

CANADA / JUDGMENT

Zhang v. Zeng

2025 BCSC 12

COURT

Supreme Court of British Columbia

DECIDED

6 January 2025

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2025 BCSC 12 Zhang v. Zeng

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang v. Zeng,

2025 BCSC 12

Date: 20250106

Docket: E231592

Registry: Vancouver

Between:

Zuo Rui Zhang also known as Alex Zhang

Claimant

And

Stephanie Bihua Zeng

Respondent

And

Shu Jun Wang, Invec Holding Ltd.,

8081 Cartier Holdings Ltd. and 1285311 B.C. Ltd.

Respondents by Counterclaim

Before: The Honourable Justice K. Loo

Reasons for Judgment

Counsel for the claimant, and the respondents by counterclaim Shu Jun Wang and Invec Holding Ltd:

L. Spencer

Counsel for the respondent:

M. Katsionis

Place and Date of Hearing:

Vancouver, B.C.

December 4, 2024

Place and Date of Judgment:

Vancouver, B.C.

January 6, 2025

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Introduction

- [1] On this application, Shu Jun Wang (Ms. Jun) and Invec Holding Ltd. (collectively, the "applicants") seek orders under the summary trial provisions in Rule 11-3 of the Supreme Court Family Rules, B.C. Reg. 169/2009, declaring that Invec is the sole owner of the legal and beneficial interests in the sales proceeds of two properties.
- [2] The applicant Ms. Jun is the mother of Zuo Rui ("Alex") Zheng, who is the claimant in this family proceeding. The properties are alleged by Stephanie Zeng, the respondent, to be family property.

Background

- [3] The claimant and the respondent were married on October 27, 2020. They separated on June 6, 2023.
- [4] Invec is owned by Ms. Jun. The claimant is a director of Invec but he is not a shareholder.
- [5] Invec purchased a property at 2069 E. 34 St. in Vancouver (the "original property") on December 31, 2020, for \$1.348 million.
- [6] In January 2024, the original property was subdivided into two separate properties, referred to in these proceedings as the "2067 property" and the "2069 property." Invec was the registered owner of both properties.
- [7] The 2069 property was sold in July 2024 for net proceeds of approximately \$1.416 million, and the 2067 property was sold on August 29, 2024, for net proceeds of approximately \$1.313 million. The proceeds of both sales are held in trust by counsel pending the determination of this application or the action or written agreement of the parties.
- [8] The applicants take the position that neither the original property nor the two subdivided properties are, or ever have been, family property as defined by the Family Law Act, S.B.C. 2011, c. 25 [FLA]. As stated above, they seek a declaration to that effect.
- [9] The respondent does not seek to prove on this application that the properties are family property. Rather, her position is that this dispute is not suitable for resolution under the summary trial rule. Alternatively, she submits that this summary trial ought to be adjourned, pending an examination for discovery of the claimant.

Issues

- [10] The issues before the Court are whether it is able on the whole of the evidence before it on this application to find the facts necessary to decide the issues of fact and law, whether it would be just to decide the issues on the application, and if so, whether the applicants have established on the evidence that they are entitled to the declarations sought.

Discussion

- [11] For the reasons set out below, I have concluded that this application is not suitable to be determined under Rule 11-3, as I am unable to find the facts necessary to decide the issues of fact or law to give judgment. Further, I am of the view that it would be unjust to decide the issues on this application.
- [12] Therefore, the application will be dismissed and the matter must proceed to trial. Since I have reached this conclusion, I will try to keep my remarks brief so as not to prejudice the conduct of the trial.

Legal principles

- [13] In order for a property to be a family asset, there is no requirement that it was used or contributed to by either spouse. The only questions are whether the property existed on the date of separation and at least one spouse owned it or had a beneficial interest in it: *Asselin v. Roy*, 2013 BCSC 1681 at para 160.
- [14] The summary trial rule, Rule 11-3, states, in part:
- (15) On the hearing of a summary trial application, the court may
- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application
- [15] There are two questions for the court to determine when suitability is contested. In *Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241, the Court of Appeal held:
- [70] Whether the necessary facts can be found and whether it would be unjust to decide the issues on summary trial are separate, but related, questions. If the necessary facts cannot be found it would not be just for the court to determine a matter on a summary trial. However, in some circumstances, even if such facts can be found on the whole of the evidence presented, it may not be just for the court to determine a matter summarily: *Foreman v. Foster*, 2001 BCCA 26 at para. 19. For example, a judge may conclude that a summary trial would not improve the overall efficiency of the trial process. The judge's discretion is broad and the summary trial process is only appropriate where justice can be done between the parties bearing in mind the requirements of Rule 9-7.
- [16] In *C.K.M. v. H.R.M.*, 2021 BCSC 1297 at para 13, this Court cited the well-known decision in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at para 215, in which the Court of Appeal set out some of the factors relevant in determining whether it would be unjust to grant a judgment in a summary trial. These factors include:
- a) the amount of money involved;
 - b) the complexity of the matter;
 - c) the urgency of the case;
 - d) the prejudice likely to arise by reason of delay in taking the case to trial;
 - e) the cost of taking the case forward in relation to the amount involved; and
 - f) the course of the proceedings.

Application of legal principles to the evidence**The Court's ability to find the necessary facts**

- [17] The applicants submit that the evidence in their favour regarding the ownership of Invec is clear. Ms. Jun deposes that the claimant has no interest in Invec and did not contribute in any way to its formation or to its finances. She deposes that she has always been the only shareholder and that neither the claimant nor the respondent has ever been a shareholder in the company.
- [18] Ms. Jun has exhibited to her affidavit documents which show that the balance owed to the vendor when the original property was purchased was paid by Invec. She has exhibited to her affidavit a cheque made out by Invec to the conveyancing lawyer for the purchase.
- [19] She deposes that neither party to this family proceeding made any payments towards any mortgage, taxes, utilities, or fees, and that neither party contributed to any repairs or renovations in relation to any of the subject properties. She deposes that she paid all of the costs incurred to subdivide the original property and that she sold the 2067 and 2069 properties to arm's length purchasers.
- [20] Ms. Jun concedes that the claimant is a director of Invec, but deposes that the claimant only does work for Invec when she is in China and is unable to attend to company affairs personally, and when the company's business requires discussions in English. Ms. Jun deposes that she directs the claimant and that he follows her instructions.
- [21] By contrast, the respondent alleges that the claimant is a beneficial owner of Invec and that his mother is holding an interest either in Invec or the properties on his behalf. The respondent asserts, broadly, that the claimant appears to run the company alone. She deposes that he has managed Invec "without Shu Jun's involvement in any capacity."
- [22] The claimant has signed credit applications on behalf of Invec as "principal" or "director". He has signed at least one personal guarantee in support of a credit application made by Invec. On one document, with Standard Building Supplies, he listed himself as "owner."
- [23] The respondent submits that inconsistencies within Ms. Jun's evidence should lead this Court to doubt its veracity. Ms. Jun deposes that the claimant "has no interest in Invec as he did not contribute in any way to the formation, growth or finances of Invec" and that he acts for Invec "as a convenience" when Ms. Jun is in China. However, on her examination for discovery, Ms. Jun conceded that the claimant has a building license and recommends contractors to her. He communicates with architects on Invec's behalf. He dealt with the city to obtain permits with respect to the properties.
- [24] Ms. Jun concedes that she has not paid the claimant for his work on Invec since 2018, but claims that she has compensated him by allowing him to live in her home rent-free.

- [25] Ms. Jun has given evidence that the claimant is not authorized to deal with her business accounts. However, in October 2020, Ms. Jun signed an enduring power of attorney [POA] authorizing the claimant to deal with all of her financial and legal affairs. She sought to explain the POA by reference to her father who was ill and ultimately passed away, but that was four years ago. The power of attorney was not revoked until approximately a month before this application was heard.
- [26] The respondent raises other issues which, she submits, cannot be justly determined on a summary trial. In particular, she deposes that throughout their relatively short marriage, the claimant appeared to have access to considerable wealth that did not correspond to his stated income or assets. She asks the Court to infer that the claimant has income-generating assets that are beneficially owned by him, but legally held by his mother.
- [27] The respondent also points out that there are other business ties between Invec, Ms. Jun, and the claimant. Specifically, Invec owns shares in two companies, including the respondent by counterclaim 1285311 B.C. Ltd. ("128"). Invec owns 128 with other shareholders who are friends of the claimant.
- [28] Moreover, the matrimonial home in which the parties lived during their relationship was purchased for \$7 million and is solely in Ms. Jun's name. The respondent deposes that this property was purchased by her and the claimant, but in her application response she states that "the source of the funds for the purchase remains an issue to be determined."
- [29] In my view, it is clear from the recitation of the evidence above that there are significant factual disputes regarding the co-mingling of Ms. Jun's financial affairs and those of the claimant. It is undoubtedly true that disputed issues of fact and law may be determined on a summary trial application, but the Court must be able to find the necessary facts, and the Court must not find it unjust to do so.
- [30] The fact that the claimant did not contribute in any way to Invec's formation or its finances, even if true, does not conclusively determine ownership of the company's shares. It may be that Ms. Jun has gifted an interest in Invec to the claimant in return for his assistance in running the company, or simply because he is her son. The respondent's allegations that the couple had a lifestyle that was not supportable by the income and assets now reported by the claimant have not been answered. It is notable that the claimant has not sworn an affidavit in the proceedings, and has not been examined for discovery.
- [31] In my view, the trier of fact will gain a significant advantage in finding the necessary facts by observing the witnesses, including the claimant and Ms. Jun, in person and under cross-examination. The evidence and the arguments advanced on this application are insufficient for me to make findings which would lead either to the declarations sought being granted or refused.

Whether it would be unjust to decide the issues on this application

- [32] In relation to this question, this Court must consider the factors set out in C.K.M. above.
- [33] The potential amounts at stake on this application are substantial. If the respondent is successful in persuading a Court that the claimant owned a beneficial interest in Invec during the course of the parties' relationship, the family assets in this proceeding would include at least some of the \$2.7 million held in trust as proceeds from the sales of the two subject properties.
- [34] The issue of urgency does not compel a resolution by way of summary trial. Ms. Jun has not given any evidence that she needs the proceeds from the properties for anything specific. She appears to have considerable wealth, having at least legal title to the matrimonial home which was purchased for more than \$7 million.
- [35] Regarding the course of the proceedings, and whether a summary trial would improve the overall efficiency of the trial process, it was suggested by counsel for the applicants that the granting of this application could sever Ms. Jun's ties to this family action. However, that does not appear to be so.
- [36] First, the orders sought in the notice of application are declarations that the two subject properties are "the sole property of the Applicant, Shu Jun Wang."
- [37] The declarations sought say nothing about Invec. Therefore, even if those declarations could be made in isolation, issues regarding the ownership of Invec and its other assets, including its shares in 128, would continue to require Ms. Jun's involvement in this family proceeding.
- [38] Second, there appears to be a contest, at least between the respondent on one hand and the claimant and Ms. Jun on the other, regarding whether the house in which the parties lived, but which is registered in Ms. Jun's name, is family property. Again, for that reason, Ms. Jun's participation in this action would not be severed even if this Court were able to make the declarations sought on this application.
- [39] In any event, and perhaps most importantly, it is my view that by seeking declarations that Ms. Jun owned the 2067 property and the 2069 property, the notice of application is misconceived. It is clear from the land title records that, legally, the properties belonged to Invec, not Ms. Jun.
- [40] The declarations sought by the applicants cannot be made without implications beyond the beneficial ownership of the two properties. If this Court were to conclude on this summary trial application that the proceeds from the properties beneficially belong to the applicant, Ms. Jun, and not to the claimant, it would seem to follow that Invec itself, and its other assets including 128, belong only to Ms. Jun. However, the issue of the ownership of Invec and its other assets is not even squarely before the Court.

[41] For these reasons, the Court's general reluctance against "litigating in slices" comes into play. This summary trial application would result in litigation in slices because even if the Court were able to determine who beneficially owns the proceeds from the two subject properties, the Court would still need to determine who owns the family home and the balance of Invec's assets at trial.

Conclusion

[42] For all of these reasons, the summary trial application advanced by Ms. Jun and Invec under Rule 11-3 is dismissed.

[43] Costs of the application shall be payable by the applicants in the cause at scale B.

"The Honourable Justice Loo"

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