared to accept that she could work part-time providing private tutoring of students after school and on weekends, such that, she says, her income should be imputed to be \$100,000. She does not agree that it should be imputed at \$200,000, as argued by the respondent, based on her 2016 and prior level of earnings.
- [34] The claimant's expenses as disclosed on her financial statement total over \$53,000 per month. Like the respondent's, these expenses are mostly related to the Children. There is duplication in this respect between the parties' financial statements with both of them claiming to pay those expenses. Other items include \$4,693 per month in life insurance, \$3,000 per month for vacation, \$500 per month for a driver for the Children.
- [35] Subsequent to her move to Vancouver, in 2019 the claimant returned to China as she wished to sell properties so that she could continue to pay the \$20,000 per month mortgage she held, and cover the Children's ongoing expenses. She deposes that if she had sold the property she intended to sell, she would have been in a position to pay off the mortgage for the West Vancouver house that she was living in at the time. However, the respondent, who was using the property for business offices, refused to vacate and/or cooperate with a sale, although he deposes that he was under no obligation to do so. From 2022 to 2023, the claimant sold other properties and, she deposes, has used those funds to cover her living costs in Vancouver.
- [36] The parties ultimately sold the West Vancouver property by consent with the net proceeds of approximately \$2.7M being paid into trust.
- [37] At an application on June 23, 2023, the claimant sought to have \$2.0M from those funds paid out to enable her to make a purchase of a new property. That application was dismissed as the purpose for distribution being sought did not meet the requirements under s. 89 of the Family Law Act, S.B.C. 2011, c. 25 for an interim distribution such that the court had no jurisdiction to make the order. Notwithstanding that result, the respondent later agreed to have the \$2.0M released to the claimant to enable her to purchase the property she wished. Subsequently the parties have agreed to interim distributions from time to time for the payment of legal fees, with \$800,000 now remaining in trust from the sale of the former family home.

The 2016 Agreement and Chinese Proceedings

- [38] The validity of the 2016 Agreement is in dispute, and has been the subject of various proceedings in China.
- [39] The claimant's position is that, by the terms of the 2016 Agreement, the respondent agreed to divide 61 pieces of real property located in China, which are owned by the respondent and various corporations in which the respondent or his family members have an interest. Some of those properties were transferred to the claimant under that agreement but, the claimant says, not all of them as contemplated.

[40] The 2016 Agreement also contemplated that the respondent would be entitled to keep all of his cash and investments (valued at the approximate equivalent of \$7.6M CDN) in exchange for those transfers.

[41] The proceedings in response of the 2016 Agreement include:

- a) An action commenced by SSPSE to have the 2016 Agreement declared invalid and an order vesting any transferred properties back to SSPSE, with SSPSE alleging that the respondent held the properties in trust for it (the "Trust Action"); and
- b) An action commenced by the claimant to enforce the 2016 Agreement (the "Enforcement Action").

The SSPSE Trust Action

[42] The Chinese Court did not accept the argument that the identified properties were subject to a trust in favour of SSPSE. The company appealed that decision, with the appeal being denied. In the reasons for judgment of the Chinese Court of Appeal, they confirmed the following facts as found by the Chinese Court below:

- a) SSPSE was incorporated in 2009, after the parties' marriage.
 - b) The respondent held 90%, then 95% of the shares, until November 2010 when he transferred those to his mother, at a price of 1 yuan per share. At the time, there was a written statement confirming that the shares would be held in trust for him, by his mother.
 - c) SSPSE's evidence was that, at a meeting on January 12, 2012, to deal with a significant construction debt of just under 8 million RMB, and to effect "proper tax avoidance", certain properties were agreed to be transferred to the respondent, but that he would be the "debtor" and SSPSE would be the "creditor" until such time as the properties were sold. Upon their sale, the net sales proceeds would be paid to SSPSE. This alleged agreement, and the corporate resolutions approving it, was the basis for the Trust Action. The basis on which this transaction is alleged to have occurred was not easy to follow, however, the respondent deposes that it is a common practice in China for a contractor to be given property in lieu of payment. The claimant signed a power of attorney authorizing the respondent to deal with various properties in the manner described by the respondent. The claimant argued that this evidence, and any written agreements or resolutions supporting it, were fabricated.
 - d) The 2016 Agreement was signed to "deal with the joint matrimonial assets", by having 26 of the properties transferred to the claimant or to the Children. In July 2016 some of the properties as referenced in the 2016 Agreement were transferred to the claimant.
- [43] The Chinese Court of Appeal did not find it necessary to determine if the SSPSE resolutions were fabricated, finding that on their face they were insufficient to satisfy the requirements for a valid trust. At most, they found, they created a creditor/debtor relationship.

- [44] As to the "over 100" properties owned by the respondent, the court noted that they did not need to resolve who the true owner of those properties was for the purpose of the appeal, as such a determination would be "based upon whether other people's lawful rights and interests are infringed upon". One of the issues which the court noted would have to be resolved is, based on the alleged construction debt, whether the profits received were the respondent's or SSPSE's, while also noting that if the respondent failed to pay the relevant debt, SSPSE could pursue the respondent for it, without any reference by the court of appeal to any in rem rights as part of that enforcement.
- [45] The Chinese Court of Appeal did make a final finding that the parties "signed an agreement on June 15, 2016, which states clearly that the 61 real estate properties identified in the agreement are confirmed by the both parties to be joint matrimonial assets, and they have no financial connections to or disputes or property ownership issues connected to" SSPSE and other companies referenced. Further "the shareholders and legal representatives of the aforementioned five entities all waive their rights to pursue any claim over the 61 real estate properties".

The Enforcement Action

- [46] The claimant brought a proceeding in China to enforce the 2016 Agreement. In a 2020 decision the claims, but only with respect to the property transfers contemplated therein, were dismissed. The court concluded as follows:

This court finds, the claimant and the respondent set out terms in the Agreement regarding the ownership of 61 properties involved in this case. During the trial, the respondent argues that some properties located at [No. 8, No. 3 and No. 5] are used by the respondent to sign the commodity housing presale contracts or inventory housing purchase and sale contracts with parties not involved in this case to offset the property payment with construction project payment. In June 2018 the claimant authorized the respondent to sell the property at [unit 3106] and the properties at [unit 2301, 2312, 2401 to 2412, and No. 8]. It remains unclear whether this part of the assets are matrimonial joint assets between the claimant and the respondent or properties held in trust by the respondent during the course of the company operation. Secondly, according to the bank transaction records, the respondent successively transferred around 15 million yuan to the claimant since April 2017 so that the claimant and the children's lifestyle has not been affected. The claimant and the respondent are still in a marital relationship and both parties are their minor children's guardians. In summary, the orders sought by the claimant to have the respondent perform according to the agreement are not granted. During the trial, the claimant withdrew her claim to the proceeds from the respondent's sale of the properties at [unit 2301 to unit 2312] and that is granted.

- [47] The claimant appealed that decision but then withdrew her appeal.

[48] It is not obvious on its face that the 2016 Agreement was found to be unenforceable for all purposes, but rather that the court refused to order that the property transfers be undertaken. Among other things, the court was concerned with whether or not those properties were held in trust, an issue which would need to be resolved. I am speculating, but that may be one of the reasons why the SSPSE brought the later action to declare that those properties were in fact held in trust for it, which was not successful as outlined above.

Standard of Living

[49] As noted, the claimant takes the position that the respondent agreed to pay her \$1M per year for living expenses as part of the 2016 Agreement, which she argues is indicative of his understanding of what their standard of living was to be while in Canada.

[50] Further, and in support of the lifestyle they were to have, the first property they bought in Canada was purchased for \$8.4M with the respondent putting a \$4.2M down payment for that property, which they left vacant for over a year before the claimant and the Children settled in Vancouver.

[51] Consistent with a high standard of living, initially the respondent covered the costs of a live-in nanny, and a driver to take the Children to and from school (although he disputes his level knowledge of the driver). The claimant's evidence is that she and the Children would travel 3 to 4 times per year, always flying business class, spending around \$135,255 per year on such vacations.

[52] The Children have been attending Collingwood School since 2019, the tuition for which is \$79,329.15 per year. Their s. 7 expenses are estimated at over \$320,000 per year. The activities in which the Children are enrolled include Chinese classes, math classes, logic classes, French classes, Kumon lessons, English classes, writing classes, science classes, piano lessons, violin lessons, cello lessons, painting classes, choir, orchestras, table tennis training, swimming club and training, tennis and various camps. The respondent argued at this application, however, that many of these activities are unnecessary and that the claimant tends to enroll the children unilaterally without consultation. Until this application, he says, he did not know of all of these classes.

[53] However, the respondent's evidence is consistent with his understanding of the family having a high standard of living. For example, in his financial statement he lists various assets being purchased which support a luxurious lifestyle, such as:

- a) Furniture valued at \$500,000;
- b) A grand piano valued at \$60,000;
- c) Two other pianos valued at \$20,000;
- d) A Tiffany diamond necklace valued at \$60,000;

- e) A diamond ring valued at \$30,000;
- f) Various high-end bags valued at over \$230,000.

- [54] In addition, the respondent is alleged to have 5 vehicles, which the claimant deposes were not disclosed on his financial statement but were purchased with cash by him for values between \$50,000 to \$371,000. In submissions, counsel for the respondent states that "the respondent denies he owns any of these vehicles", In The respondent's precise evidence is that "none of these cars are under my name". He does not deny using his money to buy them, to be put in other's names. For example, when the Older Child was accepted to UBC, the respondent bought her a \$60,000 Lexus.
- [55] Historically, the respondent would transfer money in the claimant's bank account to cover her and the Children's expenses. The amounts would vary, however, in March 2019 he stopped doing that and, instead, waited for the claimant or the Children to ask him to pay for an expense. While the evidence was not set out in an orderly way, it appears that prior to this litigation starting, a few hundreds of thousands of dollars were sent per year by the respondent upon request.

Legal Framework

- [56] In *Robles v. Kahn*, 2009 BCSC 1163, at para. 11, Master Baker set out the now well accepted considerations for interim support applications as follows:
- a) On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
 - b) An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
 - c) On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 1082; *Newson v. Newson*, 1998 CanLII 6440 (BC CA), [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
 - d) The courts should not unduly emphasise any one of the statutory considerations above others;
 - e) On interim applications the need to achieve economic self-sufficiency is often of less significance;
 - f) Interim support should be ordered within the range suggested by the SSAG unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);

- g) Interim support should only be ordered where it can be said a prima facie case for entitlement has been made out: L.G.B. v. M.A.C.M., [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
 - h) Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: L.G.B.
- [57] The respondent argued that entitlement is in dispute.
- [58] Specifically, the respondent relied upon the previously noted fact that the claimant brought no assets into the relationship, did not work and "contributed little". As such, he argues, she suffers no economic disadvantage. What financial assets the payee brought into the relationship is generally not a factor on applications such as this, particularly where the relationship's duration is over 10 years long.
- [59] In my view, the comments made by Master Baker as to the threshold issue for entitlement as a bar for interim support relates more to the situations where there are issues as to entitlement in any situation, for example, in those circumstances where there is an issue as to whether the parties were in a marriage-like relationship, or because a limitation period has passed.
- [60] If those issues do not arise, then the bar to meet entitlement as contemplated is relatively low, as the means and needs of the parties then take on greater significance, as stated by Master Baker.
- [61] The claimant here does have an arguable, or prima facie case, for entitlement to spousal support given:
- a) the length of the parties' relationship, regardless of whose separation date is used;
 - b) the parties' respective income and asset holdings, and standard of living, during the relationship; and
 - c) the respondent has paid support post separation consistent with the marital standard of living.
- [62] As to the parties' means and needs, the position of the claimant is that the respondent is hiding his wealth, causing her to live well below the family's marital standard of living, putting her into financial stress in order to keep the Children in the educational and extracurricular activities they enjoyed prior to separation.
- [63] The position of the respondent is that the claimant, despite having no significant assets prior to the relationship, is now seeking to live well beyond what would be a reasonable standard of living having regard to their respective financial circumstances, with no intention of working herself. He is content to pay support based on his current income of \$155,000 only, and on the basis that \$200,000 also be imputed to the claimant.

- [64] The court's discretion to impute income is broad and not subject to the restrictions in ss. 16 through 18 of the Guidelines: *Ouellette v. Ouellette*, 2012 BCCA 145, at para. 66. In doing so, the court may "employ common sense": *Riemersma v. Riermersma*, 2013 BCSC 474 at para. 39.
- [65] As noted in *Tang v. Cheng*, 2020 BCSC 1341, as a general rule, income should not be imputed to a spouse on an interim application unless the evidence is properly developed or there are appropriate circumstances. The court in *Tang* referenced *I.F. v. R.J.R.*, 2015 BCSC 793 for that proposition although, the court in *I.F.* was not that definitive, but rather acknowledged that there was authority against doing so, but in that case still imputed income finding that that payor was "playing fast and loose in representing income" (at para. 135)
- [66] In *P.W. v. G.Z.*, 2021 BCSC 467, the court found it was appropriate to do so where the evidence as to income was so conflicting, and the assertions as to earning only a modest income of \$36,000 was substantially incongruous with the parties' lifestyle prior to separation.
- [67] The respondent referred to the court to *Kouznetsova v. Kouznetsova*, 2014 BCCA 160, where the court noted as follows:
- [44] This Court has said the primary purpose of interim orders in family matters is to maintain the status quo between the parties: *Johnson v. Jessel*, 2012 BCCA 393 at para. 48, citing *Leung v. Leung* (1998), 1998 CanLII 4652 (BC CA), 44 R.F.L. (4th) 121 (B.C.C.A.) at para. 10; *Eaton v. Eaton* (1987), 1987 CanLII 2950 (BC CA), 11 R.F.L. (3d) 92 (B.C.C.A.); and *Prost v. Prost* (1990), 1990 CanLII 907 (BC CA), 30 R.F.L. (3d) 80 (B.C.C.A.) (in Chambers).
- [45] I am of the view that the imputing of income is better addressed at trial where the parties have fully canvassed their respective earning capacities and an evidentiary basis for such a finding can be properly established
- [68] The respondent has also raised as a consideration on this application his concern that the claimant is forum shopping. Specifically, he argues, that by commencing proceedings in both British Columbia and China, and then by permitting some of the property issues to be dealt with in China, she is picking the more favourable court by issue. Although, I note that it was not the claimant, but SSPSE that commenced the trust claims in China.
- [69] In addition, while the court on this application has not been asked to consider choice of law, the respondent says that there are live issues in that respect.
- [70] The various issues raised by the respondent show a number of triable issues. However, in so far as they have been raised on this application, they do not establish that the claimant is bound to fail on her claims for spousal support, such that I remain of the view that there is a prima facie case as to entitlement.

- [71] As has often been noted, on interim applications such as this the courts seek to achieve rough justice because live issues that may be determinative as to the final resolution are better left for trial when credibility can be assessed.
- [72] The overall purpose of interim support orders is to serve the interests of the parties in a way that is consistent with the status quo until they can have the issues resolved on that full evidentiary record, while balancing the prejudice of each party should they ultimately be successful by giving full consideration of their respective means and needs.
- [73] While I do not agree with the respondent that income is not to be imputed on interim applications, I do agree that if the court does so, it should exercise considerable caution and be satisfied that there is sufficient evidence to support the imputation or, to paraphrase the court in I.F. and P.W., be satisfied that the evidence as to the payor's lifestyle is so incongruous with the payor's claimed income that the payor's evidence is objectively questionable.
- [74] Further, as noted in I.F. at para. 15, in making interim orders, the court should not be so cautious so as to be timid.
- [75] However, the court must have some evidentiary basis for any imputation of income that is made: *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para. 35.
- [76] Orders imputing income should not be made on pure speculation although, by its very nature, rough justice will inherently require that the presider make some reasonable assumptions.
- [77] Further, I agree with the respondent that given the issues that have been raised as to the validity of the 2016 Agreement, that an order for interim support should not be made assuming it to be valid.

Analysis and Conclusion

- [78] Despite it being a trite principle that on interim applications such as this the court is not to embark on an in-depth forensic analysis, both parties sought to do that.
- [79] While it is not possible to fully determine the extent of the respondent's earnings given the complicated corporate holdings, and allegations as to beneficial ownership, there are some conclusions that can be drawn from the evidence that support his income as being significantly greater than the \$155,000 claimed, including:
- a) The disclosed value of his assets, including his excluded assets, at over \$41M in his most recent financial statement;
 - b) The respondent's annual expenses which he has continued to make, at close to \$500,000 per year (ignoring the life insurance policy);
 - c) The payment of \$120,000 per year towards the Older Child's education;

- d) The agreement for the ongoing purchase of life insurance at \$300,000 USD per year (although, this expense was removed from the respondent's list of expenses for the past year, with his sister-in-law now allegedly making the payments, the fact that this is believed to be a reasonable expense is suggestive of a standard of living);
 - e) His purchase of high-end vehicles. While his evidence is that these were not purchased in his name, where the payor is a director or shareholder of a corporation, s. 18(2) of the Guidelines allows the court to consider other benefits received. The respondent's evidence appears to be intentionally vague as to whose name the vehicles were in. However, he appears to have had access, and the benefit of, those vehicles and did not deny that he paid cash for them;
 - f) For the three years from March 31, 2020 and early 2023, the respondent transferred to the claimant the approximate Canadian equivalent of \$634,500 (which averages out to \$211,500 per year, or \$17,625 per month) plus \$5,882 to \$7,843 per month towards the Children's extracurricular activities. Notably, it is this three year time span when the impacts of the COVID were most impactful; and
 - g) During 2023 the respondent has, so far, transferred \$113,725 to one of the Children's account directly for his tuition and expenses, plus a further \$5,100 on March 3, 2023 for tutoring for another.
- [80] Objectively, the parties' standard of living along with the expenses which have continued to be paid by the respondent do not support an income of only \$155,000 per year. The evidence of his income is substantially incongruous with the parties' lifestyle prior to separation and his expenses post separation.
- [81] In considering what income ought to be imputed, the claimant relied upon *Kim v. Hong*, 2013 BCSC 587 where the court accepted, in the absence of expert evidence, that it was reasonable to assume that a proper rate of return on investment assets is in a range consistent with the Bank of Canada's prime rate of interest. The claimant seeks to have the court take that into account. However, I note that the court in *Kim* did not indicate that this could be taken as a rule of thumb, but rather did so in the unique circumstances of that case where one party sought a rate of return to be assumed at 5%, and the other party raised the Bank of Canada rate at 3% a more appropriate bench mark, with neither party disputing that one of those rates could be applied. The court preferred to apply the lower of the two.
- [82] In any event, assuming a nominal investment return rate of just over .5% the \$41 million of assets disclosed by the respondent would yield an imputed income of \$2.05 million, which is in the range that the claimant seeks to impute. It does not matter to the income analysis that a significant proportion of those assets are excluded assets.
- [83] I agree with the respondent that using a rate of return based on investment may not provide an accurate indication of income.

- [84] However, it does provide a benchmark of sorts to judge whether the evidence tendered by the claimant as to expected rental earnings is a reasonable estimate as to what could be earned. In my view, it is. However, using the common-sense approach referenced in Riemersma, such amounts would have to be discounted for the holding costs necessarily incurred.
- [85] Unfortunately, there is no evidence before the court to quantify those holding costs. The respondent suggested that the cash flow statements filed by the respondent which show the individual companies having, for the most part, negative cash flow, means that there is no net income from the rental properties. However, many properties are owned by the respondent personally and would not be reflected on those cash flow statements. It was not evident on the face of the cash flow reports what income, from what properties, are included in the income for each company.
- [86] The parties did take the court to various evidence, and lists, of properties which were not always consistent so as to enable the court to compare apples to apples. Regardless, it is that type of forensic audit that the courts are not to undertake on interim applications such as these.
- [87] Having regard to all the financial circumstances of the parties, applying a rough justice approach, and accepting that the respondent's income has likely been affected by COVID, I impute the respondent's income in the amount of \$1M.
- [88] Although no particular factor is determinative, I note that an imputation of income at \$1M is consistent with the following:
- a) A nominal net investment rate of return on the \$41 million of assets declared on the respondent's financial statement, at 0.25% would yield this amount;
 - b) Rental income of approximately \$2 million, if discounted, albeit by an arbitrary 50% given the lack of evidence from the respondent to fully reconcile the properties' holding costs, would yield this amount;
 - c) Extrapolating the payment amount under the 2016 Agreement with what the respondent actually paid since 2020 is consistent with this amount. Notwithstanding the issues as to its validity of the 2016 Agreement, as noted, it was entered into at a time when the rental income from the properties was \$4.4M per year (as found by the Chinese court). The support payments under that agreement at \$1M per year were 22.5% of the rental income. The average actually paid by the respondent from March 2020 to March 2023 was \$211,500 per year. \$211,500 per year is 22.5% of \$940,000.
 - d) The respondent's annual expenses, as disclosed on the respondent's first financial statement were just under \$765,000 per year, without including any income taxes that may be payable. As gross income is used, applying a less than 25% tax and mandatory withholding rate would bring the gross amount within a \$1M range.

- [89] As to the claimant's income, I agree that there is no reason why the claimant cannot work outside of the home, particularly given that a nanny has been used. Prior to 2016, when the children were younger and in more need of personal care, she was able to do so and make \$200,000 per year.
- [90] In addition, based on her expenses and own evidence as to the respondent ceasing his support, although that evidence was inconsistent as to when that was, with only nominal debt being disclosed on her financial statement, I have some concern as to whether there has been complete financial disclosure by the claimant.
- [91] I agree that claimant's income should be imputed at \$200,000, consistent with her pre-2016 income levels.
- [92] On a prospective basis commencing January 1, 2023, the respondent shall pay support to the claimant as follows:
- a) Child support in the amount of \$16,062, that being the amount required under the Guidelines; and
 - b) Spousal Support at the mid range of the SSAG amounts, based upon the parties' incomes as imputed herein, and child support as set out above, with a marriage date of September 25, 2008 and a separation date of March 25, 2019.
- [93] As to retroactive support, courts are generally reluctant to make such orders on interim applications given the potential prejudice, particularly where it could result in a large lump sum payment that may not be able to be adjusted for on a final resolution.
- [94] Here, I note that the claimant does not disclose anything other than nominal debt as being incurred during the period of non-payment. As such, she is not significantly prejudiced by not having the order made retroactively. In contrast, a retroactive order could cause significant difficulty for the respondent, particularly in terms of the ability to move funds out of China.
- [95] With respect to the child support specifically, in order to make a retroactive order a full accounting of the funds paid to date would also need to be undertaken. Not all of the expenses paid by the respondent are necessarily s. 7 expenses. Some may be of the type that are considered to fall under the umbrella of expenses to be covered by child support. Without a full accounting, any appropriate retroactive order cannot be determined.
- [96] As such, no retroactive order is made.

[97] In addition, while the claimant sought an order for payment of s. 7 expenses, the parties did not take the court to any calculations in support of those amounts. It was not clear if there was a specific list of expenses incurred that the claimant sought to be approved. I order that the s. 7 expenses are to be paid pro rata by the parties, namely 83.3% by the respondent, and 16.7% by the claimant. If there are any further determinations that need to be made as to specific expenses, they are adjourned.

[98] There has been some divided success, although the claimant has been substantially successful on this application. However, given the issues that remain to be resolved, it is appropriate that costs be to the claimant in the cause.

Summary of Orders

[99] In summary, I make the following orders:

- a) On an interim and without prejudice basis, the respondent's income is imputed at \$1,000,000 and the claimant's at \$200,000.
- b) On an interim basis, commencing January 1, 2023, the respondent shall pay the claimant support as follows:
 - i. Child support in the amount of \$16,062, that being the amount required under the Guidelines; and
 - ii. Spousal Support at the mid range of the SSAG amounts, based upon the parties' incomes as imputed herein, and child support as set out above, based on a marriage date of September 25, 2008 and a separation date of March 25, 2019.
- c) On an interim basis, the parties shall share s. 7 expenses with the respondent paying 83.7% and the claimant 16.7%. The accounting for any such expenses is adjourned generally.
- d) All other relief sought in the notice of application is adjourned generally.
- e) Costs of this application shall be to the claimant in the cause.

[100] If the parties are able to agree as to the spousal support amounts based upon the SSAG guidelines and noted parameters, they may insert the amount in the order accordingly.

"Master Robertson"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/22/2023BCSC2206cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/zhang-v-chen-2023>

Prepared on 29 October 2026 · Esheria