

CANADA / JUDGMENT

Zhang v. Lin

2023 BCSC 1679

COURT

Supreme Court of British Columbia

DECIDED

26 September 2023

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

2023 BCSC 1679 Zhang v. Lin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang v. Lin,

2023 BCSC 1679

Date: 20230926

Docket: S172062

Registry: Vancouver

Between:

Shu Rong Zhang

Plaintiff

And

Cuiguo Lin and Ming Hu

Defendants

Before: The Honourable Justice Funt

Ruling on Production of Further Documents

Counsel for the Plaintiff:

K.J. Learn

L. Jiang

Counsel for the Defendants (December 2019 to March 2020):

D. Chen

J. Hong

Counsel for the Defendant, Ming Hu (January 2021 to July 2022):

Z.C. Ng

Counsel for the Defendant, Cuiguo Lin:

J. Liu

(January 2021)

S. Xue

(April 2021 to July 2022)

W. Simek

(August 16 and 17, 2023)

Place and Dates of Trial:

Vancouver, B.C.

December 2-6, 9-13, 16-17, 2019

January 20-24, 27-31 and

March 2-6, 2020

January 4-8, 11-15, 18-22

April 6-9, 12-16, May 10-14, 31

June 1-4, 7-11, 2021

February 14-18, July 4-8, 2022

Place and Dates of Hearing of the Within Application:

Vancouver, B.C.

August 16-17, 2023

Place and Date of Judgment:

Vancouver, B.C.

September 26, 2023

Table of Contents

1. introduction. 4

-
2. key background facts. 6
 - a) Surrey Bare Land. 6
 - b) Surrey Development Land. 8
 - c) Refinancing of the Surrey Development Land. 10
 3. Follow the money. 11
 4. Other Grounds. 11
 - a) Lack of an Informed Decision. 11
 - b) Duty to the Court 13
 - c) Possible Prejudice to the Trial Process. 13
 5. Mr. Lin's possession and control. 13
 6. Holdco's 2022 Tax return. 14
 7. Conclusion. 15
 8. costs. 16
 1. introduction
 - [1] This action involves a dispute with respect to significant real estate holdings.
 - [2] After many weeks of evidence and several days of legal argument, on July 8, 2022, I reserved judgment.
 - [3] During argument at trial, the parties agreed to many facts, and shortly after the conclusion of argument, a Joint Statement of Agreed Facts dated July 19, 2022 (the "Joint Statement of Agreed Facts") was submitted to me.
 - [4] The Joint Statement of Agreed Facts was signed by counsel for the plaintiff, Ms. Shu Rong Zhang (Mr. Learn and Mr. Jiang), then counsel for the defendant, Mr. Cuiguo Lin (Mr. S. Xue), and counsel for the defendant, Mr. Ming Hu (Mr. Z.C. Ng).
 - [5] One of the agreed facts was that L23172289 Holdings Ltd. ("Holdco") still held title to a property referred to by the parties in this action as the "Surrey Development Land", "both legally and beneficially", as of July 19, 2022.
 - [6] During the hearing of evidence and legal argument, all counsel and the Court understood that Holdco then owned the Surrey Development Land. Upon this basis, Mr. Xue tendered evidence and made detailed submissions involving financial calculations.
 - [7] In early October 2022, Mr. Han Biao Wang, Ms. Zhang's son, discovered that the Surrey Development Land had been sold on March 30, 2022, which was several months before closing submissions and the Joint Statement of Agreed Facts was signed.
-

- [8] The records of the Land Title Office show that the Surrey Development Land was sold for \$28,924,000 on March 30, 2022. The records of the BC Assessment Authority show an apparent subject removal date of May 26, 2021.
- [9] On October 6, 2022, Ms. Zhang's counsel wrote to Mr. Xue and Mr. Ng and informed them of the fact that the Surrey Development Land had been sold.
- [10] Shortly after, on October 11, 2022, Mr. Xue withdrew as counsel of record for Mr. Lin.
- [11] Mr. Lin initially acted for himself, then retained new counsel. His then new counsel was further replaced by his current counsel, Ms. Simek.
- [12] Mr. Ng is still counsel for Mr. Hu. Mr. Ng did not appear at the hearing but asked Mr. Jiang, counsel for Ms. Zhang, to report the result of the hearing to him. Mr. Hu did not file a response to Ms. Zhang's application.
- [13] The Court wishes to be clear that there is absolutely no basis to suspect that either Mr. Xue or Mr. Ng was aware, or even suspected, that the Surrey Development Land had been sold when each signed the Joint Statement of Agreed Facts on July 19, 2022.
- [14] Mr. Lin simply did not tell Mr. Xue. Similarly, Mr. Hu did not tell Mr. Ng.
- [15] Ms. Zhang has brought the current application to have Mr. Lin and Mr. Hu produce further documents in relation to the sale of the Surrey Development Land.
- [16] For several reasons, I will grant the application for the production of documents that relate or may relate to the March 30, 2022 sale of the Surrey Development Land.
- [17] Chief among the reasons is that the documents may show a financial tie to the financial contributions upon which the interest Mr. Lin may have in another real estate investment referred to as the "Surrey Bare Land" is based.
- [18] Mr. Lin and Mr. Hu both recognize that Mr. Hu holds in trust for Ms. Zhang a significant interest in the Surrey Bare Land.
- [19] Ms. Zhang asserts that Mr. Lin may have used her investment and further equity in the Surrey Bare Land to fund his purported contributions to the Surrey Bare Land by way of a circular flow of funds through the Surrey Development Land.
- [20] As one may surmise from the many weeks of evidence, there are many facts involved in this litigation. For the purposes of the current application, I need only focus on the key financial aspects involving the Surrey Bare Land and the Surrey Development Land.
2. key background facts
- a) Surrey Bare Land

- [231] On or about May 14, 2015, Mr. Lin entered into a contract for the purchase and sale of bare land with a civic address of 2680-168th Street, Surrey, BC. This is the property that is referred to as the "Surrey Bare Land".
- [222] On August 31, 2015, the purchase of the Surrey Bare Land was completed. The contract had an addendum that provided that on completion, the Surrey Bare Land would be registered in Mr. Hu's name. At that time, Mr. Hu was Mr. Lin's son-in-law.
- [233] Mr. Lin did not contribute funds to the purchase of the Surrey Bare Land. Ms. Zhang and Mr. Hu each contributed \$809,261.51, with further financing of \$1,410,000 by way of a mortgage with Antrim Balanced Mortgage Fund Ltd. (the "Antrim Mortgage").
- [244] The Surrey Bare Land was registered in only Mr. Hu's name. In addition to his own interest in the Surrey Bare Land, Mr. Hu held in trust Ms. Zhang's interest. The trust was not registered in the Land Title Office.
- [255] As documented in what the parties refer to as the "Second Co-operation Agreement", Ms. Zhang's interest in the Surrey Bare Land was the same as Mr. Hu's interest in it.
- [266] Under the Second Co-operation Agreement, Mr. Lin was to pay the monthly interest on the Antrim Mortgage, and the total of such payments would give rise to his relative contribution at the time of the eventual sale of the Surrey Bare Land under a proportional profit share. He was also to receive a management fee based on pre-tax profit.
- [277] In sum, Mr. Hu was the registered owner of the Surrey Bare Land. Mr. Hu and Ms. Zhang would have equal interests in the Surrey Bare Land, with Mr. Lin entitled to a management fee and to profit sharing based on his payments of the monthly interest on the Antrim Mortgage.
- [288] In paragraph 4(b) of the Amended Response to the Third Amended Notice of Civil Claim, Mr. Lin and Mr. Hu plead that Mr. Lin would pay the interest for the Antrim Mortgage "without contribution from Zhang or Hu".
- [299] At the outset of the trial, Mr. Lin took the position that his financial contribution should also include the principal amount of the Antrim Mortgage. On day 14 of the trial, in cross-examination, he resiled from this position. The cross-examination reads:

Q Sir, you agree that the time when you opened your case here, that is when you opened what the issues were in this case through your lawyer, one of the issues that you were still putting forward to this court was that the - whether the first mortgage, that is the Antrim mortgage, was part of your initial investment.

That was one of the issues you were putting forward at that time.

A It's really - it's really irrelevant that - if I agree or not. It's just that this issue has been talked about at a later stage and at an earlier stage.

They - they're all the same - same question. You keep repeating the same question. At the time we - we were just upset and we just wanted to make her upset; didn't want her to have an easy time either.

Q And that was your reason for advancing, insofar as even up to the opening statement, the position that the first mortgage principal was your actual investment, because she had upset you and you wanted to upset her.

A Mainly that - that's the reason.

b) Surrey Development Land

[30] On May 8, 2016, Mr. Lin entered into two contracts for the purchase and sale of two parcels of adjoining land for \$5,350,000 each (totalling \$10,700,000). These two parcels constitute the Surrey Development Land.

[31] On August 18, 2016, Mr. Lin and Mr. Hu caused Holdco to be incorporated with the purpose of having Holdco purchase and then hold the Surrey Development Land.

[32] Holdco's purchase of the Surrey Development Land closed August 25, 2016.

[33] Holdco's purchase of the Surrey Development Land was financed in part by a loan from "iMor Capital Corp., represented by InstaFund Financial Services (2000) Ltd., secured by a loan with a principal amount of \$4,350,000 as a 1st mortgage" (the "InstaFund Mortgage"): Joint Statement of Agreed Facts at para. 69.

[34] Mr. Lin also raised funds from a number of small investors for the purchase of the Surrey Development Land.

[35] The small investors did not become Holdco shareholders. They were not to be registered in Holdco's share registry. Mr. Lin was to represent their financial interests. In this regard, the typical Investment Agreement (the "Investment Agreement") reads:

6. For the transaction and management of this investment project, Party A [Mr. Lin] has registered a company. The current near total purchase price for the two lands are CAD\$11 million, the value of each share (1%) will be CAD\$110,000. To avoid having too many registered shareholders in the company, any investment participants (Party B) holding 5 shares (5% or CAD\$550,000) or more will be legal registered shareholders in the company; for other investment (Party B) holding less than 5 shares (5% or CAD\$550,000), the company will provide an investment Receipt and Share of Certificate that formally witnessed and signed by lawyers. Party B will ask Party A to represent its interest in the company.

[36] The Investment Agreement also reads:

This investment project will hire professional accountants to handle all finances. All accounts and its transactions can be viewed by all shareholders.

[37] Many of the investors were not Canadian residents.

- [38] Further funding came from Mr. Hu placing two additional mortgages on the Surrey Bare Land. As set forth in the Joint Statement of Agreed Facts:
67. On August 16 and 22, 2016 respectively, Hu signed two loan documents from Kabak Ventures Ltd. (the "Kabak Mortgages") and the net loan proceeds (the "Kabak Funds") were applied towards the down payment for purchasing the [Surrey Development Land] on completion of the [Surrey Development Land] Purchase Contract on August 25, 2016, as Hu and/or Lin's investment in the [Surrey Development Land]. The particulars of the two loans are as follows:
- a. A 1st loan with a principal of \$1,000,000, secured by a second mortgage registered against the title to the Surrey Bareland;
 - b. A 2nd loan with a principal of \$425,000, secured inter alia by:
 - i. A 3rd mortgage on the Surrey Bareland (the 2nd and 3rd mortgages on the Surrey Bareland are collectively referred to as the "Kabak Mortgages") and
 - ii. A 2nd mortgage on a property with a civic address of 2715 - 164A Street, Surrey, British Columbia, Hu's residence.
- [39] Upon the closing of the purchase of the Surrey Development Land, Mr. Lin, or corporations controlled by him, and a corporation controlled by Mr. Hu, held 80% of the shares in the capital of Holdco.
- [40] As set forth above, the net proceeds from the \$1,000,000 Kabak mortgage ("Kabak Mortgage #1") and the \$425,000 Kabak mortgage ("Kabak Mortgage #2") were used by Holdco to fund the August 25, 2016 purchase of the Surrey Development Land.
- [41] The Antrim Mortgage remained registered against the Surrey Bare Land.
- [42] Mr. Lin and Mr. Hu say that Ms. Zhang was aware that they, Mr. Lin and Mr. Hu, were going to use the equity in the Surrey Bare Land to help fund Holdco's purchase of the Surrey Development Land. Ms. Zhang denies any such knowledge. In my reasons for judgment, I will make a finding on this aspect.
- c) Refinancing of the Surrey Development Land
- [43] As the value of the Surrey Development Land increased, Mr. Lin caused Holdco to refinance its investment in the Surrey Development Land. As set forth in the Joint Statement of Agreed Facts:
80. On or about February 25, 2019, Hold Co paid off the InstaFund Mortgage with proceeds of a loan that it borrowed from Golden Top Financial Services Inc. with a principal amount of \$6,000,000 and secured by a 1st mortgage registered against the title to the [Surrey Development Land] for the benefit of the lender (the "Golden Top Mortgage").

81. In April 2021, Hold Co paid off the Golden Top Mortgage with proceeds of a loan that it borrowed from CareVest Capital Inc. with a principal amount of \$8,000,000 and secured by a 1st mortgage registered against the title to the [Surrey Development Land] for the benefit of the lender (the "CareVest Mortgage"). As of this date, the CareVest Mortgage remains on the title to the [Surrey Development Land].
- [44] The Joint Statement of Agreed Facts also states:
84. Lin claimed he had, directly or indirectly, paid all the costs or expenses in relation to the Antrim Mortgage, including but not limited to the monthly mortgage payment, and other expenses for or in relation to maintaining the title to the Surrey Bareland, such as the annual property tax, since the completion of the Surrey Bareland Purchase Contract on August 31, 2015.
85. As of this date the Antrim Mortgage has never been in default.
86. The \$1,000,000 Kabak Mortgage#1 (CA5429977) was paid off and cancelled on January 13, 2021, before which the Kabak Mortgage#1 had never been in default.
87. The \$425,000 Kabak Mortgage#2 (CA5441701) was modified and discharged from the Surrey Bareland on December 16, 2020. The balance of the Kabak Mortgage#2 of \$325,000 remains registered against Hu's residence. Kabak Mortgage #2 had never been in default before December 16, 2020.
88. Holdco still holds the title to the [Surrey Development Land], both legally and beneficially, as of this date.
- [45] Mr. Hu remains the registered owner in fee simple of the Surrey Bare Land.
- [46] As noted above, the Land Title Office records show that the Surrey Development Land was sold for \$28,924,000 on March 30, 2022, with an apparent subject removal date of May 26, 2021.
3. Follow the money
- [47] In brief, Ms. Zhang says that the investment and equity she had in the Surrey Bare Land was used by Mr. Lin and Mr. Hu to fund the purchase of the Surrey Development Land, which, in turn, Mr. Lin then used to make the \$7,100 monthly payments on the Antrim Mortgage.
- [48] In other words, Ms. Zhang says that, among other aspects, Mr. Lin will say that he is entitled to an interest in the profits from the eventual sale of the Surrey Bare Land based on his \$7,100 monthly interest payments on the Antrim Mortgage. Where, if one were to "follow the money", the initial source of such funds is the mortgaging of the Surrey Bare Land using Kabak Mortgage #1 and Kabak Mortgage #2 to purchase the Surrey Development Land which, in turn, was further mortgaged with such proceeds used in part to fund Mr. Lin's payments on the Antrim Mortgage.

[49] As noted, Mr. Lin, in the Response to the Third Amended Notice of Civil Claim, plead that he would pay the interest for the Antrim Mortgage "without contribution from Zhang or Hu". Mr. Lin's assertion is a material fact: *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at para. 45.

[50] On this basis alone, the Court finds that the types of documents Ms. Zhang seeks should be ordered to be produced.

4. Other Grounds

a) Lack of an Informed Decision

[51] Ms. Zhang also submits that the documents requested may support her seeking relief on the basis of the disgorgement of profits.

[52] Ms. Simek, Mr. Lin's current counsel, says that Ms. Zhang previously abandoned disgorgement of profits as a remedy. Ms. Simek notes that during closing submissions at trial in July 2022, Ms. Zhang's counsel stated:

Justice, I just want to make a comment at the outset about the remedy that Mr. Xue is seeking here, disgorgement of profits, and then he measures the profits by what happened in the Surrey development lands.

From the plaintiff's perspective, that is a totally inadequate remedy. It is a totally inadequate remedy because of - the court has referred to it many times, but it involves Ms. Zhang's calculation of profits in an organization, Holdco, that's controlled by Mr. Lin and whom she has no faith at all, and I submit the court ought not to have faith.

The organization itself has small investors that aren't getting exactly all that was held out to them. There doesn't appear to be any kind of representation with the securities law. That remedy of disgorgement of profits by measuring the profits against the Surrey development land is totally inadequate.

So what we are seeking is, as I said in my submissions, tab A, the appropriate remedy is to transfer the property to Ms. Zhang. By transferring it, there will still be that shortfall of \$250,000, which can be dealt with by way of judgment.

But we do not choose to be involved at all in the Surrey development land, and really what we're seeking is basically a transfer of the property to Ms. Zhang. And so all of my learned friend's argument on, this is how you measure the loss if we consider it through the Surrey development land, we say, are of no import at all.

[53] At the time of closing submissions at trial, Ms. Zhang's counsel was not aware that the Surrey Development Land had been sold several months before (on March 30, 2022) for \$28,924,000.

[54] Similarly, during the July 2022 submissions, Mr. Xue was also unaware of the March 30, 2022 sale of the Surrey Development Land. He had based his submissions on the possible quantum of profits if such profits were to be disgorged. Mr. Xue submitted that they were relatively small based on the appraisal by an expert witness called by Mr. Lin which estimated the fair market value of the Surrey Development Land to be \$16,920,000 as of January 31, 2021 (less than five months prior to the apparent subject removal date of May 26, 2021).

[55] Ms. Zhang says that her counsel's statement to the Court during closing submissions, through no fault of her counsel, was not an informed decision. I agree.

[56] With the disclosure of the sought documents, Ms. Zhang, with her counsel, may then make an informed decision.

b) Duty to the Court

[57] Mr. Lin and Mr. Hu also owed a duty to the Court to correct the stated fact in the Joint Statement of Agreed Facts: "Holdco still holds the title to the [Surrey Development Land] both legally and beneficially, as of this date". The date of the Joint Statement of Agreed Facts was July 19, 2022. As noted, the sale of the Surrey Development Land occurred on March 30, 2022, several months before the Joint Statement of Agreed Facts was signed by all counsel.

c) Possible Prejudice to the Trial Process

[58] I also find that there is possible prejudice to the trial process and the administration of justice.

[59] For the administration of justice to be held in high repute, it is important that the court is not viewed as not treating seriously or condoning a breach of well known rules of litigation involving disclosure, including ongoing disclosure of relevant documents: Rule 7-1(9) of the Supreme Court Civil Rules; *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2021 BCCA 322 at para. 93.

[60] For the particular litigants to an action, each litigant should similarly be satisfied that there was a fair hearing. A fair hearing cannot be assured without proper and timely disclosure.

5. Mr. Lin's possession and control

[61] Mr. Lin's counsel, at the hearing of the current application, submitted that Mr. Lin does not have possession or control of Holdco's corporate documents.

[62] In *Dallas v. Dallas* (1960), 24 D.L.R. (2d) 746, 1960 CanLII 328 (B.C.C.A.), Justice Sheppard, for our Court of Appeal, stated at 747-48:

The defendant's mind is the directing and controlling mind of the company and of the board of directors. []

[]. Any nominal control exercised by the company would in reality be the control of the defendant. I am not prepared to hold that the doctrine in *Salomon v. Salomon*, [1897] A.C. 22 does negative the control which this defendant has in fact so as to enable him to escape discovery of relevant documents in his possession by interposing this his controlled creature.

[63] I find that Mr. Lin is the directing and controlling mind of Holdco having regard to the following facts:

- a) He is Holdco's controlling shareholder.
- b) He is shown as Holdco's only director (August 19, 2022 currency date).
- c) In many of the investor agreements, he represents, as noted above, that professional accountants would handle all finances, and that all accounts and its transactions could be viewed by shareholders (which, when read in context, is a reference that includes an investor under an investor agreement).
- d) Holdco's financial statements (unaudited) for the periods ending June 30, 2017, June 30, 2018, June 30, 2019 and June 30, 2020 were previously produced at trial.
- e) At trial, Mr. Lin, through his counsel, submitted a "Hypothetical Net Income Report" for Holdings prepared by Mr. Wenji Jiang, CPA. The purpose of the report was to "provide a comprehensive computation of the net income" to Holdco based on a hypothetical sale of the Surrey Development Land on January 31, 2021. Mr. Wenji Jiang was called by Mr. Lin. Mr. Wenji Jiang had also previously prepared Holdco's financial statements.

[64] In sum, at trial, Mr. Lin produced Holdco information and documents similar to those now sought. He is Holdco's directing and controlling mind. He has possession and control of the sought documents.

6. Holdco's 2022 Tax return

[65] By December 31, 2022, Holdco's 2022 tax return would have been filed. Holdco's fiscal year end is June 30.

[66] In reviewing the orders sought, Ms. Zhang seeks "any post-sale corporate records". For greater certainty, the Court expects the defendants to provide a true copy of Holdco's 2022 tax return with all schedules, attachments, and any other information filed with or forming part of the tax return.

7. Conclusion

[67] The Court orders the defendants, Cuiguo Lin and Ming Hu, to:

Produce the following documents within 35 days of this order relating to two real properties at 2289 and 2317 176 Street, Surrey, BC, owned by L23172289 Holdings Ltd., referred to as the "Surrey Development Land" at trial:

- a. the contract of purchase and sale and any addendums that were accepted and led to the eventual sale of the Surrey Development Land;
 - b. the vendor's conveyancing documents including, but not limited to, the order to pay, \$9 million CareVest Mortgage discharge, and payout statements;
 - c. any shareholders' and directors' resolutions of L23172289 Holdings Ltd. relating to the sale, profit distribution, dividend issuance declaration or payment;
 - d. any post-sale corporate records including resolutions of shareholder's loan repayments relating to Mr. Lin or Mr. Hu, and any other record showing shareholder's loan repayments to Mr. Lin, Mr. Hu, or corporations related to either of them; and
 - e. any post-sale corporate records including corporate bank account statements recording and showing such profit distribution, dividend payments, and shareholder's loan repayments to the defendants, Mr. Lin, Mr. Hu, or corporations related to either of them.
- [68] Within 30 days of the production of the documents, I ask counsel to arrange, through Supreme Court Scheduling, a 9 a.m. 55-minute hearing to determine the next steps to be taken in this matter.

8. costs

[69] Costs may be addressed after my trial reasons are released.

"Funt J."

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/23/16/2023BCSC1679.htm>

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

Prepared on 27 October 2026 · Esheria