

CANADA / JUDGMENT

Zhang v. Xiong

2023 BCSC 915

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Supreme Court of British Columbia

DECIDED

31 May 2023

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2023 BCSC 915 Zhang v. Xiong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang v. Xiong,

2023 BCSC 915

Date: 20230531

Docket: E190905

Registry: Vancouver

Between:

Jiabei Zhang a.k.a. Jia Bei Zhang

Claimant

And

Yilei Xiong a.k.a. Yi Lei Xiong

Respondent

And

Ursids Toronto Inc., Ursids Boutique Corp.,

A Level Luxe Fashion Corporation and Wenjing Li

Respondents by Counterclaim

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

The Claimant, appearing in person:

J. Zhang

Counsel for the Respondent:

J. Kang

Place and Dates of Trial:

Vancouver, B.C.

October 11-14, 17-21, 2022

and March 27-28, 2023

Place and Date of Judgment:

Vancouver, B.C.

May 31, 2023

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- [1] In this family law proceeding, Mr. Zhang and Ms. Xiong wish to divorce. They share similar views about the best parenting arrangements for their daughter over the next year or so, and about the appropriate child support payments for her. Neither of them seeks spousal support.
- [2] Their primary dispute is over the division of family assets. Each seeks apportionment of the remaining assets in their favour based on claims about their respective contributions and allegations of misappropriation of assets after they separated.

The Parties

- [3] Mr. Zhang and Ms. Xiong are in their early 30s. They met in 2011 while attending Simon Fraser University. They began living together in January 2013 and married in Richmond, British Columbia in the summer of 2016. They separated on March 8, 2019. Both currently reside in China.
- [4] In February 2015, they founded Ursids Boutique Corp. ("Ursids"), to run a boutique clothing store in the Aberdeen Mall in Richmond. Ursids was owned 51% by Mr. Zhang and 49% by Ms. Xiong and both were directors. The store is now closed and the company is out of business.
- [5] Ursids Toronto Inc. ("Ursids Toronto"), founded in October 2018, operates a second Ursids store in Toronto. According to its corporate records in evidence, it is owned 51% by Mr. Zhang and 49% by two other arm's length owners in Toronto, although this is disputed as discussed below.
- [6] A Level Luxe Fashion Corporation ("A Level") operates a boutique clothing store in the Aberdeen Mall. A Level is owned by Ms. Wenjing Li, a friend of Mr. Zhang's. Just before the trial commenced, Ms. Xiong settled her claims against Ms. Li and A Level alleging that Mr. Zhang was the true beneficial owner of A Level.

Background Facts

- [7] In February 2015, the parties opened Ursids, their fashion boutique store in the Aberdeen Mall. Ms. Xiong was passionate about the fashion industry and Mr. Zhang liked the idea of managing a retail business with her. Specializing in luxury clothing and accessories mainly from Europe, the company did a substantial amount of business through its WeChat sales account ("WeChat Account") in addition to its in-store sales. The parties worked hard together on the business.
- [8] Mr. Zhang's parents contributed an initial \$200,000 to launch the business, later matched by a contribution from Ms. Xiong's family.
- [9] In May 2015, the parties purchased a condominium in Richmond for \$500,000 ("Condo"). Mr. Zhang's parents contributed the \$200,000 down-payment.
- [10] The parties married in Richmond in the summer of 2016. In 2018, Ms. Xiong was pregnant and so, needing more space, they leased a townhouse and rented out their Condo for around \$2,500/month.
- [11] On October 19, 2018, Ursids Toronto was incorporated. Its shares were owned 51% by Mr. Zhang and 49% by two acquaintances in Toronto. Mr. Zhang was one of three directors. Ms. Xiong's evidence was that she was not included as a shareholder because, nearing the end of her pregnancy, she did not wish to travel to Toronto at the time.
- [12] Bella was born on November 5, 2018 in Richmond and is a Canadian citizen. For the next few months, Ms. Xiong was her primary caregiver while Mr. Zhang focussed on Ursids.
- [13] The parties separated on March 8, 2019. Ms. Xiong and Bella left the townhouse and moved into an apartment at a location unknown to Mr. Zhang. She testified that Mr. Zhang had become emotionally controlling and would occasionally kick or punch things around the house and say he wanted to divorce. He denied these allegations.
- [14] Mr. Zhang returned to the Condo. Ms. Xiong brought Bella to Ursids once or twice a week to see her father.
- [15] On April 4, 2019, Mr. Zhang commenced these proceedings.
- [16] By late May, 2019, Mr. Zhang was not sleeping and was depressed by his marital break-up and separation from his daughter. He testified to begging to see more of Bella and losing substantial weight from stress. Worried about his health, he returned to China to stay with his parents. He asked Ms. Xiong to spend more time managing Ursids in his absence.
- [17] By the end of June 2019, Ursids was closed. At trial, each party accused the other of ruining the business and misappropriating its valuable inventory.

- [18] In November 2019, A Level was incorporated by Ms. Li. She was the sole shareholder and director. A Level took over Ursids' former location in the Aberdeen Mall. At trial, Mr. Zhang acknowledged assisting Ms. Li incorporate A Level and giving her Ursids' WeChat Account and the contact details for its European suppliers.
- [19] In December 2019, Ms. Xiong went to China to be with her father while he underwent surgery. Before leaving, she obtained a consent order allowing her to take Bella to China for two weeks, until January 15, 2020. In breach of this order and the re-location process in the Supreme Court Family Rules [SCFR], Ms. Xiong has kept Bella in China ever since, and Mr. Zhang has seen his daughter only a few times. I will return to this issue when considering Bella's parenting below.
- [20] From February to July 2020, Ms. Xiong returned to Richmond to complete her studies. Bella stayed with Ms. Xiong's parents in Zhongshan. In June 2020, Mr. Zhang and his parents went to Zhongshan to try to see Bella. He did not tell Ms. Xiong he was going. The trip was an ordeal, requiring him to quarantine for 28 days for COVID-19. When he finally went to see Bella, a lengthy verbal confrontation ensued outside the building where she and her grandparents were staying and he was unable to see her. Ms. Xiong tendered video evidence of this altercation at trial.
- [21] On September 29, 2022, the Condo was sold in foreclosure. Proceeds of sale of \$205,634.78 (plus interest after March 27, 2023) remain in trust ("Condo Proceeds"). Both parties seek the entirety of the funds.

Procedural History

- [22] Mr. Zhang has been self-represented through much of the case. From the record it appears that he rarely participated in the proceedings from around April 2020 until trial.
- [23] Mr. Kang accurately summarized Mr. Zhang's history of non-compliance with court orders in the following table, which I have somewhat revised:

Chart of Breaches of the Claimant

No.

Order

Presider

Para.

Description

Breach

1

Aug 2, 2019

Master Muir

1(a)

S. 91 Restraining order

Disposed of Ursids' WeChat Account

2

Sep 5, 2019

Armstrong J.

5

Documents to expert

Failed to provide most documents requested by MNP

3

Dec 9, 2019

Master Vos

2

Provide cellphone

Not produced

4

3

Documents or affidavits

Most not produced and no affidavit

5

Feb 11, 2020

Master Elwood

1

\$395/m child support

Ceased paying after May 2020

6

3

Comply with Master Vos order

Failed to comply

7

Apr 30, 2020

Master Elwood

1

\$500 fine forthwith

Paid in Jan 2023

8

2

Provide affidavit of documents

Failed to provide compliant affidavit

9

Aug 28, 2020

Master Elwood

1

\$3,500 fine payable forthwith

Paid in Jan 2023

10

Feb 26, 2021

Milman J.

2

Costs of application thrown away

Paid in Jan 2023

[24] Mr. Zhang also failed to attend examination for discovery in June 2020.

- [25] Mr. Zhang testified that he was unable to deal with the litigation due to stress, depression and sleep difficulties from his separation and not seeing his daughter. He admitted his failure to pay child support was wrong and selfish. He felt Ms. Xiong took most of the family assets when they separated and it was too painful for him to pay child support when she was keeping Bella from him.
- [26] On September 5, 2019, while Mr. Zhang was represented, the parties consented to an order to jointly retain and pay an expert accountant for a forensic analysis of Ursids' inventory and revenues and a valuation of Ursids and Ursids Toronto. The order required the parties to provide documents to the expert as requested.
- [27] In November 2019, the parties jointly retained MNP LLP ("MNP") as the expert. However, when MNP requested documents in April and May 2020, Mr. Zhang failed to provide most of them.
- [28] On December 9, 2019, Mr. Zhang consented to an order to produce his cellphone containing the Ursids' WeChat Account, and documents relating to the disposition of its inventory, its banking and other records and various passwords. Most of this was never produced, leading to the April and August 2020 court fines indicated in the table above.

Credibility and Non-Disclosure

- [29] Many of the disputed issues involve head-on credibility conflicts between the parties.
- [30] Credibility and reliability are generally assessed based on harmony with the probabilities that a practical, informed person would readily recognize as reasonable. Factors to consider include: clarity and firmness of memory; consistency with other accepted evidence; internal consistency; and, motive to lie. Demeanor may also be considered but with caution (*Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296).
- [31] Ms. Xiong testified through a Mandarin interpreter. She was granted leave to testify by video from Zhongshan, China, having submitted evidence that she applied for her travel visa to Canada in early August but it was delayed and not processed in time through no fault of her own. Mr. Zhang testified in English which is his second language. Although he is reasonably proficient at times it was a challenge for him.
- [32] Our case law recognizes the difficulties for credibility assessment when cultural differences are in play and key witnesses testify by interpreters (*Fu v. Zhu*, 2018 BCSC 9, paras. 39-42; *Wu v. Gu*, 2020 BCSC 396, paras. 103-4). Similar difficulties can arise for a witness testifying in English as a second language. I have endeavoured to bear these considerations in mind on the disputed issues.
- [33] Ms. Xiong seeks adverse inferences against Mr. Zhang for his failure to produce financial records, the inference sought being that the missing records would be contrary to his evidence and positions in the case (*Zhang v. Deng*, 2021 BCSC 1152, para. 145).

- [34] At trial, Mr. Zhang gave various explanations for this. As mentioned, he testified to his general inability to deal with the litigation due to stress and depression from his marital breakdown and separation from his daughter. He testified that he provided what documents he had but Ms. Xiong had taken Ursids' laptop and had access to many of the records in question (which she denied). He said that the categories for production were numerous and complicated and he was unclear about the specific information required.
- [35] Ms. Xiong also alleged that Mr. Zhang failed to disclose the details of his ownership interest in, and income from, Ursids Toronto and A Level.
- [36] In family litigation, failure to disclose documents, assets and to comply with court orders relating to accounting is a notorious problem. As indicated below, I draw some adverse inferences against Mr. Zhang for his non-disclosure while at the same time recognizing that such inferences are not an adequate substitute for evidence. Justice Donald made this point in *Wu v. Sun*, 2011 BCCA 239:
- [41] I am not the first to observe that non-disclosure is the Achilles heel of family assets litigation. Strong measures are justified in discouraging it. However, one cannot make something out of nothing. The right note of caution was sounded by Madam Justice Baker in *Palanca v. Palanca*, 2005 BCSC 1014:
- [127] Counsel for Mrs. Palanca submitted that the court could draw an adverse inference against Mr. Palanca's estate in relation to the existence of family assets in the Philippines because Mr. Palanca failed to comply with court orders relating to accounting and disclosure. I accept that Mr. Palanca did not meet his obligations in this regard, but an adverse inference is not an adequate substitute for evidence about specific assets, the ownership of those assets, whether the assets were used for a family purpose, or otherwise met the definition of family assets, or the value of the family assets, sufficient to allow for the making of a compensation order that is more than a guess.
- [37] Both parties sought adverse inferences from the other's failure to call certain witnesses. Ms. Xiong did not call her sister or mother, both of whom were on her witness list. Mr. Zhang did not call the other Toronto Ursids owners or Ms. Li.
- [38] These witnesses might have had useful evidence. Ms. Xiong's family members could have addressed parenting and what inventory they helped Ms. Xiong remove from Ursids in June 2019. The Toronto partners and Ms. Li could have addressed Mr. Zhang's alleged ownership interest in their businesses and the allegations that he transferred Ursids' inventory to them after separation.
- [39] I do not draw adverse inferences against either party for not calling these witnesses. In my view, both parties were legitimately seeking ways to shorten what was a difficult trial that went beyond its time estimate causing delay and re-scheduling difficulties. Also, regarding the Ursids Toronto owners and Ms. Li, they were not in Mr. Zhang's control in a manner that would justify an adverse inference.

Analysis

Parenting of Bella

[40] During the break between the completion of evidence and final argument, the parties consented to an interim parenting arrangement, without prejudice to their arguments and positions. The January 26, 2023 consent order included this:

- i. Mr. Zhang will have parenting time with Bella in Zhongshan for two consecutive days each month, each day for 4 hours (no overnight), at a public space to be further agreed upon by you and Ms. Xiong.
- ii. Ms. Xiong will bring 2 or 3 family members of her choice to be present through parenting time. Mr. Zhang can bring his parents.
- iii. In addition, Mr. Zhang will have one or two video sessions with Bella per month, each lasting 30 to 60 minutes, to be further arranged by him and Ms. Xiong.
- v. This agreement is on an interim basis and is without prejudice to either Mr. Zhang's or Ms. Xiong's ability to seek adjustments or additional parenting time in the future.

[41] Unfortunately, Mr. Zhang's sole meeting with Bella in China proved unsuccessful.

[42] When the trial resumed for final argument, evidence was briefly re-opened to show the video of Bella and her mother meeting with him in a hotel lobby in Zhongshan, on November 23, 2022. Bella was upset throughout, crying and clinging to her mother, and would not interact with her father. Afterwards, there was an unfortunate incident, not caught on video, between Mr. Zhang and Ms. Xiong's brother-in-law apparently caused by a misunderstanding.

[43] Despite these problems, in final argument the parties agreed that a similar parenting arrangement should be tried for the next year, being the best way for Mr. Zhang and Bella to build their relationship. They agree that the arrangement can then be reviewed with the hope of increasing Mr. Zhang's involvement. The evidence was that the trip from Nanjing, where Mr. Zhang is living, to Zhongshan takes around six to seven hours. His visits to see her will therefore be demanding but manageable.

[44] In my view, this proposal, with some refinements set out below, is in Bella's best interests. I accept Ms. Xiong's evidence that Bella is generally healthy and happy with her in Zhongshan, China. She was in school there for around a year before the COVID-19 closures. She speaks Mandarin, is learning English, and enjoys drawing, swimming and dance. She spends time with Ms. Xiong's large extended family in Zhongshan and Wuhan.

[45] Mr. Zhang testified that Ms. Xiong is a good mother, his one reservation being the belief that she has alienated Bella from him. Nevertheless, he acknowledged that, for Bella's sake, she must remain in her mother's care for now while he builds their relationship.

- [46] Ms. Xiong agreed that it is in Bella's interest to gradually build her relationship with her father. It is important for Bella's sake that Ms. Xiong assist and support this as much as possible.
- [47] I accept Mr. Zhang's testimony that his separation from Bella pained him deeply and he sincerely wants to rebuild his relationship with her. He repeatedly described their separation as "mental torture". Mr. Zhang demonstrated his desire to forge this relationship by his trips to China to see her, each time requiring extensive quarantining.
- [48] Ms. Xiong testified that, as their relationship deteriorated, Mr. Zhang became angry once or twice a month and would hit the walls and doors. She said he suffered from poor sleep and depression and mentioned suicide. She felt he was unable to control his emotions. In cross-examination, she acknowledged never needing to call 911 and that he never harmed her or Bella. Mr. Zhang denied any history family violence.
- [49] On July 9, 2020, after the episode outside Ms. Xiong's parents' home in China, a six-month protection order was granted to Ms. Xiong against Mr. Zhang and his parents, restraining them from contact with Ms. Xiong, her family or Bella.
- [50] Based on all of the evidence at trial, I find that Mr. Zhang poses no risk of violence to Bella or Ms. Xiong.
- [51] In the Zhongshan video, Mr. Zhang was emotional, angry, and verbally aggressive with the people barring him from entering, but he was not physically violent. I accept his evidence that he acted this way because he was deeply frustrated, having travelled so far and quarantined so long, only to be kept from Bella by her grandparents and strangers outside their building.
- [52] From what I saw at trial, Mr. Zhang will be able to exercise the necessary self-control so long as he receives reasonable cooperation regarding Bella from Ms. Xiong and her family.
- [53] As mentioned, an additional troubling parenting issue is that Ms. Xiong never applied to extend the December 2019 order allowing her to take Bella to China for two weeks. She has been in continuous breach of that order and has relocated Bella from Richmond to Zhongshan contrary to the SCFR process for authorization to do so.
- [54] Ms. Xiong's explanation for this situation was, firstly, that she became stranded in China by COVID-19. Even when the severe travel restrictions loosened, she feared for Bella, while so young, catching COVID-19 on the long trip back to Canada. Secondly, she said that Mr. Zhang was also in China for most of 2019-2020, so it made no sense for Bella to return to Canada. Thirdly, by the time Mr. Zhang returned to Richmond just before the original trial date in March 2021, Bella was completely established in China.
- [55] Obviously, Ms. Xiong should not have kept Bella in China contrary to the December 2019 order and the re-location process. I accept however that her failure is somewhat explained by the exceptional circumstances of the pandemic and then both parents residing in China.

- [56] Despite this troubling re-location, it is still clearly in Bella's best interest, at least for now, to remain in Zhongshan with her mother and with her father relatively close. However, Ms. Xiong's breach of the December 2019 order and the re-location rules may be a factor in future location and parenting orders.
- [57] Throughout the trial, Mr. Zhang expressed a long-term desire for equal, if not primary, parenting time and responsibilities for Bella. What longer-term parenting arrangement will be in Bella's best interest cannot be assessed until she has a chance to build her relationship with her father over the next year or so.

Child Support

- [58] By order of February 11, 2020, Mr. Zhang was to pay \$395/month in child support. He stopped making payments shortly thereafter, in May 2020. By order of January 26, 2023, his arrears from May 2020 to October 2022 were paid from release of some of the Condo Proceeds. When the trial resumed in April 2023, I was told that he had not paid from November 2022 forward.
- [59] Ms. Xiong seeks continued child support of \$395/month based on an imputed income for Mr. Zhang of around \$40,000, the same amount imputed to him by the order of February 11, 2020.
- [60] Regarding the parties' current financial circumstances, neither appears to have significant income or assets. Ms. Xiong operates a Young OG clothing store in China with her sister. Her financial statement shows annual income of \$900 and savings of around \$9,000. Her only indicated asset is the 49% interest in the Young OG store but no estimated value is provided.
- [61] Mr. Zhang testified to being unemployed since the separation. During most of the trial, he lived in a friend's apartment in Vancouver. After the evidence finished, he returned to living with his parents in Nanjing. He testified that his only employment since the separation was for six months, in late 2021, when he worked for a virtual reality company for approximately \$900 per month. He said he gave up the job to return to Canada to deal with this litigation.
- [62] Without providing records in support, he testified to around \$9,000 of savings, credit card debt of around \$15,000, and supporting himself by loans from his parents. He testified that his last Canadian tax return was in 2018 and he has not filed tax returns in China. Ms. Xiong did not challenge that evidence and I accept it.
- [63] Mr. Zhang said that, once the trial was over, he intended to reside in China so that he could see Bella regularly and find employment there. .

- [64] In my view, Ms. Xiong's proposed imputation of income is reasonable and fair to Mr. Zhang in the circumstances. Mr. Zhang presented at trial as a capable, entrepreneurial person with useful experience managing a retail business. I expect, now that the trial is over, he will quickly find a job, get his working life back on track, and make more of a financial contribution for Bella than he has so far.

Division of Family Assets

- [65] Based on Ms. Xiong's evidence, I find the parties began living together in a marriage-like relationship in January 2013. Although Mr. Zhang testified that they did not live together full-time until their marriage in 2016, he acknowledged that starting in 2013 they lived together much of the time and spent most of their time together.
- [66] Each party seeks all of the Condo Proceeds based on claims of disproportionate financial contribution and the other party's misappropriations. Mr. Zhang goes further and seeks reapportionment or compensation from Ms. Xiong beyond just her share of those proceeds.
- [67] Thus far, from the Condo Proceeds Mr. Zhang has received \$58,690, pursuant to the order of January, 26 2023.[1] Ms. Xiong has received \$50,000, pursuant to an order of August 3, 2022, and \$1,310 pursuant to the January 26, 2023 order. Thus, Mr. Zhang has so far received \$7,380 more of the Condo Proceeds than Ms. Xiong.
- [68] Reapportionment of family property requires consideration of whether the presumptive equal sharing between spouses should not apply because it would be significantly unfair within the language of s. 95 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The circumstances that may be considered include unequal contribution, although this consideration should be much constrained (*He v. Guo*, 2022 BCCA 355).
- [69] In *Khan v. Gilbert*, 2019 BCCA 80, Justice Fenlon said that "[c]ases in which unequal contribution to family expenses and burdens were found to make it significantly unfair to divide family property equally have involved marked, prolonged, and intentional or unexplained disparities in contribution to family burdens" (at para. 32).

No forensic accounting

- [70] The forensic accounting and valuations ordered by consent in September 2019 did not occur.
- [71] MNP was jointly retained from September 2019 to February 2021. Ms. Jacklyn Davies, a partner from the firm, testified at trial. She explained that MNP's initial retainer contemplated four phases: Phase 1, to analyze and revise the financial statements in preparation for a forensic review; Phase 2, the forensic review; Phase 3, the companies' valuation; and Phase 4, tax advice.

- [72] Early on, MNP estimated fees of around \$5,000 for Phase 1 and \$20,000 for Phase 3. Ms. Davies explained that Phase 2 was not initially estimated because it depended on the complexity of the parties' records. On April 26, 2020, MNP estimated \$75,000-\$85,000 for Phase 2.
- [73] The upshot of Ms. Davies' evidence was that MNP was unable to complete Phase 1 due to lack of documents and a shortfall in their retainer. They never received Ursids' general ledger, its financial statements for 2017-2019, or any financial statements for Ursids Toronto. Total billings for their initial work on Phase 1 were approximately \$15,600. They were left with an account receivable of around \$3,900 unpaid by Mr. Zhang.
- [74] Mr. Zhang's explanation for ceasing payments was that he was taken aback by the amount of the Phase 2 estimate. In addition, the Phase 1 fees were already three times greater than estimated without the work completed. He did not have the funds to pay these fees, and it made no economic sense to him to incur such costs when Ursids was out of business, the family assets were small, and he claimed to have given up his shares in Ursids Toronto.
- [75] In my view, it was not unreasonable to reconsider MNP's involvement when the Phase 2 estimate was three times greater than for Phase 1 and 2 combined, and Phase 1 was incomplete despite being well over budget. The accounting work threatened to consume most, if not all, of what was in issue. This is no criticism of MNP, which was providing estimates for the work it saw as required to do a proper job and was dealing with inadequate disclosure. But it did come to appear that the economics of the case could not support a broad forensic accounting.

The Condo

- [76] Mr. Zhang claimed that the Condo was not a family asset or, even if it was, the Condo Proceeds should be divided more in his favour because it was purchased for him by his parents.
- [77] It is uncontested that, when the Condo was purchased in the spring of 2015 for approximately \$500,000, Mr. Zhang's parents contributed the \$200,000 down-payment and legal title was registered in his name alone.
- [78] Ms. Xiong testified to a family meeting in late 2014, when Mr. Zhang and his parents came to Zhongshan to meet her family. Mr. Zhang proposed to Ms. Xiong, she accepted, and his parents declared their intention to buy a home for the couple.
- [79] Mr. Zhang acknowledged a Chinese tradition for the groom's family to buy the newlyweds a home. But he said the tradition was not followed in this case. He said the tradition also included the bride's family contributing equal gifts but in this case Ms. Xiong's family provided only around \$20,000 for appliances and furniture.

- [80] I accept Ms. Xiong's evidence that the down-payment was a marriage gift to the parties as a couple. That is supported by the context in which Mr. Zhang's parents promised to make the payments and the Chinese cultural tradition which both parties described.
- [81] I also find Mr. Zhang's evidence on this issue inconsistent, and therefore less credible than Ms. Xiong's. In direct examination, he testified that title to the Condo was registered under the joint names of him and his father, indicating it was not to be a family asset. During cross-examination, after learning that Mr. Kang intended to introduce the registered title into evidence, he said that he and his father were both on title initially but later it was just him. When shown the title, however, he conceded that his father was never on title but that he did guarantee the mortgage.
- [82] Mr. Zhang argued that, while he and Ms. Xiong were together, he paid virtually all the expenses associated with the Condo, including the mortgage payments (approximately \$1,300-\$1,400/month), strata fees (approximately \$400/month) and property taxes. There was no evidence however that these amounts were paid by anything other than the parties' family income.
- [83] Mr. Zhang also claimed to have paid approximately \$51,000 to maintain the Condo for just over a year after Ms. Xiong had moved out. I do not see this as a basis for reapportionment because he had use of the Condo while Ms. Xiong and Bella lived elsewhere.
- [84] In sum, the parties' marriage was brief and Mr. Zhang's parents paid the entire \$200,000 down-payment for the Condo. Nevertheless, because the down-payment was a wedding gift to both of them, the Condo was family property and the down-payment is not basis to reapportion the Proceeds.
- \$100,000 wedding gift, \$23,000 from Ursids, and \$10,000-\$20,000 cash
- [85] It was uncontested that Ms. Xiong withdrew around \$123,000 from the parties' personal and business accounts just after she separated from Mr. Zhang.
- [86] Her evidence was that she felt entitled to \$100,000 from her bank account because it was a wedding gift from her parents. From April to June 2019, she took \$23,000 from Ursids because she needed it for living expenses for herself and Bella and to pay \$2,000 to her sister for work at the store.
- [87] Mr. Zhang's evidence was that the \$23,000 from the business account left Ursids with only around \$1,000 and unable to pay its rent. Ms. Xiong did not dispute that.
- [88] In my view, Ms. Xiong having taken the position that the \$200,000 marriage gift from Mr. Zhang's family for the Condo down-payment was family property, it would be unreasonable to take a contrary position regarding the \$100,000 marriage gift from her family. I understood her counsel to acknowledge this in final argument. I find this \$100,000 was family property.

- [89] This \$23,000 in Ursids' account was also family property. I do not accept that the payments to her sister assisted Ursids given what is found below about the missing inventory.
- [90] Mr. Zhang alleged that Ms. Xiong removed \$10,000-\$20,000 in cash from the Condo when she left. She denied this. There being no support for this other than Mr. Zhang's allegation, I find he has not established it on a balance of probabilities.
- [91] In sum, Ms. Xiong must compensate Mr. Zhang for his 50% of \$123,000 of family money that she took for herself in the spring of 2019.

Funds for Ursids

- [92] The parties agreed that each of their parents contributed \$200,000 to finance Ursids.
- [93] In final argument, Mr. Zhang submitted that his parents paid another \$380,000 towards the business over the years, as stated in his financial statement. But he provided no evidence to support this and so I find it was not established on a balance of probabilities.

Missing Inventory

- [94] Much trial time was spent on the parties' allegations about the inventory that went missing from Ursids in May or June 2019 ("Missing Inventory").
- [95] The parties agree that, from March to May 2019, Mr. Zhang withdrew around \$274,000 from the company's bank account to purchase luxury European inventory. They agree that this inventory was purchased on behalf of Ursids.
- [96] Mr. Zhang alleged that, in June 2019, while he was in China, Ms. Xiong removed the Missing Inventory from Ursids, and sold it in her sister's store, Young OG, which was also in the Aberdeen Mall. He says she then stopped giving shifts to Ursids' employees and closed the store by July when he returned from China.
- [97] Ms. Xiong denied any involvement with her sister's Young OG boutique. She testified that the only inventory she removed from Ursids were out-of-season remainders that she moved into storage in Richmond. An itemization of that inventory was marked as an exhibit at trial ("Richmond Inventory").
- [98] Ms. Xiong alleged that, in May and June, Mr. Zhang transferred Ursids' WeChat Account to A Level and procured the Missing Inventory, perhaps to sell at Ursids Toronto. Having essentially cleaned out their business, he returned to China.
- [99] Mr. Zhang denied this version of events. He testified that he wanted to keep the store running so he and Ms. Xiong could decide whether to sell it or keep it. He said that between the time of their separation and the store's closure, he borrowed over \$80,000 from friends to keep Ursids afloat but he provided no documentary evidence to support this.

[100] There was no good evidence about the contents or value of the Missing Inventory. The evidence was unclear whether it was limited to the inventory Mr. Zhang purchased with the \$274,000 or included more items. In round numbers, in June 2019 Ursids' accounting system showed inventory of 4,000 items with a wholesale value of \$750,000 and a retail value of \$1.5 million. The parties agreed that Ursids' typical cost of inventory was around \$850,000. In May 2020, Ms. Xiong valued the inventory that still remained, which she had stored in Richmond, at \$116,000-\$380,000. Thus, the evidence suggests the Missing Inventory was greater than just what was purchased with the \$274,000.

[101] There is compelling evidence that both parties took some of the Missing Inventory.

[102] Regarding Mr. Zhang, the evidence suggesting he did so includes that:

1. Right after he purchased the \$274,000 of new inventory, he changed the passwords to his "KevinKlein" email address used for all communications and transactions with suppliers. In this way, he denied Ms. Xiong visibility into his communications and records regarding the ordering and delivery of this inventory. He did not produce those records during the litigation or at trial.

He also did not provide access to this email account, despite the court orders that he do so of September 5, December 9, 2019 and February 11, 2020. In March 2020, when he finally provided access to MNP, it appears they could not locate the relevant records.

In my view, the non-production of these key records regarding this inventory supports the adverse inference that these records would not have supported Mr. Zhang's evidence that all these goods were delivered to Ursids. I rely for this inference on FLA s. 213(2)(b), SCFR 5-1(28)(f) and Zhang v. Deng, 2021 BCSC 1152, paras. 136-145.

2. Mr. Zhang's email to Ms. Xiong of May 29, 2019 said: "I have promised to sell the WeChat account to a company, and I have sold the rest of the inventories. You want to manage but have never managed anything well."
3. Although Mr. Zhang blocked Ms. Xiong from the WeChat Account, her evidence was that, from the public side of the account, she saw regular activity on the account from June to November without corresponding revenue into Ursids.
4. Mr. Zhang was involved with two other stores, A Level and Ursids Toronto, both of which sold this type of merchandise.

Regarding Ursids Toronto, Mr. Zhang's evidence was that his contribution to the business was supposed to be merchandise from the same European suppliers who provided the Missing Inventory.

[103] Regarding Ms. Xiong, the evidence suggesting she did so includes that:

1. On June 26, 2019, she and four family members were captured on the video surveillance cameras removing inventory from the store over a few hours.

At trial, she claimed they were removing only off-season and small items, which she took to her home, inventoried and stored with the Richmond Inventory. The photographic evidence from the surveillance camera suggested, however, that she took more items than are now found in the Richmond Inventory.

For example, as Mr. Zhang pointed out in cross-examination, the photos show many grey and white luxury shoeboxes being removed that do not appear in the photographs of the Richmond Inventory. Ms. Xiong testified that the luxury shoe boxes must have been empty and used to carry small items from the store. I do not accept that. She agreed in cross-examination that customers buying expensive shoes rarely left the shoe boxes in the store and she could not explain why there were so many boxes supposedly left behind.

2. Ms. Xiong could not explain why the goods she removed were not placed in Ursids' storage space in the Aberdeen Mall. She admitted that was where such off-season goods were stored, and were only taken home if storage space in the mall was full, and that she did not know if the storage space was full when she removed these goods.
3. Ursids' accounting system shows that, on June 27, 2019, someone using her and her mother's phone numbers changed the password and deleted 3,000 goods from inventory. Later, she was able to provide that password to MNP.
4. Her evidence about whether items similar to the Missing Inventory were sold by Young OG, her sister's store in the Aberdeen Mall, was evasive and not credible.

Young OG opened in around September 2019. Ms. Xiong claimed that, although she visited Young OG, she did not pay attention to what products it sold or if they were similar to Ursids'. It is beyond belief that she would not have paid close attention to what type of goods her sister was selling in her store in the very same mall.

There was good evidence, which I accept, that in fact the two stores did sell the same products. This evidence included WeChat posts showing Young OG's goods, and the testimony of two independent witnesses (an Ursids employee and the parties' mutual friend) who both said that Ursids and Young OG's products were very similar if not identical.

[104] In sum, I find the evidence suggests that both parties took a substantial amount of the Missing Inventory. The evidence is too vague and ambiguous to make findings about what each took or the comparable values. I therefore find that the Missing Inventory issues do not establish a basis for either party to be compensated by the other in order to equalize division of this family property.

[105] I also find on the evidence as a whole that, other than the Missing Inventory, the only assets of value belonging to Ursids at separation were the \$23,000 removed by Ms. Xiong dealt with above, and the WeChat Account and the Richmond Inventory dealt with below. There was no persuasive evidence of any other assets of value in the company before it went out of business.

WeChat Account

- [106] As mentioned, Mr. Zhang transferred Ursids' WeChat Account and European vendors list to Ms. Li and A Level. The WeChat Account had approximately 5,000 followers and accounted for approximately \$20,000 of monthly gross sales revenue in June 2019.
- [107] Ms. Xiong submits that Mr. Zhang's transfers dissipated Ursids' assets in breach of the July 10, 2019 order restraining him from transferring family assets. She argues the evidence suggests that Mr. Zhang was involved with A Level's business and must have received undisclosed benefits in return.
- [108] Mr. Zhang admitted transferring the WeChat Account and European contacts to Ms. Li. He also acknowledged helping Ms. Li establish her company, by introducing her to Ursids' accountant and suggesting she take over Ursids' former premises in the Aberdeen Mall. On October 25, 2019, the accountant sent the A Level incorporation documents to Mr. Zhang's personal email account. Its advertising material described it as the Vancouver store "reopened" and as partnered with Toronto Ursids.
- [109] Mr. Zhang denied receiving any benefit from Ms. Li or A Level. He testified that he believed the We Chat Account, supplier information and premises were no longer useful to him or Ms. Xiong because Ursids was out of business. Ms. Li was a friend who, he claimed, helped him replace some of the customer items Ms. Xiong had removed from the store and loaned him \$10,000 to cover Ursids' expenses.
- [110] There being no direct evidence that Mr. Zhang received any benefit from Ms. Li for these assets, and Ms. Xiong having settled her claims against Ms. Li, I find that he did not. His giving these things away to a friend is consistent with his personal difficulties and abandonment of the business in May 2019.
- [111] Nevertheless, Mr. Zhang's transfer of the WeChat Account and supplier information breached the July 10, 2019 order restraining him from selling or disbursing family assets. Even if Mr. Zhang received no benefit, he should compensate Ms. Xiong for her 50% of any value to this family property that he gave away. There is not evidence, however, of these assets having any market value and they may well not have. Ms. Xiong settled her claims against Ms. Li and A Level before trial and so there was no evidence of value from that perspective.
- [112] I therefore find that these circumstances do not establish a basis for Mr. Zhang to compensate Ms. Xiong for giving away the WeChat Account and supplier information.
- [113] His breach of the non-dissipation order does call for some remedy however. In my view, the appropriate remedy for Mr. Zhang's breach of this order, as well as his ongoing breach of the order for child support payments, is to require him to provide substantial security for his future child support payments. I address this further below.

Ursids Toronto

- [114] Ursids Toronto was incorporated in October 2018. Mr. Zhang was a 51% shareholder and one of three directors. He testified that the two Toronto owners invested \$250,000: \$100,000 to get the store up and running, and \$150,000 paid to Ursids for inventory. He testified that, in early 2019, he made the contribution for his shares by sending additional inventory, worth around \$240,000, from Vancouver to Toronto.
- [115] Both parties agreed that Mr. Zhang's 51% ownership of Ursids Toronto was a family asset. After the separation, Mr. Zhang left Ms. Xiong in the dark about Ursids Toronto and the store blocked her on WeChat. In September 2019, Mr. Zhang disconnected Ursids Toronto from Ursids' accounting system because, he said, he did not want Ms. Xiong to "sabotage" the Toronto store as he felt she had Ursids.
- [116] Mr. Zhang's evidence was that he abandoned his ownership interest to the other two owners in around June or July 2019 when Ursids closed. He testified that, without Ursids, he could not provide the inventory to keep up his end of the bargain with his Toronto partners. He testified that, in light of his business, marital and emotional problems, the other owners asked him to give up his involvement in the business. He agreed and the relationship was terminated. He claimed to have no idea about the business other than believing it was still operating.
- [117] Ms. Xiong put into evidence Ursids Toronto's current Profile Report from the Ministry of Government and Consumer Services, indicating Mr. Zhang is a 51% shareholder, director and general manager. She relied on November 2019 screenshots from the Ursids' accounting system, showing Ursids Toronto inventory costing \$754,241 with projected sales value of \$1.5 million. Mr. Zhang said this spreadsheet was produced and controlled by Ms. Xiong and the data was inaccurate. He pointed out that it showed sales from January to March 2019, which was before the Ursids Toronto even opened.
- [118] In his sworn Financial Statement of September 4, 2019, Mr. Zhang valued his shares in Toronto Ursids at \$255,000. He testified that this was information he gave to his lawyer much earlier and was never updated.
- [119] Mr. Kang argued that Mr. Zhang's version of events made no business sense. If he truly agreed to give up his shares, this would have been implemented and recorded by the Toronto owners rather than leaving him as a shareholder and director on the Profile Report.
- [120] Despite the plausibility of these submissions, I accept Mr. Zhang's evidence that he gave up his interest in Ursids Toronto in or around 2019. There was no evidence of him having any further involvement. Abandoning his shares is consistent with his other actions at the time whereby he withdrew from Ursids because of difficulties managing his separation. In my view, the Profile Report is too slim a basis to find Mr. Zhang did not give up his interest in Ursids Toronto. The report does not appear to indicate when the information was filed. It is possible that the Toronto partners now run the store through a different company or simply

never got around to formalizing Mr. Zhang's departure.

[121] Mr. Zhang's giving away these shares was nevertheless a dissipation of family assets for which Ms. Xiong is entitled to compensation, for her 50% of their value.

[122] The best evidence of value is the \$250,000 of inventory that Mr. Zhang contributed for the shares (to match the \$250,000 paid by the other shareholders) and the \$255,000 value he gave shares in his September 2019 Financial Statement. I therefore find that he must compensate Ms. Xiong by \$125,000 for her half of this family asset that he unilaterally gave away.

Richmond Inventory

[123] In February 2021, Ms. Xiong estimated the value of the inventory that she stored in Richmond at \$23,138.00. At trial, she said these goods would now have lost 80-90% of their original value because they were trendy and seasonal and so depreciated quickly.

[124] Mr. Zhang did not indicate any interest in the inventory.

[125] I expect Ms. Xiong will be able to make use of the inventory given her involvement with Young OG in China, and so it will not have lost its value to the extent that she estimated.

[126] I therefore hold that Ms. Xiong may have sole possession and ownership of this inventory to use or sell as she sees fit. She must compensate Mr. Zhang by \$4,000 for his share of the inventory.

Mercedes

[127] The parties owned a Mercedes car that was sold by consent for \$20,444.76 on September 25, 2019.

[128] Ms. Xiong used the proceeds to pay MNP and her legal fees. She must therefore compensate Mr. Zhang by \$10,222 for his 50% share.

Conclusion

[129] The parties sought various ancillary orders regarding parenting, some of which I have revised below in Bella's best interests based on the evidence at trial.

[130] I have included as Schedule A the accounting of the parties' family assets and their respective shares of the Condo Proceeds held in trust based on the findings made.

[131] The final orders are:

Divorce

1. Subject to section 12 of the Divorce Act (Canada), the claimant, Jiabei Zhang, and the respondent, Yilei Xiong, who were married at Richmond, British Columbia, Canada, on August 10, 2016, are divorced from each other, the divorce to take effect on the 31st day after the date of this order.

Parenting Arrangements

2. The parties will continue to be guardians of Bella under s. 39(1) of the Family Law Act.
3. They will advise each other of any significant matters involving Bella.
4. They will have the following parenting arrangements:
 - (a) Bella will reside with Ms. Xiong in Zhongshan, People's Republic of China ("China").
 - (b) Ms. Xiong will have all of the parental responsibilities for Bella as set out in s. 41 and s. 40(3) (a) of the Family Law Act, but will consult with Mr. Zhang regarding any significant decisions involving Bella.
 - (c) Mr. Zhang will have the right to obtain information concerning Bella directly from third parties, including, but not limited to, teachers, counsellors and medical professionals, pursuant to s. 41(j) of the Family Law Act. Ms. Xiong shall provide any necessary consents so Mr. Zhang can receive educational and medical information about Bella from third parties.
 - (d) Mr. Zhang will have parenting time with Bella in Zhongshan, China for two consecutive days each month, for 4 hours each day, at a public space. Mr. Zhang's parents may attend his parenting time.
 - (e) Ms. Xiong may be present when Mr. Zhang exercises parenting time, but will make reasonable best efforts to reduce her role in Mr. Zhang's parenting time as Bella becomes more comfortable with Mr. Zhang.
 - (f) Mr. Zhang is entitled to at least two video sessions with Bella per month, each lasting between 30 and 60 minutes, to be arranged between him and Ms. Xiong.
 - (g) Mr. Zhang will have any additional parenting time as agreed in writing between him and Ms. Xiong.
5. The parties will:
 - (a) Put Bella's best interests before their own interests;
 - (b) Encourage Bella to have a good relationship with the other parent and speak to Bella about the other parent and that parent's family in a positive and respectful manner; and
 - (c) Make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of Bella.

6. Ms. Xiong and Mr. Zhang will not blame, criticize or disparage the other parent, or their families, to Bella.
7. Ms. Xiong and Mr. Zhang will encourage their respective families to refrain from any negative comments about the other parent and their extended family, and from discussions in front of Bella concerning family issues or litigation.
8. Mr. Zhang will cooperate with Ms. Xiong to renew Bella's Canadian passport and sign and forward to Ms. Xiong any necessary forms for the renewal within 7 days of receiving same from Ms. Xiong. Ms. Xiong shall send a photograph of Bella's new passport to Mr. Zhang upon receipt.
9. The parties will cooperate regarding maintaining Bella's Chinese residency status in good standing.
10. The parenting arrangements in paragraph 4 are reviewable after 12 months by either party.

Child Support

11. Mr. Zhang will pay to Ms. Xiong the sum of \$395, or an equivalent amount in Chinese Renminbi, per month for the support of Bella, commencing on June 1, 2023 and continuing on the 1st day of each and every month thereafter, for as long as Bella is eligible for support under the Family Law Act or until further agreement of the parties or Court order, based on an imputed income of \$42,000 per year.
12. The arrears of child support owing from Mr. Zhang to Ms. Xiong as of May 1, 2023 are \$2,765 (the "Arrears").
13. Commencing May 2024, and for as long as Bella is eligible to receive child support, the parties will, by May 1st of every year, exchange income information as set out in section 21 of the federal Child Support Guidelines, which shall include:
 - (a) Every personal income tax return filed by the parties for the previous year and every notice of assessment and reassessment issued to the parties;
 - (b) If the spouse is an employee, documentation from their employer indicating the total earnings paid in the previous year, their total earning paid in the year to date, and the spouse's rate of annual salary or remuneration;
 - (c) Documents evidencing all sources of income, and the amount of income, received by the parties for the previous year; and
 - (d) Documents evidencing the gross and net income of any corporate entities in which the parties' have a beneficial or legal interest, including any financial statements and income tax returns.

14. The parties shall conduct a review of child support and Bella's special or extraordinary expenses on an annual basis and payments shall be adjusted as necessary by June 1st of every year, commencing in 2024.
15. The parties will contribute equally to Bella's section 7 special and/or extraordinary expenses that are agreed upon in writing, in advance.
16. For payment of child support arrears, and as security for payment of future child support as ordered by the court, \$20,000 of the equalization payment payable to Mr. Zhang shall be paid to Ms. Xiong.

Family Property and Equalization Payments

17. The following is family property:
 - (a) The Richmond Inventory, in the possession of Ms. Xiong, valued at \$8,000;
 - (b) \$23,000 removed by Ms. Xiong from Ursids' bank account after separation;
 - (c) Shares in Ursids Toronto Inc. valued at \$250,000, disposed of by Mr. Zhang;
 - (d) Condo Proceeds in the amount of:
 - (i) \$58,690 paid to Mr. Zhang;
 - (ii) \$51,310 paid to Ms. Xiong; and
 - (iii) \$205,634.78 plus interest held in trust by counsel for Ms. Xiong (the "Remaining Proceeds");
 - (e) \$100,000 removed by Ms. Xiong from her bank account after separation; and
 - (f) Net proceeds of \$20,444.76 retained by Ms. Xiong from the sale of the parties' Mercedes.
18. Ms. Xiong shall retain the Richmond Inventory, and may dispose of it as she sees fit.
19. Except as otherwise set out in this order:
 - (a) the parties shall each retain, as their sole and separate property, all assets registered in their name or held in their possession; and
 - (b) The parties shall each bear sole responsibility for their debts, and shall save harmless and indemnify the other with respect to same.
20. The Remaining Proceeds shall be divided as follows to equalize the division of family property:
 - (a) Mr. Zhang is entitled to \$48,349.77 (plus 50% of accrued interest), which shall be distributed \$28,349.77 to Mr. Zhang and \$20,000 to Ms. Xiong's counsel for child support pursuant to para. 16 above
 - (b) Ms. Xiong is entitled to \$154,285.01 (plus 50% of accrued interest), which shall be distributed to her counsel.

21. The calculation of these equalization payments is set out on Schedule A. The parties have liberty to address any errors or omissions in these calculations.

[132] Subject to the parties making further submissions, I make no order for costs. If either party wishes to speak to costs, she or he should schedule a brief case management conference before me within the next 30 days to discuss process.

"Coval J."

Schedule A

Assets

Mr. Zhang

Ms. Xiong

Joint

Richmond Inventory

\$8,000

\$23,000 removed from Ursids' bank account

\$23,000

Ursids Toronto Inc.

\$250,000

Condo Proceeds

\$58,690

\$51,310

\$205,634.78 (plus interest after March 27, 2023)

\$100,000 removed from bank account by Ms. Xiong

\$100,000

Net proceeds from sale of Mercedes

\$20,444.76

TOTAL

\$308,690

\$202,754.76

\$205,634.78

Total Family Property

\$714,079.54

50% of Family Property

\$357,039.77

Ms. Xiong's share of trust funds

\$154,285.01 (\$357,039.77 less \$202,754.76)

+ 50% of additional accrued interest

Mr. Zhang's share of trust funds

\$48,349.77 (\$357,039.77 less \$308,690)

+ 50% of additional accrued interest

Arrears of child support Nov 2022 - May 2023

\$2,765 (\$395 x 7mo)

[1] \$28,690 of which went to Ms. Xiong to pay his arrears of child support, fines and costs.

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