

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Li v. 1225839 BC Ltd.*,  
2023 BCSC 355

Date: 20230310  
Docket: S219594  
Registry: Vancouver

Between:

**Xiaosheng Li**

Plaintiff

And

**1225839 BC Ltd., Cobbett & Cotton Law Corporation,  
Hon Kit Chung, Jing Zhong, and John Doe**

Defendants

Before: Master Bilawich

## Reasons for Judgment

Counsel for the Plaintiff:

D.D. Way, appearing as agent  
for D. Chen

Counsel for the Defendant  
Cobbett & Cotton Law Corporation:

J.K. Lockhart

No other appearances

Place and Date of Hearing:

Vancouver, B.C.  
February 10, 2023

Place and Date of Judgment:

Vancouver, B.C.  
March 10, 2023

**Introduction**

[1] The plaintiff applies for an order that the defendant Cobbett & Cotton Law Corporation (“Cobbett & Cotton”) prepare and deliver an amended list of documents which includes its trust account records and other documents relating to \$250,000 that the plaintiff says he paid to the law firm in trust, including but not limited to documentation relating to disbursement of those funds from the trust account between February 2020 to present. Names of any individuals referenced to whom the plaintiff’s funds cannot be traced should be redacted.

[2] Cobbett & Cotton opposes all of the relief sought, including on the basis that this application is being made without notice to their client, whose identity they say they are unable to disclose without a court order. Lawyers have a professional obligation to claim privilege for their clients in circumstances where the information or document sought is or may be privileged.

[3] On March 18, 2021, Cobbett & Cotton changed its name to Randall Cobbett Law Corporation.

**Background**

[4] On October 27, 2021, the plaintiff filed his notice of civil claim.

- a) The plaintiff alleges that sometime on or before February 15, 2020, the defendant Mr. Chung represented he could help the plaintiff to secure a loan from the defendant 1225839 BC Ltd. (“122”) for something called the Kanaka Creek Project. Mr. Chung helped the plaintiff to prepare and submit a loan application.
- b) 122 indicated it had allocated up to \$3.5 million for the loan. The plaintiff and 122 executed a written agreement. It provided that in order for 122 to proceed with the loan, the plaintiff had to provide a deposit of \$250,000 as an application commitment to reserve a fund for a loan of up to \$3.5 million until April 30, 2020. The deposit was payable to Cobbett & Cotton In Trust.

- c) The plaintiff says Mr. Chung and Mr. Zhong instructed him to arrange a bank draft payable to Cobbett & Cotton in trust.
- d) On February 19, 2020, the plaintiff arranged a bank draft. On February 20, 2020, Mr. Zhong attended with the plaintiff at the office of Cobbett & Cotton. The plaintiff gave the bank draft to the firm. He received back a stamped, signed and dated photocopy of the draft as a receipt.
- e) The plaintiff says Cobbett & Cotton did not take steps to identify him, verify the source of the draft or the settlor of the funds being placed in trust, or confirm any trust conditions applicable to these funds.
- f) Mr. Zhong met privately with someone from the law firm. The firm placed the \$250,000 in trust for the defendant John Doe at Mr. Zhong's direction.
- g) The plaintiff did not satisfy the conditions precedent in the loan agreement, so the project loan was never funded.
- h) On or before September 3, 2021, the plaintiff asked Cobbett & Cotton to release the \$250,000 deposit to him. The firm advised it was not aware of him, 122 or the loan agreement. The firm advised it had never received funds at any time which appeared to belong to him. The plaintiff says the deposit has never been returned to him.
- i) The plaintiff seeks, amongst other relief, an accounting of the deposit, an order for return of the deposit to him and an order that the defendants jointly and severally pay him the sum of \$250,000.
- j) Under part 3, Legal Basis, the plaintiff claims in conversion, conspiracy and unjust enrichment.

[5] On February 18, 2022, Cobbett & Cotton filed its response to civil claim.

- a) It denies receiving the bank draft for \$250,000 from the plaintiff, denies knowledge of any alleged loan agreement or project loan and denies placing the funds in trust at the direction of Mr. Zhong.
- b) It goes on to decline to plead further responsive facts in answer to the notice of civil claim, where to do so may require it to divulge information subject to a duty of confidentiality and solicitor-client privilege which has not been waived.

[6] In support of the application, the plaintiff tendered an affidavit of the plaintiff which attaches as exhibits a copy of the loan agreement, bank draft and the receipt he received which has been signed, apparently by someone with Cobbett & Cotton and dated “2/20/20”.

[7] The plaintiff obtained default judgments against the defendants Mr. Zhong (June 7, 2022), 122 (October 19, 2022) and Mr. Chung (November 9, 2022).

[8] On September 14, 2022, the plaintiff delivered his list of documents to Cobbett & Cotton.

[9] On October 25, 2022, Cobbett & Cotton delivered its list of documents to the plaintiff. Part 4 of the list has a detailed listing of documents over which it claims privilege on the basis that they are contents of client files of the law firm. Documents included in the detailed privileged list include accounting records, cheques, cheque stubs, source of funds declarations, accounts and orders to pay.

[10] On November 30, 2022, plaintiff’s counsel demanded that Cobbett & Cotton produce the documents sought on this application and took the position that solicitor-client privilege did not apply to them.

[11] On January 6, 2023, counsel for Cobbett & Cotton informed plaintiff's counsel that all of the documents requested were listed in part 4, and they would not be produced due to privilege. Counsel went on to advise:

My clients have an ethical obligation to protect and preserve the confidential information of their clients. If you wish to challenge the privilege associated with these documents, the first step is to bring an application seeking an order that would permit my clients to provide you with the name and contact information of their clients, so that you can bring any further application on notice to the party to whom the privilege belongs. I have available dates in January and February for such an application, if you wish to proceed.

[12] Counsel for Cobbett & Cotton says notwithstanding this clear advice, the plaintiff chose not to bring an application for the name and contact information of the firm's client, and has instead chosen to apply for production of the documents in issue without notice to the client whose rights are affected.

[13] Counsel for Cobbett & Cotton did not provide a clear explanation as to why they have not brought the application materials to their client's attention. Presumably, efforts were made in that regard but the client either cannot be located or has not responded.

**Legal Basis**

[14] Cobbett & Cotton refer to s. 84(4) and (5) of the *Legal Profession Act*, S.B.C. 1998, c. 9, which provide that:

Responsibility of lawyers

**84** ...

(4) The relationship between a law corporation carrying on business as authorized under this Part and the rules, and a person receiving legal services provided by the corporation is subject to all applicable law relating to the fiduciary, confidential and ethical relationships that exist between a lawyer and a client.

(5) All rights and obligations respecting professional communications made to or information received by a lawyer, or in respect of advice given by a lawyer, apply to a law corporation and its employees, shareholders, officers, directors and contractors.

[15] It says at all material times it was and remains bound by a lawyer's duty to protect their client's privileged information, as well as a broader duty of

confidentiality. See s. 3.3-1 of the *Code of Professional Conduct for British Columbia* [*"CPC-BC"*]:

**3.3-1** A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

- (a) expressly or impliedly authorized by the client;
- (b) required by law or a court to do so;
- (c) required to deliver the information to the Law Society, or
- (d) otherwise permitted by this rule.

[16] It is obliged to claim privilege over client documents, unless the client waives the privilege. See s. 3.3-2.1 of the *CPC-BC*:

**3.3-2.1** A lawyer who is required, under federal or provincial legislation, to produce a document or provide information that is or may be privileged must, unless the client waives the privilege, claim solicitor-client privilege in respect of the document.

### **Analysis and Order**

[17] Both parties provided detailed legal argument regarding the merits of Cobbett & Cotton's claim for privilege over their client's documents. I have concluded it would not be appropriate to consider the plaintiff's application on its merits until the law firm's client has been given notice of the application materials and a reasonable opportunity to decide whether they wish to advance their own claim of privilege or resist production on some other basis. The plaintiff's application is accordingly adjourned.

[18] As it appears Cobbett & Cotton may have had difficulty getting instructions from the client regarding the relief sought on this application, in my view it is necessary and in the interests of justice that Cobbett & Cotton disclose to plaintiff's counsel the name and contact information for the client whose documents have been listed in part 4 of Cobbett & Cotton's list of documents. This contact information should include the name, address, phone number and email address, if available. If the client is not an individual, it should include name and contact information for the client's contact person.

[19] Before re-setting this application for a hearing on the merits, the plaintiff is directed to attempt to serve the application materials and a copy of these reasons on the client. In the event the plaintiff encounters difficulty effecting personal service, he is at liberty to apply to serve the client by an alternative means.

“Master Bilawich”