

CANADA / JUDGMENT

# Zhou v. Li

2022 BCSC 308

## COURT

Supreme Court of British Columbia

## DECIDED

21 January 2022

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IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Zhou v. Li, 2022 BCSC 308 Date: 20220121 Docket: S212017 Registry: Vancouver Between: Shaomei Zhou and Bayshore Gateways Corporation Plaintiffs And Angel Li and 1136436 B.C. Ltd. Defendants Before: Master Harper Oral Reasons for Judgment In Chambers Counsel for Plaintiffs, appearing by videoconference: K. Tutt Counsel for Defendants, appearing by video conference: M. Gartner, appearing as agent for J. Narwal Place and Date of Hearing: Vancouver, B.C. January 21, 2022 Place and Date of Judgment: Vancouver, B.C. January 21, 2022

- [1] THE COURT: The plaintiffs apply to add two defendants, Jennifer Ding ("Ding") and Shengjun Zhao ("Zhao"), to the action and to amend the notice of civil claim.
- [2] The original claim arises out of a business relationship that did not go well. The original notice of civil claim, I think, has the same underlying pleadings defects as the proposed amended notice of civil claim and basically the problem with the amendments are with respect to material facts.
- [3] Interestingly, the response to civil claim filed by the existing defendants states that insufficient particulars were provided with respect to the allegations and they deny that there is a proper legal basis to support the plaintiffs' claims, and then the response to civil claim goes on to address the allegations.
- [4] I think that the plaintiffs ought to have been put on notice after receiving the response to civil claim that there might be something defective about the notice of civil claim. Therefore, the application before me is an attempt to graft amendments on top of what might arguably be insufficient pleadings.
- [5] Essentially, the pleadings that I am being asked to approve have to do with alleged false representations by Ding and an unjust enrichment claim against Zhao. The difficulty with all of these allegations is that they fail to set out the material facts in support.
- [6] I accept for the application purposes, that Ding and Zhao are defendants that might well be proper defendants, but it is really the quality of the pleadings that are at issue.

- [7] Further, the court has a gatekeeping function, and notwithstanding the lack of appearance of Ding and Zhao, the court will not permit pleadings to be amended where they are bound to fail. I am concerned about whether there is a legitimate Limitation Act, S.B.C. 2012 c. 13 argument. I agree, however, that that is an argument that should have been made by the proposed defendants who are not here for inexplicable reasons.
- [8] The application is more difficult to deal with because of the inadequacy of the legal basis set out in the notice of application. The legal basis does cite the rule and sets out an argument, but does not refer to any of the case authorities or the test. *Zecher v. Josh*, 2011 BCSC 311 and *Dupre v. Patterson*, 2013 BCSC 1561 deal with these issues. Case authorities, if they present a legal argument, should be summarized and applied to the facts of the present case in any notice of application or application response.
- [9] I note from the *Perfonic v. Maranda*, 2021 BSCS 1007, which had to do with an application for leave to file third party notices, that some of the third parties or proposed third parties did not appear to oppose and yet the master dismissed the application on the basis that no material facts had been pleaded. Therefore, this is an example of the court maintaining its gatekeeper function, and I agree that it is not in the spirit of Rule 1-3 to permit the amendments and leave it up to the new defendants to apply to strike.
- [10] I will give just briefly some examples of the inadequacy of the amendments.
- [11] There are no facts pleaded to lead to a claim of misrepresentation. Here, I refer to *Meade v. Armstrong (City)*, 2011 BCSC 1591 at para. 16, where it says:
- [16] [ ]
- 5) Where an applicant relies on pleadings alone, the facts alleged, which if assumed to be true, must disclose a cause of action [ ] [Citation omitted.]
- [12] There are no facts with respect to money being paid to Zhao. There are no facts to lead to a conclusion of unjust enrichment with respect to Zhao. There are no facts with respect to when any misrepresentations were made. This is particularly important where there might be a limitation period issue.
- [13] At paragraphs 23 to 27 of Part 1: Statement of Facts of the proposed further amended notice of civil claim, with respect to Ding's representations, there is no indication as to what those are. There is no clear indication of fact as to in what way there was reliance. From a very basic level, unless I missed something in the pleading, there is no explanation as to what "WorkBC" is and why that was relevant. There are no facts that clearly illustrate who "Jones" was, what he did, and what he was supposed to do. There are no facts that indicate that Ding was acting in her capacity as a consultant and, if so, what she did. So these are just some basic examples of the inadequacy of the pleadings.

- [14] In submissions, counsel for the plaintiffs was able to describe in a narrative fashion what the claim was about, and I think it would be constructive for counsel to go back to the drawing board, not only with respect to this application, but with respect to the original notice of civil claim to take a very close look at what proper pleadings are meant to do.
- [15] I am not prepared to say that there is no potential properly drafted notice of civil claim that would properly include these new defendants, but the pleading that I have before me is not adequate and it does the parties no service to permit poorly drafted pleadings to come before the court. I think if the plaintiffs took a more careful look at what the claim is all about, even by starting with a narrative, telling the story of what happened, and then putting that story into properly drafted pleadings, would be very helpful to focus the plaintiffs' minds on what their case is actually all about. If the plaintiffs say that they do not have enough facts at the moment to determine what their case is about, they are still caught with the requirement of having to plead facts and they need to plead the facts that support their cause of action. The time to do that is now, and if the plaintiffs plead that they are not in possession of the facts because the facts are only in the possession of the defendants, there might be a way of making that a proper pleading but I am not suggesting that that is the case here because in a case of misrepresentation, a misrepresentation has to have been received by the person who claims to have been misled. They have to have that information or else there is no misrepresentation.
- [16] This is not a Continuing Legal Education course and it is not the court's role to draft pleadings for counsel. I do not want the plaintiffs to be overly discouraged because I think there might be a proper claim there, and I think going back to some pleadings precedents might help.
- [17] A minor point: I saw the expression "false representation". I do not know what this is. That is not a term that I am familiar with in our legal system. If it is misrepresentation, it should be misrepresentation. If it is negligent, it should be negligent. If it is fraudulent, it should be fraudulent. "False representation" seems to be something that somebody cooked up, but again that is a relatively minor example of a pleading that does no service either to the plaintiffs or to the defendants who have to answer these claims.
- [18] With that, I dismiss the application with liberty to reapply.
- [19] I agree with counsel for the defendants that they have been put to a lot of unnecessary trouble, and I order that the plaintiffs pay the defendants their costs of this application in any event of the cause but not payable forthwith. "Master Harper"

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