

CANADA / JUDGMENT

Zhu v. Lin

2024 BCSC 1486

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Supreme Court of British Columbia

DECIDED

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2024 BCSC 1486 Zhu v. Lin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhu v. Lin,

2024 BCSC 1486

Date: 20240814

Docket: E213150

Registry: Vancouver

Between:

Liang Fa Zhu

Claimant

And

Xiao Ping Lin

Respondent

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

The Claimant, appearing in person:

L. Zhu

The Respondent, appearing in person:

X. Lin

Place and Dates of Trial:

Vancouver, B.C.

July 15-19, 2024

Place and Date of Judgment:

Vancouver, B.C.

August 14, 2024

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I. Introduction

[1] This is an action seeking a division of family property and debt.

[2] The parties were married on February 4, 2016 and separated on November 4, 2020. They were ordered divorced on May 19, 2022.

[3] The main asset to be divided is the former family home, a condominium located at 119-8300 General Currie Road in Richmond, British Columbia ("GCR"), title to which is held jointly by both parties. The parties agree that their net interest in GCR, after accounting for the associated mortgage debt, must be divided between them, although they disagree about its value and the appropriate division.

- [4] In addition, both assert that there are other assets and debts to be divided, but neither accepts that the assets and debts asserted by the other, apart from GCR, are properly subject to division in this action.
- [5] In particular, the claimant, Liang Fa Zhu, claims an interest in the following assets, or the proceeds of their sale, on the basis that they were beneficially owned by the respondent, Xiao Ping Lin, at the material time:
- a) a condominium located at 212-8100 Jones Road in Richmond, British Columbia (the "Jones Road Property");
 - b) a condominium located at 1808-9887 Whalley Boulevard in Surrey, British Columbia (the "Whalley Boulevard Property");
 - c) a pre-sale unit in a development known as "ViewStar" located in Richmond, British Columbia; and
 - d) a jewelry store business known as "Joystone Corner", operated by Ms. Lin as a sole proprietorship in the Lansdowne shopping mall in Richmond, British Columbia.
- [6] Mr. Zhu seeks an order to have GCR sold and the proceeds split between the parties unequally in his favour, so as to account for his interest in those other assets. He also seeks to be compensated in the same manner for the rent he has been paying for his own accommodation since the parties' separation, on the basis that Ms. Lin has had exclusive possession of GCR in that time. In effect, he seeks to have Ms. Lin compensate him for occupation rent at GCR.
- [7] Ms. Lin acknowledges that Mr. Zhu has an interest in GCR for which he is entitled to be compensated, but she denies that she must account to him for any other family assets. On the contrary, she seeks an unequal division of GCR in her favour to account for:
- a) the expenses she has been paying on her own to maintain GCR;
 - b) the expenses she paid to support Mr. Zhu while they were together;
 - c) other family debts that she has had to bear on her own;
 - d) her right to an interest in Mr. Zhu's assets in China, which he has failed to disclose; and
 - e) the fact that Mr. Zhu married her merely to facilitate his own and his son's immigration to Canada.
- [8] On that basis, Ms. Lin seeks an order transferring title to GCR to her alone, on terms that would see Mr. Zhu compensated for his interest in GCR, valued as of the date of separation, after accounting for those other factors.
- [9] The following is my decision on those matters.

II. Background Facts

- [10] The parties are originally from China. They met relatively late in life, when they were already in their 50s. Both had already been married and divorced before. Mr. Zhu has a son and Ms. Lin a daughter from those previous relationships.
- [11] Until his retirement in August 2018, Mr. Zhu worked for the Chinese government and now lives off his Chinese government pension. For several years while still employed by the Chinese government, but on an unpaid leave of absence, he ran a manufacturing business that produced Christmas lights. Mr. Zhu acknowledged that this work was contrary to the terms of his employment with the Chinese government.
- [12] Both parties took title to real estate in China following their respective divorces, but both assert that those properties were held in trust for their respective children. In Ms. Lin's case, that property was an apartment located at 1409-285 No. 6 Zhongshan Road in Guangzhou, China (the "Zhongshan Road Property").
- [13] Ms. Lin had immigrated to Canada before she met Mr. Zhu. In early 2014, she began operating Joystone Corner in premises that she rented for that purpose in the Lansdowne shopping mall.
- [14] In October 2015, the parties were introduced to one another by a mutual friend. At the time, Mr. Zhu was still residing and working in China.
- [15] In December 2015, Ms. Lin returned to China for a family visit that lasted approximately three weeks. While she was there, the parties spent a great deal of time together and grew very close. Mr. Zhu purchased a diamond ring for Ms. Lin and they discussed getting married and having Mr. Zhu join Ms. Lin in Canada.
- [16] On January 30, 2016, Mr. Zhu flew to Canada for a visit, together with his son, both on tourist visas. On February 4, 2016, during that visit, the parties were married.
- [17] Soon after that, on April 18, 2016, they purchased GCR together, with the intention that it would serve as their family home. They took title as joint tenants. They paid the purchase price, a total of \$498,800, by jointly granting a mortgage for \$324,220 and making a down payment of \$174,580. It is common ground that Mr. Zhu funded most of the down payment himself, but they disagree about the exact amount of his contribution. Ms. Lin said he contributed \$152,500 by transferring funds from China, but Mr. Zhu says he also brought \$20,000 in cash with him for that purpose, thereby raising his contribution to \$172,500.
- [18] Mr. Zhu spent most of 2017 and 2018 in China, but came to Canada to visit Ms. Lin once or twice a year, for several weeks at a time. Mr. Zhu says that, while in China, he purchased furniture and custom window coverings for GCR, and had them shipped to her or carried those items with him in his luggage when he came to visit. He says he also sent Ms. Lin cash to help pay the mortgage and other expenses and that he procured inventory for Joystone Corner. Ms. Lin acknowledges that she received lump-sum payments from Mr. Zhu totalling

\$35,000 in Canadian dollars and the equivalent of \$53,737 in Chinese currency, for a total of \$88,737.

- [19] Ms. Lin also travelled to China from time to time during this period. She was on such a visit when, on January 10, 2017, she sold the Zhongshan Road Property for RMB 3,144,000. She says she used the proceeds of that sale to purchase the following properties:
- a) 2707-15 Baogang Road in Guangzhou, China (the "Baogang Road Property"), for RMB 1,503,000; and
 - b) the Jones Road Property, for \$285,000.
- [20] There is a dispute between the parties as to whether Mr. Zhu contributed any funds to the purchase of the Jones Road Property.
- [21] Mr. Zhu has produced documentation showing that, on January 13, 2017, he transferred and converted RMB 340,000, or \$64,500, from his Chinese bank account to the parties' joint chequing account in Canada. He says those funds constituted his contribution to the purchase of the Jones Road Property.
- [22] Ms. Lin says that those funds came from her. She says that she asked several of her friends and members of her family, including Mr. Zhu, to assist her in exporting the requisite funds from China, drawing from the proceeds of sale of the Zhongshan Road Property. According to her, she gave Mr. Zhu the RMB 340,000 in cash from that source, which he then transferred to their joint account for her use in purchasing the Jones Road Property. The transfer was done in cash, she says, because they were concerned that Mr. Zhu, a Chinese government employee, not be seen to be assisting in avoiding Chinese currency export restrictions.
- [23] I find Ms. Lin's version of events to be more credible. Mr. Zhu had difficulty recalling the details of these events as clearly as Ms. Lin. The documents she produced show the entire \$285,000 as having been sourced originally from the sale of the Zhongshan Road Property. The circumstances suggest that Mr. Zhu was merely one of several individuals who assisted Ms. Lin to export those funds.
- [24] Mr. Zhu acknowledges that he made no financial contribution to the purchase of the Baogang Road Property, although he says he did do some minor renovation work there and paid some expenses on Ms. Lin's behalf.
- [25] In August 2018, Mr. Zhu decided that it was time for him to retire. His son, who had been living with him until then, had just graduated from high school and moved out. Ms. Lin retained an immigration consultant later that year to assist with the immigration and in July 2019, Mr. Zhu became a permanent resident of Canada.

- [26] Ms. Lin travelled to China in December 2019 to accompany Mr. Zhu back to Canada with her. They landed in Vancouver on December 9, 2019. After about a month, Mr. Zhu went to work at a supermarket. His salary was deposited into the parties' joint account and was used to pay family expenses. Nevertheless, Ms. Lin says that she expended a great deal more of her own funds in supporting Mr. Zhu while they lived together.
- [27] The parties had never spent as much time together as they did after Mr. Zhu's arrival in Canada. They began to quarrel frequently and their relationship deteriorated. Ms. Lin suspected Mr. Zhu of infidelity and felt abandoned. Mr. Zhu began to regret his decision to relocate to Canada. He missed his son. He wanted to return to China but by then the pandemic-related travel restrictions had come into effect, forcing him to remain in Vancouver for most of that year. They slept in separate bedrooms.
- [28] By the fall of 2020, travel restrictions had eased sufficiently that Mr. Zhu was able to book a flight back to China, departing on November 4, 2020. He surreptitiously left the home the day before, November 3, 2020. He took the parties' marriage certificate with him because, he says, he needed evidence to show that the parties had been married. He went to stay overnight with a friend. Ms. Lin tracked him down and confronted him there. The police were called and the incident ended when Ms. Lin returned home. Mr. Zhu flew back to China as scheduled on November 4, 2020, which the parties agree was the date of their separation.
- [29] Ms. Lin continued to reside at GCR until June 8, 2024, when the apartment and its contents were severely damaged by a flood caused by a water leak from a neighbouring unit. She has had to move out and find alternate accommodation while the damage is repaired. The cost of the repairs, and the extent to which they will be covered by insurance, are unknown. Nevertheless, she has continued since the date of separation to pay all of the expenses associated with GCR, including the mortgage, property tax, strata fees and insurance, without contribution from Mr. Zhu.
- [30] On November 26, 2020, Ms. Lin sold the Jones Road Property for \$417,000, from which she netted \$311,377.93. She says she used those proceeds to purchase the Whalley Boulevard Property for her daughter.
- [31] Mr. Zhu commenced this action on December 23, 2021. In September 2023, he moved back to Vancouver and has, since then, been renting his own separate accommodation at a cost of \$950 per month.

III. Applicable Legal Principles

- [32] The rules to be applied in dividing family assets and debts are set out in Part 5 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. They were conveniently summarised by Fleming J., as she then was, in *Nazarinia v. Amid-Nazarinia*, 2024 BCSC 189, as follows:

[325] Part 5 of the FLA governs the division of property and debt after separation, based on an excluded property regime that defines property as family property or excluded property. The relevant principles are:

1. Spouses are entitled to family property and are responsible for family debt regardless of their respective use or contribution (s. 81(a));
2. On separation, each spouse has a presumptive right to an undivided half interest in all family property as a tenant in common and is equally responsible for family debt (s. 81 (b));
3. Any real or personal property owned by at least one spouse at separation is family property, subject to s. 85 which identifies property excluded from family property (s. 84);
4. Excluded property includes property acquired by a spouse before the relationship began and gifts from a third party (s. 85(1)(a) and (b.1)), and property derived from property or the disposition of property referred to in ss. 85(1)(a) through (f);
5. The party claiming that property is excluded bears the onus of proving it is excluded (s. 85(2); *Pisarski v. Piesik*, 2018 BCCA 326);
6. Family debt includes all financial obligations incurred by a spouse at separation and after separation if incurred for the purpose of maintaining family property (s. 86);
7. Family debt and family property are presumptively valued as of the date of the trial, absent an agreement that provides otherwise (s. 87);
8. An unequal division of family property, family debt or both may be ordered if it would be significantly unfair to divide them equally based on the considerations in s. 95(2) and (3); and
9. The significant unfairness threshold is a high bar. It requires unfairness that is "compelling or meaningful having regard to the factors set out in s. 95(2)", or something objectively unjust, unreasonable or unfair in an important or substantial sense: *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44; *V.J.F. v S.K.W.*, 2016 BCCA 186 at para. 10; and *Jaszczewska v. Kostanski*, 2016 BCCA 286 at paras. 41 and 42.

IV. Discussion

A. The Family Assets

i. GCR

[33] It is common ground that GCR is family property to be divided in this action. The parties disagree, among other things, about its value, particularly the appropriate date to value it.

[34] Mr. Zhu has adduced an appraisal stating its value as of April 25, 2024 to be \$830,000-\$840,000. He urges me to value it accordingly.

- [35] Ms. Lin has adduced her own appraisal stating a value for GCR, as of June 21, 2024, of \$775,000, assuming it had not been damaged in the flood. Nevertheless, she urges me to value GCR by reference to its assessed value in 2021 (\$532,000), which is close to the date of the parties' separation. She argues that GCR should be valued as of that date because she alone has been paying all of the associated expenses since then.
- [36] Section 87 of the FLA directs the court to presume that family assets like GCR will be valued as of the date of trial. I have been given no sound reason to depart from that statutory presumption. The fact that Ms. Lin has been paying all of the associated expenses herself for many years is a factor to be considered in determining whether an unequal division would be significantly unfair, an issue that I address below. Accordingly, I am valuing GCR as of the date of the trial, but in its pre-flood condition.
- [37] The average of the two appraisals is \$805,000, which I find to be a fair approximation of the current value of GCR but for the flood damage. As of June 21, 2024, there was a balance owing on the mortgage of \$283,693.99. The difference between those two figures, \$521,306, reflects the current value of the parties' net equity interest in GCR at the time of trial, based on those assumptions.
- [38] I appreciate that GCR is probably worth considerably less than that in its current damaged state. However, the flood damage will not be permanent. The evidence suggests that repairs are already underway but will take many months to complete. It is not yet clear how much they will cost, how long they will take, and to what extent they will be covered by insurance. In order to account for that uncertainty, my order will provide for a future division of GCR once the answers to those questions have become clearer.

ii. The Zhongshan Road Property

- [39] If the Zhongshan Road Property belonged to Ms. Lin, then any property derived from it would be excluded property. Mr. Zhu would be entitled to a half interest in any increase in value of that property during the relationship.
- [40] Ms. Lin purchased the Jones Road Property on February 1, 2017, during the relationship, for \$285,000 using part of the proceeds of sale of the Zhongshan Road Property. In July 2017, Ms. Lin placed a mortgage on the Jones Road Property to secure a loan for \$100,000. She used those borrowed funds to purchase at least one pre-sale unit, the Whalley Boulevard Property. She sold the Jones Road Property on November 26, 2020, just after the parties separated, for \$417,000. She used the proceeds of sale to complete the purchase of the Whalley Boulevard Property.
- [41] Having considered the evidence adduced by the parties on this point, I am not persuaded that the Zhongshan Road Property truly belonged to Ms. Lin. Rather, it appears that both parties took title to real property in China after their respective divorces on terms that required them to hold those properties in trust for their respective children, who were minors at the time. Further, Ms. Lin appears to have treated the Zhongshan Road Property,

and the property derived from it, as if it belonged to her daughter. In particular, she used the rental revenue generated by the Jones Road Property, while she held it, to pay for her daughter's education. After Ms. Lin purchased the Whalley Boulevard Property, her daughter, now of the age of majority, took title in her own name, moved in and has been residing there ever since.

- [42] An asset that is held by a spouse in trust for a third party is not subject to division under Part 5 of the FLA: *J.D.G. v. J.J.V.*, 2016 BCSC 2389. Having found that Ms. Lin held the Zhongshan Road Property in trust for her daughter, it follows that none of the property derived from its sale, or the increase in value of that property during the relationship, is properly subject to division in this action.

iii. Other Chinese Assets

- [43] Both parties appear to have acquired a number of properties in China prior to the relationship. As I have already noted, at least some of those properties were held in trust for their respective children and are therefore not properly subject to division in this action. To the extent that one or both of them also held excluded assets in China, the other party would be entitled to share in any increase in the value of those assets during the relationship. However, I was given no evidence to show that there was in fact any such increase. It follows that there is no property to be divided in this category.
- [44] The party claiming an interest in property bears the onus to prove the existence of that interest and its value, failing which the court may refuse the claim: *Boyd v. Foster*, 2019 BCSC 901, *aff'd* 2020 BCCA 177.

iv. Joystone Corner

- [45] Ms. Lin began to sell jewelry from rented premises in the Lansdowne shopping mall in 2014, prior to the parties' relationship. Since then, she has operated the business in that location, known as Joystone Corner, as a sole proprietorship.
- [46] Whatever value lies in the business is excluded property. Mr. Zhu is entitled to a half interest in any increase in that value during the relationship. However, I received no evidence to suggest that the business actually increased in value during that time. On the contrary, it appears that it performed so poorly during the pandemic years that Ms. Lin was required to take on significant debt to sustain it.
- [47] I am not persuaded on the evidence before me that there was any increase in the value of the business during the relationship that is capable of being divided between the parties in this action.

B. The Family Debt

- [48] Ms. Lin seeks to have Mr. Zhu share in the following debts that she claims to have incurred:

- a) a loan that Ms. Lin claims to have received on May 9, 2017 from a friend in China, Xiumei Qiu, in the amount of \$24,985, for Joystone Corner and other expenses, of which approximately \$20,000 is said to remain outstanding;
 - b) a TD Bank line of credit in her name with a balance owing as of March 31, 2020 of \$17,570; and
 - c) a \$60,000 loan that Ms. Lin says she received from the Government of Canada in March 2021 under the Canada Emergency Business Account ("CEBA") programme for pandemic-related relief to Joystone Corner, of which \$20,000 was forgiven when she paid \$40,000 to the Government of Canada in September 2023 (she was able to make that payment by borrowing \$50,000 from another friend, Yufang He, at that time).
- [49] Ms. Lin has adduced documentation showing that she received \$24,985 from Xiumei Qiu on May 9, 2017 for "living expense" but there is no documentation or other evidence of any repayment terms. I am therefore not persuaded that this debt has been adequately proven.
- [50] Both the original CEBA loan and the later loan from Yufang He were advanced after the date of separation and therefore cannot qualify as family debts unless the funds were used to maintain family property. Given my finding that the Joystone Corner business is an excluded asset, the exception does not apply and neither loan can be considered a family debt.
- [51] However, I accept, based on the documentation adduced, that the balance owing on the TD Bank line of credit in the amount of \$17,570 is a family debt which Mr. Zhu must share with Ms. Lin.

C. The Appropriate Division

- [52] I have found that the only family asset to be divided is the parties' net equity in GCR (which I have valued at \$521,306, but for the flood damage) and that the only family debt to be divided is the \$17,570 that was owing on Ms. Lin's TD Bank line of credit. Both parties seek an unequal division in their favour.
- [53] In view of my finding that there are no other family assets to be divided, Mr. Zhu's claim for an unequal division rests solely on his claim for occupation rent. I am not persuaded that an equal division would be significantly unfair merely because Mr. Zhu has had to rent his own accommodation while Ms. Lin has remained in exclusive possession of GCR, given that Ms. Lin has been paying all of the associated expenses herself.
- [54] Both parties appear to have contributed significant funds to the family during the relationship. Of particular relevance in deciding whether an unequal division of GCR would be significantly unfair are the following GCR-related expenses paid by Ms. Lin:

Item

Total amount paid during relationship

Total amount paid from the date of separation through to the date of trial

Total Paid

Mortgage Payments

\$66,028.42

\$58,356.67

\$124,385.09

Property Tax

\$4,963.57

\$6,707.53

\$11,671.10

Strata Fees

\$21,895.37

\$22,207.98

\$44,103.35

[55] Other expenses paid by Ms. Lin, such as utilities, internet, groceries, automobile insurance premiums, renovations and upgrades to GCR (not including flood damage repairs), were generally for her own benefit or that of the family, rather than for the purpose of maintaining GCR. Overall, Ms. Lin's payment of GCR-related expenses has not been out of proportion to Mr. Zhu's initial down-payment of \$152,500-\$172,000 and his other cash contributions to GCR and the family. Although Ms. Lin has been paying all of the GCR-related expenses on her own since separation, she has also had exclusive use of GCR, at least until the flood occurred.

[56] It has been held that a spouse in exclusive possession of the former family home is not entitled to an unequal division merely because he or she has been paying the mortgage and other property-related expenses on their own since separation: *Storey v. Terry*, 2020 BCCA 30; *Lodhi v. Khan*, 2019 BCSC 398; *S.D.M. v. B.R.M.*, 2018 BCSC 1473. It is only since the flood that Ms. Lin has been paying those expenses without also having the exclusive use of GCR.

[57] The only other grounds advanced for an unequal division is Ms. Lin's allegation that Mr. Zhu married Ms. Lin only to facilitate his own and his son's immigration to Canada. I am not persuaded that Mr. Zhu entered into the relationship for that reason. Rather, I am satisfied that he married Ms. Lin out of love and that he intended to enter into a long-term partnership with her. He made significant financial and other contributions to the relationship. He took steps in an apparent effort to reconcile after the separation, but to no avail. Overall, I am not persuaded that an equal division would be significantly unfair for

that reason either.

[58] For those reasons, I have concluded that the parties are each entitled to half of the current net equity in GCR (\$521,306, or \$260,653 each), less the family debt (\$17,570, or \$8,785 each), before accounting for the cost to repair the flood damage to GCR and Ms. Lin's post-flood payment of GCR-related expenses.

V. Disposition

[59] I have concluded that the property and debt to be divided are as set out in the previous paragraph. Mr. Zhu wishes to see GCR sold to satisfy my judgment, once the flood repairs are completed. Ms. Lin wishes to retain GCR for herself by buying Mr. Zhu out. In order to balance the parties wishes, my order will give Ms. Lin the option of satisfying this judgment in one of two ways.

[60] Her first option is to pay Mr. Zhu, within one year following the date of this judgment, \$251,868, less:

- a) half of all uninsured flood repair costs; and
- b) half of all GRC-related expenses (namely, mortgage payments, strata fees, property tax and property insurance),

paid by her from the date of the flood until the date that payment to Mr. Zhu is made.

[61] Upon receipt of that payment, Mr. Zhu will sign the documents necessary to convey title to Ms. Lin alone.

[62] If that payment to Mr. Zhu is not made by the end of the year following the date of this judgment, then GCR is to be sold. In that event, the parties will have joint conduct of sale and the net proceeds of sale are to be split equally between the parties after crediting Ms. Lin with Mr. Zhu's share of the family debt (\$8,785) and:

- a) half of all uninsured flood repair costs; and
- b) half of all GRC-related expenses (namely, mortgage payments, strata fees, property tax and property insurance),

paid by Ms. Lin from the date of the flood until the date that GCR is sold.

[63] As success was divided, my order will be that the parties are to bear their own costs, subject to any further submissions they may wish to make. If either party seeks an award of costs, they must file a requisition online within the next 30 days seeking to schedule a supplemental one-hour appearance before me for that purpose.

"Milman J."

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