

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Zhong Tie Enterprise Inc. v. Topcorp
Development Inc.*,
2024 BCSC 1016

Date: 20240612
Docket: S158691
Registry: Vancouver

Between:

Zhong Tie Enterprise Inc. and Lihui Meng

Plaintiffs

And

**Topcorp Development Inc., Canadian Top Consultant Ltd.,
Ping Wang also known as Peter Wang also known as Peter Ping Wang,
Qian Fan also known as Sophie Fan also known as Sophie Qian Fan,
and Wen Qing Sun also known as Wenqing Sun**

Defendants

And

**Ping Wang also known as Peter Wang also known as Peter Ping Wang,
Qian Fan also known as Sophie Fan also known as Sophie Qian Fan,
Zhong Tie Enterprise Inc., Lihui Meng, Topcorp Development Inc. and 8688
Holding Inc.**

Defendants by Counterclaim

Before: The Honourable Mr. Justice N. Smith

Reasons for Judgment on Costs

Counsel for the Plaintiffs and Defendants by
Counterclaim, Zhong Tie Enterprise Inc. and
Lihui Meng:

S.A. Turner
D.C. Han

The Defendant and Defendant by
Counterclaim, Ping Wang also known as
Peter Wang also known as Peter Ping
Wang, appearing in person:

P. Wang

The Defendant and Defendant by
Counterclaim, Qian Fan also known as
Sophie Fan also known as Sophie Qian
Fan, appearing in person:

Q. Fan

Counsel for the Defendant and Plaintiff by
Counterclaim, Wen Qing Sun also known as
Wenqing Sun:

C. Dayan

Place and Date of Hearing:

Vancouver, B.C.
April 19, 2024

Place and Date of Judgment:

Vancouver, B.C.
June 12, 2024

[1] The plaintiff, Lihui Meng, and the plaintiff by counterclaim, Wen Qing Sun (collectively, “the plaintiffs”) seek special costs after a trial in which the defendants were found liable for breach of fiduciary duty, fraudulent misrepresentation, breach of contract, unjust enrichment and conversion. The plaintiffs obtained a monetary judgment along with orders that shares in two companies be transferred to them.

[2] The reasons for judgment are dated February 12, 2024 and indexed at 2024 BCSC 224 (the “previous judgment”). These reasons will often simply reference paragraphs of the previous judgment rather than repeating evidence and findings in detail.

[3] In very brief summary, the plaintiffs separately sought to immigrate to Canada from China under the British Columbia Provincial Nominee Program (“BCPNP”), a program for entrepreneur immigrants investing in British Columbia businesses. The defendant, Peter Wang, agreed to find qualified business opportunities for the plaintiffs and help establish those businesses. The defendant, Sophie Fan, through her company, agreed to prepare and submit the plaintiffs’ immigration applications. I found that those defendants did nothing to advance the plaintiffs’ immigration efforts while converting some of the plaintiffs’ investment funds to their own use and investing other funds in ways that would not have been eligible investments under the BCPNP.

[4] I summarized my view of the defendants’ evidence in the previous judgment:

[204] Throughout my recitation of the facts, I have repeatedly rejected the evidence of Ms. Fan and Mr. Wang as being inconsistent with the probabilities related to each transaction. I have also noted how they have relied on alleged agreements with or work allegedly performed by other individuals (most notably “Brenda” and Raymond Yang) who they failed to call as witnesses. ...

[205] The personal defendants have on many issues relied upon alleged verbal agreements with or instructions from Jianguo Dong [husband of the plaintiff Ms. Meng] who is now dead. Documents that would exist as a matter of course, such as evidence of any application to the BCPNP, do not exist. Other documents that the defendants were ordered to produce, and initially said they did not have, suddenly appeared months later on the eve of or

during trial. Some documents they now rely on appear to have been created after the fact for the purpose of this action.

[Emphasis added.]

[5] The authority to award special costs comes from the court’s inherent jurisdiction and Rule 14-1(1)(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. Special costs should be awarded with restraint in exceptional circumstances that demand punishment and deterrence: *Low v. Straiton Development Corporation*, 2023 BCSC 593 at para. 71. A party seeking special costs must demonstrate the existence of those exceptional circumstances: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 73.

[6] Special costs may be awarded where a party engaged in reprehensible conduct during the course of litigation that deserves rebuke: *Garcia v. Crestbrook Forest Industries Ltd.*, 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.) at para. 17; *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 134. Reprehensible conduct will likely be found in when there is evidence of “improper motive, abuse of the court’s process, misleading the court and persistent breaches of ... the rules of court...”: *O.W.L. (Orphaned Wildlife) Rehabilitation Society v. Day*, 2019 BCSC 1900 at paras. 31-33.

[7] Dishonest testimony, by itself, is insufficient to warrant special costs: *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284 at para. 59. But deliberate attempts to mislead and deceive the court are sufficient: *Friedlander v. Claman*, 2015 BCSC 482 at paras. 30-41; *Curtis v. Curtis*, 2023 BCSC 2346 at para. 4. The “egregious” conduct leading to an award of special costs may include “multiple instances of deliberate lying designed to mislead the Court, forgery of documents, or the deliberate concoction of evidence to support a party’s position”: *Sull v. Pengelly*, 2019 BCSC 1565 at para. 30.

[8] In *Behan v. Park*, 2014 BCSC 1982, Justice Voith (as he then was) provided three factors to identify testimony that is worthy of rebuke through special costs:

[49] ...where a party gives:

- i. false evidence that has been contrived, concocted or fabricated;
- ii. with an intention to mislead: [citations omitted];
- iii. on an issue that is central to the matter before the court: [citation omitted], and, which if accepted, would “drive [the opposing party] from the judgment seat”: [citation omitted].

[9] Special costs may also be awarded where there is deliberate non-disclosure, delayed disclosure, a failure to respond to reasonable requests and when a party causes unnecessary interlocutory applications: *Kim v. Hong*, 2013 BCSC 2248 at para. 11; *Chew Fidelity Ltd. v. Greater Victoria Contracting Services Ltd.*, 2019 BCSC 1474 at para. 75.

[10] In the previous judgment, I did more than reject the defendants’ evidence. I found their evidence at trial to have generally been contrived, concocted and fabricated with an intention to mislead the Court on central issues and drive the opposing parties from the judgment seat. This pervasive untruthfulness amounts to reprehensible conduct that warrants special costs. A few examples will suffice for present purposes.

[11] A particularly egregious example is found in the defendants’ evidence about the alleged involvement of Raymond Yang. This is discussed in some detail at paras. 87-103 of the previous judgment.

[12] The plaintiff, Mr. Sun, contributed 88% of the funds used to purchase a property in Squamish B.C., but received only 43% of the shares of the defendant, Topcorp Development Inc. (“Topcorp”), which was incorporated to hold that property as its only asset. The defendants asserted this share distribution was pursuant to a written agreement under which Mr. Sun agreed that another 43% would go to someone who would recruit investors to develop the property. At para. 83 of the previous judgment, I found that this agreement was likely forged.

[13] The shares representing 43% of Topcorp went to a Saskatchewan company called 8688 Holding Inc. (“8688”), of which Mr. Wang was the sole registered

shareholder. The defendants asserted that the true majority shareholder was Raymond Yang, a businessman from China.

[14] After 8688 was added to the litigation as a defendant by counterclaim, Mr. Sun applied in March 2021 to compel Mr. Yang to attend an examination for discovery. In response to that application, the defendants' then-counsel swore an affidavit stating:

I am informed by Sophie Fan and verily believe that the majority shareholder of 8688 is one Raymond Yang who is an entirely new party to the litigation, that he was residing in China at the time that the litigation commenced, that he continues to reside in China, [and] that as long as COVID is a threat, Raymond Yang is not intending to return to Canada. I am informed by the defendant Peter Wang and verily believe that Raymond Yang wants him to represent 8688 Holding Ltd. in the Sun litigation.

[15] As set out at para. 91 of the previous judgment, the instructions and information that the defendants gave to their counsel were clearly false. Mr. Wang and Ms. Fan testified at trial that they did not know Mr. Yang's whereabouts in China and had no contact information for him. The dates they gave as the last time they spoke to him meant they could not possibly have received the instructions they conveyed to their counsel.

[16] A document filed with the Saskatchewan Corporate Registry a few months before that affidavit was sworn listed Mr. Yang as a director of 8688 and stated he was a Canadian resident with an address in Regina.

[17] Mr. Yang did not appear at the examination for the discovery that the court ordered. At trial, the defendants produced two documents allegedly signed by him and I found that, "[e]ven to the untrained eye, there is no similarity between the purported signatures of Mr. Yang on the two documents": para. 93. I concluded:

[103] I do not need to decide whether I accept the contention of Mr. Sun's counsel that Mr. Yang does not exist and is simply a fictitious alter ego of the personal defendants. It is sufficient to find that, in the absence of any direct evidence from him, I do not accept that he ever did anything in relation to the Squamish property or that he, rather than Mr. Wang, is the true owner of 8688.

[18] At the subsequent hearing on special costs, Ms. Fan revealed that Raymond Yang does exist but, rather than being a mysterious businessman from China, he is Mr. Wang's nephew.

[19] Ms. Fan testified at trial that she transferred the plaintiffs' BCPNP application work to an immigration consulting firm where the work was done by an employee named Brenda. Ms. Fan maintained throughout trial that all of her communication with Brenda was verbal, but she did not know Brenda's current address or contact information. This either exemplifies a disregard for the truth or a failure to produce highly relevant documents and a disregard for the discovery process. If such communications happened, it is simply not believable that nothing was ever written down or that the defendants cannot get in touch with Brenda.

[20] In an effort to explain his own inconsistent evidence, Mr. Wang made a statement on his second day of cross-examination that obfuscated his evidence further and highlighted the self-serving, fluctuating nature of his evidence:

... I had a personal bad habit – I never take any notes or records. This has caused the result of me not being able to remember anything in a matter of a couple of days...

... when I personally tried to recall a matter or incident or state or describe the incident, I often do so based on my thoughts or ideas. Many things described may not actually describe what happened at the time...

... So the statement I've made at discovery and some answers I gave at the time, actually I didn't recall the time or dates properly and I messed up over the dates and my language expression wasn't accurate...

[21] At the hearing on special costs, Mr. Wang and Ms. Fan did not seriously dispute the suggestion that they had tried to mislead the court. Instead, they each blamed the other for misleading them and telling them what to say.

[22] The defendants also pursued a meritless counterclaim against Mr. Sun, seeking repayment of a "loan" evidenced by promissory notes. Those notes were produced only on the eve of trial, and I did not accept their authenticity: paras. 195-199. I found that the transaction in which the loan was alleged to arise had in fact been one in which money from Mr. Sun was returned to him and other funds

originating with Ms. Fan ultimately went to Mr. Wang. I also found the transaction to have been one set up for the defendants to document Mr. Sun's purchase of shares in a company at an inflated price: previous judgment at paras. 192-200, 251-252.

[23] Advancing claims that are bound to fail can ground an award for special costs: *McLean v. Gonzalez-Calvo*, 2007 BCSC 648 at para. 26; *Chancery Estate Holdings Corp. v. Sahara Real Estate Investment Inc.*, 2012 BCSC 822 at para. 12. Although this was not the only counterclaim advanced by the defendants, it most clearly demonstrated a disregard for the truth and was bound to fail because it was manifestly deficient and meritless. The personal defendants deliberately set up a convoluted transaction in which Mr. Sun transferred money and then got it back. There was never any credible claim based on a loan because, by design, the only money that Mr. Sun received had been his own.

[24] That is not an exhaustive list of the misleading and fabricated evidence that the defendants relied upon at trial, and it is not necessary to deal with every instance which the plaintiffs now point to. The above examples are sufficient for a finding of reprehensible conduct at trial.

[25] The defendants' reprehensible conduct began before trial. The record of pre-trial proceedings shows a pattern of behaviour in which they would refuse to cooperate on routine matters—such as document disclosure and scheduling of examinations for discovery—forcing the plaintiffs to bring applications. When those applications came on for hearing, the defendants would either not appear or consent only at the hearing.

[26] Once orders were made, the defendants often failed to comply with them. Failing to disclose documents after being ordered to do so by the court supports an award for special costs: *De Cotiis v. Hothi*, 2020 BCSC 1545 at para. 35.

[27] For example, on August 3, 2021, the defendants were ordered to produce certain documents by August 31, 2021. Mr. Wang's response to that order stated that he had already produced all the documents he had, while Ms. Fan's response

said that she had none. More than a year later and just before what was then the scheduled trial date, Mr. Wang produced documents that he said at trial he had only recently obtained from a person identified only as “Andy” who was not called as a witness. I found that at least one of those documents was “patently false”: previous judgment at paras. 99-101.

[28] Reprehensible conduct post-judgment may also justify an award of special costs: *Bandpey v. Talebpourazad*, 2023 BCSC 1265 at para. 24; *Ma v. Haniak*, 2018 BCSC 1000 at paras. 66-72.

[29] The relief granted in the previous judgment included declarations that all shares held by Mr. Wang, Ms. Fan and 8688 in the defendant Topcorp were subject to a constructive trust in favour of the plaintiffs and orders that those shares be immediately conveyed to them: para. 275. On the day the previous judgment was released, Mr. Wang and Ms. Fan filed a notice of change of directors of Topcorp, removing themselves and appointing two new directors who were not involved in this litigation. The plaintiffs, who were to become the sole shareholders in the company as a result of the judgment, were not notified of this change.

[30] The change of directors was apparently intended to stop the plaintiffs from causing Topcorp to sell the Squamish property, which is its only asset. One of the new directors, Tao Liu, has filed an affidavit exhibiting messages from Ms. Fan, including a statement that: “Ultimately, in this case, our goal is to drag them out, negotiate with them.” This is clearly reprehensible behaviour that demands rebuke.

[31] For all of the above reasons, I find the plaintiffs have clearly demonstrated that they are entitled to an award of special costs of the proceedings, to be assessed by the registrar.

“N. Smith J.”