

CITATION: Mao v. Liu, 2024 ONSC 752
COURT FILE NO.: CV-23-00699499-0000
DATE: 20240205

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 241 OF the *Canada Business Corporations Act*,
R.S.C. 1985, c. C.44, as amended**

BETWEEN:)
)
 JIAN MAO) *Oleg M. Roslak* for the Plaintiff
 Plaintiff)
)
 - and -)
)
 ZHENQIANG LIU, JUNLIANG LIU,) *Rory McGovern* for the Defendants Zhen
 and ECOUNION INTERNATIONAL) Qiang and Jun Liang Liu
 LTD.)
 Defendants) *Ronald Allan* for *Zhen Qiang Liu* as
) mortgagee of the property owned by the
) Defendant Ecounion International Ltd.
)
)
)
) **HEARD:** January 29, 2024

PERELL, J.

REASONS FOR DECISION

A. Introduction

[1] The Plaintiff, Jian Mao, is a director and the President of the Defendant, Ecounion International Ltd. Jian Mao has a 14% shareholder interest in Ecounion. The majority shareholder and the other director of Ecounion is the Defendant Zhen Qiang Liu, who is a 56% shareholder. The Defendant Jun Liang Liu is Zhen Liu’s son. Jun Liu is the general manager of Ecounion, but he has no ownership interest in Ecounion.

[2] Ecounion operates an Esso gas station, with a 10-bay car wash, a service garage (“jiffy lube”), and a convenience store at 616 Colborne Street, Brantford, Ontario.

[3] Jian Mao brings a motion to enjoin the sale of the gas station’s property and for the appointment of a receiver and manager for the gas station business. Alternatively, he seeks the

appointment of an investigative receiver. In the further alternative, Jian Mao seeks an order pursuant to rule 54.02 of the *Rules of Civil Procedure*¹ directing a reference in respect of the conduct of the sale of the gas station property and business. More particularly, Jian Mao seeks the following Order:

- a. appointing Albert Gelman Inc. (“AGI”) as interim receiver and manager over the assets, undertakings and properties of Ecounion, in accordance with the form of Order in the Motion Record;
- b. in the alternative, appointing AGI as an investigative receiver, without taking possession of the property of Ecounion;
- c. in the event that the alternative relief is granted, in addition, directing a reference in respect of the manner and conduct of the sale, and for the taking of accounts in respect of the Liu Mortgage, pursuant to rule 54.02 of the *Rules of Civil Procedure*;
- d. in the further alternative, if no receivership order is granted, solely directing a reference in respect of the manner and conduct of the sale, and for the taking of accounts in respect of the Liu Mortgage, pursuant to rule 54.02 of the *Rules of Civil Procedure*; and
- e. for the costs of this motion, on a substantial indemnity basis.

[4] At the return of the motion, Jian Mao advised that he would pay the receiver’s costs of \$150,000 for an anticipated 60-day investigation into the business operations of Ecounion. This was a twofaced gesture because Jian Mao also sought an Order that the Receiver’s costs constitute a first charge on the Property in priority to Zhen Liu’s mortgage and all other unsecured creditors.

[5] Jian Mao’s motion for interlocutory injunctive relief is brought pursuant to s. 101 of the *Courts of Justice Act*,² Rules 40 and 41 of the *Rules of Civil Procedure* and s. 241 of the *Canada Business Corporations Act*.³

[6] Jian Mao’s motion was opposed only by the Defendants Zhen and Jun Liu. The Defendant Ecounion was unrepresented. It did not appear to oppose the motion brought by its minority shareholder and co-director.

[7] For the reasons that follow, Jian Mao’s motion is dismissed.

B. Facts

1. The Parties, Dramatis Personae, and Credibility

[8] The Plaintiff, **Jian Mao** is a wealthy Chinese Canadian businessman who resides in Oakville Ontario. He has a net worth of \$18.3 million. He gave an undertaking as to damages. Among his assets is his 14% shareholder interest in Ecounion. He also has a 51% interest in another gas station business on Barton Street in Hamilton owned by **Greenshield International Investments Inc.** He is the 100% owner of **1984178 Ontario Inc.** (“Malcorp”), his management company.

[9] As will become apparent from the description of the facts to follow, I do not find Jian Mao

¹ R.R.O. 1990 Reg. 194.

² R.S.O. 1990 c. C. 43

³ R.S.C. 1985, c. C-44.

to be a credible or reliable witness. His affidavit and his testimony under cross-examination are rife with implausibility, incongruities, and prevarications. In areas of conflict, I prefer the evidence of Zhen Liu and Jun Liu.

[10] The other shareholder in Greenshield International Investments Inc. (a 49% shareholder interest) is **Qianyu Chen**. She is the Defendant Zhen Liu's spouse and the Defendant Jun Liu's mother. The Greenshield property was purchased in 2015. Ms. Chen has no ownership interest in Ecounion.

[11] The Defendant **Zhen Liu** is a wealthy Canadian Chinese businessman with business interests in Canada and in China. He resides in Toronto but travels frequently to China. He is the majority owner (56% shareholder interest) of Ecounion. He is the owner of the approximately \$4.2 million first mortgage on Ecounion's property. He has a 50% ownership interest in a property in Richmond Hill worth \$2.5 million.

[12] The Defendant **Jun Liu** is a wealthy Canadian Chinese businessman who resides in Toronto, Ontario. He is the general manager of Ecounion, although he has no ownership interest in it. He is the treasurer and has some sort of managerial position at Greenshield International Investments Inc., although he has no ownership interest in the corporation. He deposed that he has equity interests in two real properties worth \$5.5 million and also other undescribed assets.

[13] Although I do not believe everything in the evidence of the Defendants Zhen Liu and Jun Liu, they were forthcoming, and their account of the events is plausible and consistent with the documentary evidence, common sense, and the circumstances of the case.

[14] **Herman Hui** of Hui & Associates or of NTC Professional Corporation was and is Ecounion's bookkeeper and accountant. He kept the financial books and he prepared the financial statements and he prepared Ecounion's tax returns.

[15] **Mirza G. Chaudhary**, is a real estate agent and a mortgage broker with Global West Realty Limited. He was the real estate agent for the purchase of Greenshield's gas station in Hamilton. As described in more detail below, he was the mortgage broker for Ecounion's mortgage refinancing with the Toronto Dominion Bank ("TD Bank").

2. The Factual Narrative

[16] In **2015**, Greenshields, which as noted above is owned 51% by Jian Mao and 49% by Qianyu Chen purchased a gas station in Hamilton, which was managed by Jian Mao and which employed Jun Liu as an employee.

[17] In **2015**, Ecounion was founded. It is a corporation under the *Canada Business Corporations Act*. At the time of its incorporation, there were five shareholders: (a) Li Xue (31.5%); (b) Yuanyuan Zhan (30%); (c) Zhen Liu (21%) (d) Jian Mao (14%) and (e) Yitan Mao (3.5%).

[18] In **2017**, Ecounion purchased a 1.6 acre gas station property and business operating at 616 Colborne Street, Brantford, Ontario. A photograph of the property is below:



[19] It shall be important to keep in mind that a portion of Ecounion’s gross revenue is received in cash from the car wash facility that includes vacuum cleaners and air pumps to inflate vehicle tires. These facilities are all coin operated. The evidence of the parties was, colloquially speaking, “all over the map” about the potential revenues, the actual revenues, the accounted for revenues, and the allegedly pilfered revenues from the car wash and its coin operated facilities. The evidence of the parties was also all over the map about the cash revenue from the convenience store part of Ecounion’s business. On these matters, I much prefer the evidence of Jun Liu than the evidence of Jian Mao.

[20] The purchase price for Ecounion’s property and business was \$5,580,000. Just before the acquisition of the property, Ecounion obtained an appraisal report dated May 25, 2017, “the Stry Appraisal.” The appraisal indicated that the business had a going concern value of \$5,580,000 million.

[21] The appraisal, which is dated May 25, 2017 was prepared by Stry Appraisals International Limited. Stry Appraisals was retained by the Royal Bank of Canada (“RBC”) to prepare a prospective narrative appraisal and valuation analysis of the ESSO gasoline station. The purpose of the appraisal was for first mortgage financing purposes only. It is a “prospective” appraisal, which is to say that it is a forecast or prediction of the value of the property at a future date, which in this case was February 15, 2017. The appraisal report relied on financial projections prepared by Matrix Ventures Management Incorporated based on the performance of the business by its existing owners.

[22] I pause to say that for present purposes, the Stry Appraisal is a historical artifact that has very little utility in determining what the current fair market value of the property may be today. The appraisal also has little utility in determining whether Zhen Liu should be enjoined from enforcing his mortgage loan or whether a receiver should be appointed to investigate Ecounion’s business for the purposes of an oppression remedy.

[23] From the time of Ecounion’s acquisition of the gas station in 2017 until **July 2020**, Jian Mao managed the business. He was the person who had signing authority. He was the person who

oversaw the day-to-day operation of the business. He was the person who personally repaired the car wash facilities, which were frequently not working, adding to the all over the map evidence about the revenues from those facilities. He was the person who dealt with the suppliers. He was the person who retained Herman Hui who was the bookkeeper and the accountant for the business.

[24] The day-to-day management of Ecounion's business changed in 2020 after Li Xue and Yuanyuan Zhan sold their shares in Ecounion. In **July 2020**, Zhen Liu increased his shareholdings in Ecounion to a majority interest (56%). Yuanyuan Zhan retained his 30% shareholder interest. Jian Mao retained his 14% interest.

[25] I pause here to note that Yuanyuan Zhan has not been joined as a party to these oppression remedy proceedings brought by Jian Mao. Whether he ought to have been is a matter that is not before me and so I will say no more about Yuanyuan Zhan.

[26] Returning to the narrative, with the change of majority ownership, Jun Liu was appointed general manager of the business. There is a dispute between the parties about who managed the business after Jun Liu was appointed general manager. Jian Mao says that Jun Liu completely took over day-to-day management responsibilities. This is denied by the Lius. He deposed that Jian Mao remained in charge until February-March 2023 with Jun Liu following instructions from him.

[27] The Lius deposed that after February-March 2023, Jun Liu assumed day-to-day management hampered by the fact that Jian Mao retained control of the banking arrangements but was no longer coming to the gas station to repair the equipment and no longer making arrangements with the suppliers with whom he and not Jun Liu had authority.

[28] The degree of management control exercised by Jian Liu is a matter of serious controversy between the parties. As shall be seen further below, Jian Mao blames Jun Liu for alleged misrepresentations made to Ecounion's bankers. Jian Mao blames Jun Liu for the decline in the businesses revenues and for the misappropriation of cash from the businesses. These allegations are denied by the Lius. The Lius say that Jian Mao continued to be chief manager of day-to-day operations with the assistance of Jun Liu. The Lius say that Jian Mao misappropriated funds from the business.

[29] Based on the evidentiary record for this interlocutory motion, the truth of the matter appears to be that although Jun Liu as general manager assumed some of responsibilities previously performed by Jian Mao, Jian Mao was not, as he would have, the president of Ecounion in name only.

[30] The truth is that Jian Mao exercised his management control of the business until February 2023. Before and after February 2023, Jian Mao controlled the bank accounts of Ecounion. Before and after February 2023, Jian Mao continued to be the person who dealt with suppliers and with the bank where he had signing authority. Jian Mao communicated with and had access to the work of Herman Hui throughout. He had access to Ecounion's primary business email account throughout.

[31] The truth is that Jian Mao cannot blame Jun Liu for the fiasco with the TD Bank to which I now turn.

[32] In **November 2021** the Royal Bank of Canada ("RBC"), which was Ecounion's lender, refused to renew the mortgage it had on the gas station business for, among other reasons, Ecounion's failure to satisfy the debt service ratio required under the mortgage.

[33] In the **late fall of 2021 and into January 2022**, under the direction of Jian Mao, Jun Liu, with the assistance of Mr. Chaudhary, arranged, for a refinancing with the Toronto Dominion Bank (TD Bank) to replace the lost financing from RBC.

[34] Mr. Chaudhary arranged for financial statements about Ecounion's business to be presented to the bank. The statements were prepared by Herman Hui. Mr. Chaudhary then retained Orientec Tax & Accounting Services to prepare statements suitable to make a loan application to the TD Bank.

[35] I do not believe Jian Mao's evidence that he was uninformed and uninvolved with the arrangements for the TD mortgage. Jian Mao knew Mr. Chaudhary from the purchase of Greenshields property in Hamilton. Jun Liu says that Jian Liu introduced him to Mr. Chaudhary. It is neither plausible nor true that Jian Mao was unaware of the application process or was kept in the dark about the information that was being provided to the TD Bank to obtain a mortgage loan. I believe Jun Liu's evidence that he obtained Ecounion's financial statements from Herman Hui and gave them to Mr. Chaudhary who provided the information to the TD Bank in his role as a mortgage broker for Ecounion. Jian Mao cannot disavow responsibility for what was presented to the TD Bank. In the mortgage commitment agreement with the TD Bank, Jian Mao represented that:

The financial statements and forecasts delivered to the Bank fairly present the present financial position of the Borrower and have been prepared by the Borrower and its auditors in accordance with the International Financial Reporting Standards or GAAP for Private Enterprises.”

[36] In any event, there is no evidence that Jian Mao, Jun Liu, or Mr. Chaudhary did make misrepresentations to the bank.

[37] On **January 27, 2022**, the TD Bank transaction closed, and it made a \$3.6 million first mortgage loan to Ecounion with a \$70,000 line of credit. The financing was secured by a mortgage and by the personal guarantees of Jian Mao and Zhen Liu. The interest rate was TD's prime rate plus 1.5 per cent per annum. That Jian Mao guaranteed the loan, belies his testimony that he was kept in the dark about the arrangements for the refinancing with the TD Bank.

[38] In addition to signing his personal guarantee, on Ecounion's behalf, Jian Mao signed the mortgage, the acknowledgement of standard terms, the officer's certificate, the directors' resolutions, the environmental indemnity agreement, the assignment of insurance policies, the general assignment of rents & leases, the assignment of contracts, the direction authorizing electronic registration of the mortgage, a declaration of possession of the real property, the non-merger covenant, the direction re funds

[39] Ecounion used \$204,680.00 from the TD Bank's mortgage advance to repay Mao Jien's shareholders loan and Ecounion used \$132,000 to repay a shareholders loan from Zhen Liu.

[40] The TD Bank business financing, however, did not last long. On **July 11, 2022**, the bank terminated Ecounion's credit facility, which then had an outstanding balance of approximately \$3.6 million. The TB Bank alleged that Ecounion had falsified the financial statements in association with the credit agreement.

[41] The TB Bank's lawyers letter provides zero particulars of what precisely was misrepresented. The truth of the bank's vague allegation is unknown and unknowable in the absence of evidence from the TD Bank about what is said to have been misrepresented. If the false fact had been identified, then evidence would be required from Jian Mao, Jun Liu, Herman Hui,

Mr. Chaudhary, and Orientec Tax & Accounting Services. In other words, it may have been the TD Bank that wrongfully called its demand loan.

[42] Jun Liu's and Zhen Liu's evidence, which I believe, was that to Jian Mao's knowledge, the parties decided not to litigate with the TD Bank; rather they decided for the third time to refinance Ecounion's first mortgage indebtedness.

[43] Thus, for the present purposes of Jian Mao's motion to enjoin Zhen Liu's enforcement of his mortgage and for the appointment of a receiver over the business of Ecounion, whether the TB Bank was defrauded is colloquially speaking a red herring. The TD Bank fiasco certainly did not harm Jian Mao. He personally received \$204,680.00 from that refinancing, and as will be seen next, he personally was better off by the third refinancing of Ecounion's first mortgage.

[44] Having lost two conventional lenders, Ecounion was no longer able to find conventional replacement financing. To solve the problem, in **October 2022**, Zhen Liu personally made a \$3.8 million mortgage loan to Ecounion to replace the TD Bank's financing. The interest rate was 10% *per annum*, which was better than market rates at the time and better than the terms of the TD Bank's financing. The monthly interest only payment was \$31,666.66 The mortgage had a term ending on May 1, 2023. Jian Mao and Ecounion received independent advice with respect to Ecounion agreeing to borrow money from one of its shareholders pursuant to a secured mortgage.

[45] From Jian Mao's perspective, he was not harmed by the replacement of the TD Bank as the gas station's financier. The terms of the new mortgage were more favorable than the financing provided by the TD Bank and Jian Mao was no longer a guarantor of the indebtedness.

[46] It should also be noted that there is no allegation that there was any fraud or deception perpetrated by Zhen Liu in granting the mortgage loan to a company in which he was the majority shareholder.

[47] The first month's mortgage payment was made on Zhen Liu's loan as a holdback from the mortgage advance. No mortgage payments were made thereafter.

[48] There is a dispute between the parties about who made the decision not to pay the monthly interest on the mortgage. Jian Mao says that the mortgage payments were to be paid by postdated cheques or automatic withdrawals from the business's bank account and should have and could have been made. Zhen Liu and Jun Liu say that this was not possible because Ecounion's bank account often had insufficient funds once its suppliers and business creditors were paid. Zhen Liu says that in these circumstances he was prepared to informally grant Ecounion a forbearance from having to make monthly payments.

[49] With the third financing in place, Jian Mao continued to manage Ecounion's business as he did in the past with the assistance of Jun Lia. However, In **February 2023**, Jian Mao stopped working at the gas station.

[50] Around this time, it appears that Zhen Liu patience was wearing thin about Ecounion's inability to pay the mortgage. He was not prepared for this state of affairs to continue and in any event, the term of the loan was in the near horizon of the end of April (May 1,2023). Zhen Liu wished to sell the business as a going concern for \$4.4 million.

[51] A real estate agent secured an offer to purchase, but Jian Mao, however, did not wish the business sold for less than \$5.0 million and in **April 2023**, he refused to proceed with the sale. Jian Mao was prepared to have Ecounion go bankrupt rather than selling the property and discharging

Zhen Liu's mortgage.

[52] On **May 15, 2023**, Jian Mao commenced this action for an oppression remedy pursuant to s. 41 of the *Canada Business Corporations Act*, and he brought a derivative action on behalf of Ecounion. Jian Mao alleged that Zhen Liu and Jun Liu. Liu had breached fiduciary duties owed to Ecounion and that Zhen Liu had conducted the business and affairs of Ecounion in a manner that was oppressive, prejudicial to, and unfairly disregarded the interests of Jian Mao. Jian Mao pleaded that he had not been repaid the \$60,000 loaned by him to pay for Mr. Chaudhary's commission on the financing with the TD Bank. Jian Mao pleaded that he has not been repaid \$28,084.55 in other loans to Ecounion.

[53] Pausing here in the narrative, Jian Mao's motion for an interlocutory injunction and for the appointment of a receiver is based on his being oppressed as a minority shareholder and upon Ecounion being damaged by the acts of Zhen Liu and Jun Liu. I foreshadow to say that based on the current evidentiary record, there is no serious issue to be tried in Jian Mao's oppression action, much less a strong *prima facie* case.

[54] Jian Mao's chief allegation in that action is about the TD Bank fiasco; i.e. that Jun Liu falsified information to the TD Bank. There is, however, no evidence of any identified misrepresentation, and if there was one, then Jian Mao was aware of it, and he breached his contract with the Bank. Further, Jian Mao personally benefitted from the TD Bank's mortgage, and he has no cause for complaint that Zhen Liu rescued Ecounion, which was no worse off under the terms of Zhen Liu's mortgage while Jian Mao personally was better off given that he had already extracted a personal benefit from the TD Bank's mortgage and was now discharged from his personal guarantee.

[55] Returning to the narrative, in any event, the Lius were not put off by Jian Mao's oppression remedy litigation. They moved forward on plans to sell the business as a going concern. They obtained an appraisal from Ridley & Associates. This appraisal indicated that that the business had a going concern value of \$4,220,000 as of May 24, 2023.

[56] I pause again to say that there is no admissible evidence as to the current fair market value of the Ecounion property of business. No appraiser gave evidence, and the Appraisal Reports are double hearsay, although the reports are admissible evidence as part of the factual narrative or what was said or understood by the parties, the truth of the contents of the appraisals is hearsay save as may be admitted by the parties.

[57] Returning to the narrative, in **June 2023**, Jian Mao withdrew \$54,238 from Ecounion's bank account. This undisputable fact belies his evidence that he was being oppressed by the majority shareholder and that he had no control over the management and affairs of the gas station. He admitted during cross-examination that the withdrawal of \$54,238 was not authorized by Ecounion.

[58] For the withdrawal, Jian Mao directed a \$14,238.00 bank draft payable to his management company (1984178 Ontario Inc. (Malcorp)). He directed a \$40,000.00 bank draft payable to Greenshield, the gas station business in Hamilton, which he owned with Zhen Liu's spouse.

[59] Neither withdrawal was in Ecounion's best interests. Neither withdrawal was authorized by the directors or shareholders of Ecounion.

[60] The withdrawal left Ecounion insolvent. Jian Mao refused the Lius' demands that he returned the funds. In the months that followed, to keep the business afloat, the Lius advanced

\$70,000 to pay for fuel and other supplies.

[61] On **July 31, 2023**, Zhen Liu served Ecounion with a notice of intention to enforce security under s.244 of the *Bankruptcy and Insolvency Act*.⁴

[62] On **August 4, 2023**, the gas station was struck by lightning, which damaged the electrical system. For present purposes, the significance of this event is that Jian Mao knew about the closure and the reasons for it and directed Jun Liu to make an insurance claim. Notwithstanding this knowledge, in his affidavit, Jian Mao deposed that Liu's were no longer carrying on Ecounion's business. This is a small example of why in cases of conflict, I prefer the evidence of Jun Liu and Zhen Liu to the evidence of Mr. Mao.

[63] On **August 14, 2023**, in the Hamilton office of the Superior Court, Zhen Liu commenced a mortgage enforcement action for payment on the covenant and for possession of the mortgaged property.⁵

[64] On **August 15, 2023**, Zhen Liu issued a Notice of Sale under Mortgage. The outstanding debt was \$4,176,092 of which \$3.8 million was the principal indebtedness. The notice indicated that Ecounion, the mortgagor, had until September 22, 2023 to repay the indebtedness or the mortgagee, Zhen Liu, intended to sell the property by power of sale.

[65] On **August 19, 2023**, Jian Mao unilaterally advised OLG (Ontario Lottery and Gaming) to suspend the gas stations terminal until further notice. Why he did this is not explained, but it is another example of evidence that discredits his evidence that he was not involved in Ecounion's business after February 2023. He was involved at least to the extent of withdrawing funds for his own purposes and to distributing the business operations of Ecounion.

[66] On **September 19, 2023**, Jian Mao delivered an Amended Statement of Claim and then he took steps to have Zhen Liu's mortgage enforcement proceedings enjoined.

[67] On **September 20, 2023**, at Jian Mao's behest, there was an attendance in Civil Practice Court, and Justice Dow made the following endorsement:

The plaintiff seeks an urgent date for an order appointing an interim receiver over the company that owns a property in Brantford and enjoin the sale of the property, by the mortgagee-defendant, Zhen Qiang Liu. Zhen Liu has more recently commenced an action in Hamilton which is related. Counsel for Jun Liang Liu seeks to contest jurisdiction and have the matter referred to arbitration. I order the parties to proceed to a Case Conference. They may serve and file not more than five doubled spaced typewritten pages in a readable font in advance of same outlining their position and relief sought, including any temporary injunctive relief which may be ordered by the Case Conference Justice. The defendant Zhen Qiang Liu shall not sell the property pending attendance at the Case Conference. [...]

[68] In support of his motion for interlocutory injunctive relief, Jian Mao delivered an affidavit dated **September 28, 2023**. In his affidavit, Jian Mao deposed that it was only in preparing for his motion that he discovered the financial statements that Mr. Chaudhary had prepared for the TD Bank.

[69] I do not believe him. Jian Mao and Ecounion were advised by Ecounion's lawyers in the TD Bank refinancing. Jian Mao signed the documentation for the TD lending, and he represented

⁴ R.S.C. 1985 c. B-3.

⁵ Court File Number CV-23-00699499-0000.

that the information being provided to the bank was complete and truthful.

[70] In his affidavit, Jian Mao deposed that he had recently reviewed POS (point of sale reports) and compared them to banking records for the months November 2022 to June 2023. He deposed that he noted a 68,196.82 discrepancy which he attributed to the Liu's misappropriating the funds.

[71] I believe that Jian Mao only recently discovered this discrepancy, but there is no basis for accusing the Liu's of misappropriating the funds.

[72] Jun Liu investigated the allegation of missing cash. He agreed that there was a discrepancy. His explanation was that there was evidence that an employee hired by Jian Mao had stolen at least some of the money. The theft was reported to the police. There is an ongoing investigation. There is no evidence that the Lius misappropriated any funds.

[73] In his affidavit, Jian Mao estimated that for the eight months from November 2022 to June 2023, \$255,332.82 derived from the car wash facilities was missing from Ecounion's bank account and had not been accounted for.

[74] Based on the record before me this is a meta-fantasy, a fantasy based on an imagined performance of the coin car wash, coin vacuums, and coin air pumps. The better evidence is from Jun Liu that while there may have been money missing from the car wash facilities it was infinitesimal. His evidence was that the car wash bays were often inoperative for repairs and might generate one or two thousand dollars a month in cash revenue.

[75] Meanwhile, while Jian Mao was delivering his affidavit for his motion for interlocutory relief, also on **September 28, 2023**, his Majesty the King in Ontario as represented by His Majesty in Right of Ontario as represented by the Minister of Finance registered a \$25,110 lien against the title of the Ecounion's property.

[76] Returning to the litigation, the Lius obtained an appraisal letter dated **November 30, 2023**, (the Antec Appraisal). This appraisal opines that the value of Ecounion as a going concern was between \$3.0 million to \$3.5 million.

[77] On **December 8, 2023**, there was a case management conference. Justice Stinson made the following endorsement:

Counsel for Zhen Qiang Liu as mortgagee in a mortgage enforcement power of sale proceeding against Ecounion, should have standing to participate in the hearing of this matter. This is due to the fact that the prosecution of the mortgage enforcement proceeding has, in effect, been enjoined since the Order of Dow J. dated September 20, 2023. The continuation of that injunction shall be addressed and resolved as part of this motion to appoint a receiver over the affairs of Ecounion.

[78] On **January 5, 2024**, Jian Mao delivered a supplementary affidavit dated January 5, 2024. In this affidavit, he deposed that he had obtained a copy of a sales report of the fuel sales at the gas station for the period April 1, 2020 to March 31, 2021 that he believed was "likely amount the fraudulent financial records that the TD Bank alleged had been submitted as part of Ecounion's application for financing." He deposed that he asked the fuel supplier for a sales volume report for the same period and determined that the sales volume reported to the TD Bank was approximately a 1.0 million litres overstatement.

[79] Mr. Mao's evidence about the alleged misrepresentation to the TD Bank is useless. It is unknown whether the report prepared by Ms. Gregoire is accurate or inaccurate. It is unknown if the sales report from Global Fuels prepared by a salesperson identified as Anita Tuer is accurate or inaccurate. It is not known whether this is the report that was submitted to TD Bank.

[80] Moreover, for the reasons already expressed above the TD Bank Fiasco is a red herring. There may not have been misrepresentations made to the bank. If there were misrepresentations, Jian Mao made them, knew about them, or ought to have known about them. There is no corporate misconduct by the majority shareholder with respect to the TD financing, and he came to Ecounion's rescue when the TD Bank called in the loan without particularizing the alleged fraud. In any event, The TD Bank lending as long as it lasted did not harm Jian Mao and the replacement financing from Zhen Liu did not harm either Jian Mao or Ecounion. Jian Mao was represented by a lawyer and had independent legal advice with respect to both the TD Bank's mortgage and Zhen Liu's mortgage.

[81] Returning to the narrative, on **January 8, 2024**, Zhen Liu delivered his affidavit dated January 8, 2024.

[82] On **January 9, 2024**, Jun Liu. Liu delivered his affidavit dated January 9, 2024.

[83] On **January 13, 2024**, Jian Mao delivered a second supplementary affidavit dated January 13, 2024.

[84] On **January 15, 2024**, Zhen Liu and Jun Liu. Liu were cross-examined.

[85] On **January 15 and 16, 2024**, Jian Mao was cross-examined.

[86] On **January 23, 2024**, Jian Mao delivered his factum.

[87] On **January 24, 2024**, Jian Mao delivered an Amended Notice of Motion

[88] On **January 25, 2024**, the Defendants Messrs. Jun and Zhen Liu delivered their factum.

[89] They also delivered a Statement of Defence and a Counterclaim. The Counterclaim sought the following relief:

- a. A declaration that Jian Mao has acted in a manner that is oppressive, unfairly prejudicial, or unfairly disregards the interests of the Respondents in breach of Section 241 of the *Canada Business Corporations Act*.
- b. A declaration that Jian Mao has breached his fiduciary duties to Ecounion in his capacity as a director in contravention of Section 122 of the *Canada Business Corporations Act*.
- c. A declaration that Jian Mao has breached his contractual and common law duties of honesty vis-à-vis the Defendants.
- d. An order granting leave to the Defendants to commence a proceeding on behalf of Ecounion against Jian Mao for damages in connection with Jian Mao's breaches of the Shareholders Agreement and other statutory and common law duties.
- e. General damages for breach of contract and/or breach of fiduciary duty of \$350,000.
- f. Special damages in the amount of \$100,000.00.
- g. prejudgment interest in accordance with section 128 of the *Courts of Justice Act*.
- h. postjudgment interest in accordance with section 129 of the *Courts of Justice Act*.
- i. the costs of this proceeding on a substantial indemnity basis, plus all applicable

taxes; and,

j. Such further and other relief as to the Arbitrator [sic] may seem just.

[90] On **January 29, 2024**, Jian Mao's motion for injunctive relief and the appointment of a receiver was argued.

[91] At the return of the motion, Jian Mao indicated that he would pay the receiver's costs for a sixty-day investigation into the business of Ecounion. As noted above, if Jian Mao did not pay, then the receiver would have a first charge with higher priority than Zhen Liu's mortgage which already stood behind His Majesty's lien on the property.

[92] As of January 29, 2024 date, the indebtedness under Zhen Liu's mortgage totaled \$4,239,776.24. The *per diem* interest is \$1,114.40.

C. Discussion and Analysis

[93] There are two branches to Jian Mao's motion. Both branches, if not frivolous, are vexatious interlocutory motions without any substantive merit.

[94] One branch of Jian Mao's motion is to restrain a mortgagee from exercising its power of sale. The law, however, is that only in extreme cases will a mortgagee be restrained from exercising its rights unless the mortgagor tenders full payment of the mortgage indebtedness. The rule from *Arnold v. Bronstein* is that subject to a mortgagor's right to bring the mortgage into good standing or to redeem pursuant to sections 22 and 23 of the *Mortgages Act*,⁶ a mortgagee acting in good faith and without fraud will not be restrained from a proper exercise of his or her power of sale except upon tender of the amount outstanding.⁷ The case at bar does not satisfy the test for enjoining a mortgagee.

[95] The second branch of Jian Mao's motion is for some type of court appointed receiver. He submits that a receiver is required about there are serious questions about the financial affairs of Ecounion and its alleged inability to make payments of the Zhen Liu mortgage and a "potential misappropriation" of funds from the business. He says that he will be irreparably harmed should the gas station property and business are sold before the completion of an investigation. He says that an immediate sale would prevent the court from assessing Mr. Mao's causes of action and establishing liability or damages. In other words, in this last regard, he submits that a sale would be a cover up of Zhen Liu's and Jun Liu's corporate oppression.

[96] For a plethora of reasons, Jian Mao is not entitled to an injunction, a receiver, or any equitable relief. The immediate case is not an appropriate case for the appointment of a receiver of any type. Under section 101(1) of the *Courts of Justice Act* and Rule 41 of the *Rules of Civil Procedure*, a receiver or receiver and manager may be appointed by an interlocutory order, where

⁶ R.S.O. 1990, c. M.40.

⁷ *National Bank of Canada v. Guibord*, 2021 ONCA 864; *Bilbija v. 2513630 Ontario Inc.*, 2021 ONSC 571; *Sibyl Investment Holding Inc. v. Vlachich*, 2020 ONSC 2191; *Armanino v. Linderwood Holdings Inc.*, 2016 ONSC 1605; *1175945 Ontario Ltd. v. Michael Wade Construction Co.*, 2010 ONSC 3732; *Hornstein v. Gardena Properties Inc.*, [2005] O.J. No. 3302 (S.C.J.), aff'd. [2006] O.J. No. 2757 (C.A.); *Girard v. MCAP Service Corp.*, [2004] O.J. No. 1518 (S.C.J.); *Testa v. GTA Savings & Credit Union Ltd.* (2001), 43 R.P.R. (3d) 121 (Ont. S.C.J.); *Arnold v. Bronstein*, [1971] 1 O.R. 467 (H.C.J.).

it appears to a judge of the Superior Court to be just or convenient to do so.⁸ The test for appointing an interim receiver is similar to the test derived from *RJR-MacDonald Inc. v. Canada (Attorney General)*⁹ for the granting of an interlocutory injunction.¹⁰ Jian Mao fails every twig of this branch of his case both for an injunction and also for the appointment of a receiver.

1. The Injunction to Restrain Mortgage Enforcement

[97] Insofar as Jian Mao seeks to enjoin Zhen Liu's mortgage, Ecounion and Jian Mao personally benefited from Zhen Liu's mortgage loan, which retired the indebtedness to the TD Bank and discharged Jian Mao from his personal guarantee of that indebtedness. The terms of Zhen Liu's secured loan were more favorable than the existing line of credit. Without the mortgage loan, Ecounion would have been out of business.

[98] Jian Mao has not offered to redeem the mortgage, and Ecounion is not financially capable of doing so. The case at bar is not an extraordinary case in which the mortgagee's exercise of its enforcement rights should be enjoined. Practically speaking, Jian Mao is mischievously interfering with Zhen Liu's efforts to recover the first mortgage indebtedness.

[99] There is a dispute between the parties about whether the monthly mortgage payments could have been made to avoid the mortgage almost immediately going into default. Practically speaking, however, this is a meaningless dispute because there is no doubt and no dispute that the mortgage is long past its maturity. The principal of the mortgage has been due and payable since May 2023. Interest is accruing at a *per diem* of \$1,114.40.

[100] The mortgagor has defaulted repayment of the principal amount of the loan. This is not a matter of the defaults in making monthly payments accelerating the repayment of the loan; repayment of the loan is due. The mortgagee has given the requisite notices providing the mortgagor with an opportunity to redeem. The mortgagor has not redeemed. Jian Mao is not the guarantor of the indebtedness, and, practically and technically speaking, he personally has no right to redeem the mortgage, but in any event he has not done so. There is no basis for him to enjoin the enforcement of the mortgage.

[101] Jian Mao received independent legal advice when the mortgage was granted. He raises no objection to the validity of the mortgage and the refinancing was to his personal benefit. He admits that the indebtedness is owing and that Ecounion is in default in repayment of its indebtedness to Zhen Liu. There is no basis for him to dispute the validity of the mortgage or to enjoin the enforcement of the mortgage.

[102] There is also no basis for him to enjoin the enforcement of the mortgage *qui timet*, based on some bizarre allegation that Zhen Liu will sell the property improvidently.

[103] Typically, in a mortgage enforcement situation, the mortgagee has no incentive to recover more than its indebtedness because it must account for any surplus to the mortgagor and because

⁸ *O.W. Waste Inc. v. EX-L Sweeping & Flushing Ltd.*, [2003] O.J. No. 3766 (S.C.J.); *Third Generation Realty Ltd. v. Twigg Holdings Ltd.*, [1991] O.J. No. 2453 (Gen. Div.); *Ryder Truck Rental Canada Ltd. v. 568907 Ontario Ltd. (Trustee of)*, [1987] O.J. No. 2315 (H.C.J.); *National Trust Co. Ltd. v. Yellowvest Holdings Ltd.* (1979), 24 O.R. (2d) 11 (H.C.J.); *Re Prytherch; Prytherch v. Williams* (1889), 42 Ch. D. 590.

⁹ [1994] 1 S.C.R. 311.

¹⁰ *Toronto Port Authority v. Canada Auto Parks-Queenpark Ltd.*, [2000] O.J. No. 4297 (S.C.J.).

the mortgagee can be sued for an improvident sale. Thus, the law imposes a duty of care on the mortgagee to take reasonable care in the exercise of its power of sale.¹¹ However, the immediate case is not typical because the mortgagee actually has an incentive to sell the property at the highest possible price; i.e., Zhen Liu has an incentive to make a provident sale and not to stop trying once the first mortgage debt is repaid. Zhen Liu is a 56% shareholder in the mortgagor, and he has more invested than just his mortgage in Ecounion's business. In contrast, Jian Mao has already been repaid several hundreds of thousands of dollars for his loan investment in Ecounion and his 14% interest in Ecounion is a quarter of Zhen Liu's 56% interest.

[104] Unlike a mortgagee whose only interest is to secure repayment of its loan, Zhen Liu is more interested than Jian Mao is securing a profit from the sale of the business. If the recent Antec appraisal is correct, then there will be a shortfall in Zhen Liu's recovery of his secured mortgage loan.

[105] In the immediate case, it remains to be determined if Zhen Liu will be able to sell the mortgaged property to even recover the first mortgage indebtedness, the likelihood of which is fading at the rate of over a \$1,000 a day. Based on the recent appraisal evidence, a full recovery appears to be unlikely, but the proof will be what actually happens once the power of sale is no longer being restrained as it has been since September when the power of sale was ripe for action.

[106] Jian Mao is just mischievously interfering with Zhen Liu's efforts to recover even the first mortgage indebtedness. The request for an interlocutory injunction is denied.

2. The Motion for the Appointment of a Receiver

[107] Under the *RJR-MacDonald* test for an interlocutory injunction, which is used to determine whether a receiver should be appointed, the court considers three factors: (1) whether the plaintiff has presented a serious issue to be tried or, in a narrow band of cases, a strong *prima facie* case; (2) whether the plaintiff would suffer irreparable harm if the remedy for the defendant's misconduct were left to be granted at trial; and (3) where does the balance of convenience or inconvenience lie in the granting or the refusing to grant an interlocutory injunction.

[108] The appointment of a receiver is an extraordinary and intrusive order, and thus this relief is granted sparingly and after a careful balancing of the effect of the order on all parties and others who may be affected by the order.¹²

[109] The court may appoint a receiver with an "investigative receiver" i.e., a receiver with investigative powers in addition to its management powers or a receiver with just investigative powers.¹³

¹¹ *Royal Trust Corp. of Canada v. 880185 Ontario Ltd.*, [2008] O.J. No. 3295 (S.C.J.); *Padelt v. 638506 Ontario Inc.*, [2008] O.J. No. 5923 (S.C.J.), aff'd. 2010 ONCA 69; *Manufacturers Life Insurance Co. v. Granada Investments Ltd.*, [2001] O.J. No. 3932 (C.A.), leave to appeal to S.C.C. ref'd. [2001] S.C.C.A. No. 637.

¹² *Bilbija v. 2513630 Ontario Inc.*, 2021 ONSC 571; *Royal Bank of Canada v. CFNDRS Inc.*, 2017 ONSC 7661; *Anderson v. Hunking* [2010] O.J. No. 3042 (S.C.J.); *Royal Bank of Canada v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565 (Gen. Div.); *Fisher Investments Ltd. v. Nusbaum*, [1988] O.J. No. 1859 (H.C.J.)

¹³ *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368; *East Guardian SPC v. Mazur*, 2014 ONSC 6403; *Degroote v. DC Entertainment Corp.*, 2013 ONSC 7101; *General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, 2011 ONSC 4136 (S.C.J.), aff'd 2011 ONSC 4704 (Div. Ct.); *Romspen Investment*

[110] In the exercise of its discretion, the court will consider the conduct of the parties and the effect of a receivership on them.¹⁴ Other factors include: the nature of the property; the current sufficiency or insufficiency of any security; jeopardy to that security; the anticipated duration of the appointment; the anticipated demands of the appointment; the likelihood of maximizing the parties' recovery; cost associated with making the appointment; and whether the proposed appointee has the requisite skills to receive and manage property.¹⁵

[111] In his request for a receiver, Jian Mao has not demonstrated a serious issue to be tried, much less a *prima facie* case.

[112] Jian Mao's case for an oppression remedy is extremely weak. His original chief complaint was about the TD Bank financing fiasco but that caused him no harm. For the reasons expressed above, there is no basis to challenge the enforcement of the mortgage. His *quia timet* notion that Zhen Liu will improvidently sell a property in which he has a 56% indirect ownership interest is without merit. The idea that the Liu's have misappropriated the cash from the business is entirely based on speculation and ill will, while, in contrast, the fact that Jian Mao has made unauthorized withdrawals from the bank account is actually a matter in which the Liu's have a strong *prima facie* case.

[113] Jian Mao will suffer no irreparable harm if his motion for an injunction or for a receivership is dismissed. At the end of the day, Mao's claim is entirely a claim for damages as an unsecured creditor after a secured creditor who has a valid and enforceable mortgage.

[114] Jian Mao is a just 14% shareholder in Ecounion and Zhen Liu has far more to lose and always had more to lose if the gas station's property and business were sold improvidently.

[115] The balance of convenience does not favor Jian Mao. If there has been a misappropriation of funds by either party, then this can be resolved by an accounting **after** the property and the gas station business has been sold. Jian Mao can hire Albert Gelman Inc. ("AGI") on his own account to investigate the business. The Lius have been forthcoming in providing information all of which was available to Jian Mao who it may be recalled was managing the business until February or March of 2024 and whose access to Ecounion's bank account has never been interrupted.

[116] The appointment of a receiver is an unnecessary expense that will erode not only the recovery on the mortgage loan but also erode whatever equity Ecounion might have in the property after the receiver's super-priority claim is paid and Zhen Liu's mortgage is discharged.

[117] Jian Mao has never been denied access to the financial, bookkeeping, and accounting records of Ecounion and does not require the assistance of a receiver to investigate.

[118] The Lius – not Jian Mao – have infused Ecounion with approximately \$70,000 to sustain it as a going concern for over a year and they are at far greater financial risk than Jian Mao as the mortgage indebtedness continues to grow. Moreover, the security of Zhen Liu's mortgage has been

Corp. v. Hargate Properties Inc., 2011 ABQB 759; *Loblaw Brands Ltd. v. Thornton*, [2009] O.J. No. 1228 (S.C.J.); *Stroh v. Millers Cove Resources Inc.*, [1995] O.J. No. 1376 (Gen. Div.), affd [1995] O.J. No. 1949 (Div. Ct.).

¹⁴ *Royal Bank of Canada v. Chongsim Investments Ltd.* (1997), 32 O.R. (3d) 565 (Gen. Div.).

¹⁵ *Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited*, 2022 ONSC 6186; *General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, 2011 ONSC 4136; *Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.*, 2009 BCSC 1527; *Standard Trust Co. v. Pandygrasse Holdings Ltd. (No. 2)*, [1988] S.J. No. 574 (Q.B.).

diminished by Ecounion's inability to pay and the province has placed a lien against the title of the property.

[119] Jian Mao relies on Justice Quigley's decision in *Padda v. 2074874 Ontario Inc.*,¹⁶ where a investigative receiver was appointed in an oppression remedy application. Obviously, each oppression remedy case is fact specific and the facts of the *Padda* case are substantially different than those of the immediate case.

[120] In the immediate case, there is no need to appoint an investigative receiver. Jian Mao submits that an investigative receiver is necessary to prevent coverup by the Luis that would prevent a court determining his claims against the Luis. Apart from the coins from the car wash facilities, there is ample evidence for the parties to settle their accounts as against one another - after - the completion of the power of sale proceedings.

[121] There is certainly no need to appoint a receiver to manage the property, which both and after the falling out with Jian Mao, Jun Liu has been capable of handling. There is no need for a production order; Jian Mao has copies of the financial reports and he has always has and continues to have access to the bank's statements and to the reports from Ecounion's suppliers.

[122] Jian Mao fails the test for the granting of a receiver of any type. His request for a receiver is denied.

D. Conclusion

[123] For the above reasons, Mao's motion is dismissed. The motion is dismissed with full indemnity costs in accordance with the standard terms of Zhen Liu's mortgage.

[124] If the parties cannot agree about costs, they may make submissions in writing beginning with the submissions of the Defendants within twenty days of the release of these Reasons for Decision followed by Jian Mao's submissions within a further twenty days.

Perell, J.

Released: February 5, 2024

¹⁶ 2010 ONSC 2872

CITATION: Mao v. Liu, 2024 ONSC 752
COURT FILE NO.: CV-23-00699499-0000
DATE: 20240205

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF SECTION 241 OF the *Canada
Business Corporations Act*, R.S.C. 1985, c. C.44, as
amended

BETWEEN:

JIAN MAO

Plaintiff

-and-

**ZHENQIANG LIU, JUNLIANG LIU, and
ECOUNION INTERNATIONAL LTD**

Defendant

REASONS FOR DECISION

Released: February 5, 2024