

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Li v. Wu*,
2023 BCSC 1207

Date: 20230623
Docket: S1913387
Registry: Vancouver

Between:

Yong Long Li also known as Jack Li and CTC Logistics (Canada) Inc.
Plaintiffs

And

Dan Ni Wu and CTC Container Service Ltd.
Defendants

Oral Reasons for Judgment

In Chambers

Counsel for Yong Long Li and CTC
Logistics (Canada) Inc.:

J.C. Fiddes

Counsel for Dan Ni Wu and CTC Container
Service Ltd.:

R. Lo

Place and Date of Trial/Hearing:

Vancouver, B.C.
June 23, 2023

Place and Date of Judgment:

Vancouver, B.C.
June 23, 2023

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] In addition, this application was brought at the same time as an application in BC Supreme Court action no. S225079, *Wu v. Li*, involving the same personal parties to this action, i.e. excluding their related companies. It may be necessary to review those reasons at the same time as these, for the full context.

[3] The application before the court today is to compel the answers to interrogatories which the Wu Parties object to answering, and production of various documents.

Background

[4] By way of background, Mr. Li and Ms. Wu and their corporations, CTC Logistics (Canada) Inc. (“Li Co”, collectively with Mr. Li, the “Li Parties”), and CTC Container Service Ltd. (“Wu Co”, collectively with Ms. Wu, the “Wu Parties”) had business and personal relationships from 2013 to 2019. For ease, I am using the same defined terms as was used by the parties during submissions.

[5] At a very high level, the business aspect of the relationship involved a series of agreements, initially entered into in 2013, between Li Co and Ms. Wu, whereby Ms. Wu would act as an agent for Li Co, a freight forwarder, to assist finding export customers, in exchange for which sales commissions and other remuneration would be paid to Ms. Wu, along with what is referred to as an agent's commission. The agreement with respect to the agent's commission is described by the parties as one whereby funds would be paid by Li Co to Wu Co or Ms. Wu for the purpose of funding inducements to be made to customers in order to ensure future export contracts.

[6] After various amendments, which are not all before the Court, but I understand involved both the personal and corporate parties from time to time, by 2017 the agreement no longer made reference to the agent commissions being

specifically used for the purposes of those inducements being payments over to customers, as was specifically referenced in the original 2013 agreement.

[7] In 2019, the parties' personal and corporate relationships came to an end.

[8] That breakdown in the relationship has led to a series of actions and claims being commenced which generally relate to claims for commissions and/or return of funds by the Wu Parties, which they say they are entitled to, including unpaid agent commissions or other remuneration, and claims by the Li Parties against the Wu Parties for return of funds and possibly an accounting of the funds that they say the Wu Parties retained rather than paid as inducements to the third party customers. As such, the issue of whether or not the amendments of the agreements had the effect of terminating the inducement obligations is a threshold issue.

[9] I pause to note that all of the various notices of civil claims filed were not put before the Court, such that the nature of the allegations being made, as set out herein, is a very general one based on counsel's submission, without regard to a review of the pleadings themselves. In any event, as has been described to the Court, the actions are as follows:

- a) The first action, Action S-196191, was commenced on May 29, 2019, in which the Wu Parties commenced an action against the Li Parties in which they sought injunctive relief of some type which was ultimately dealt with by this Court with reasons indexed at 2019 BCSC 1215, and subsequently amended to include claims for damages for sexual assault which Ms. Wu alleges was committed by Mr. Li.
- b) The second action, Action S-198065, was commenced on July 18, 2019, by the Li Parties against the Wu Parties, seeking damages for conversion of funds in the estimate, in the approximate amount of \$90,000.
- c) The third action, Action S-1910189, was commenced on September 11, 2019, by the Li Parties against the Wu Parties for breach of contract claiming damages in the approximate amount of \$160,000.

- d) The fourth action, Action S-1910190, was commenced September 12, 2019, by Mr. Li against Ms. Wu in personal capacities, seeking approximately \$90,000 arising from damages in respect of an investment in some sort of California company or California venture, and in a company called Emme Distributors Inc.
- e) This action, that being the fifth action, was commenced November 25, 2019, in which the Li Parties claimed against the Wu Parties, and the Wu Parties counterclaimed with respect to the above-noted service agreements and the commissions and agent fees due and owing thereunder. The Li Parties submit their claims could be valued at around \$2 million.
- f) The sixth action, Action S- S225079, was commenced on June 22, 2022, in which Ms. Wu claims against Mr. Li personally for damages for breach of the numerous agreements between them, which amounts to approximately \$450,000. This claim arises from alleged damages that were not recovered, or awarded, as part of the order and judgment made in oppression remedy proceedings, which have now been determined with reasons for judgment being issued on April 22, 2022, indexed at 2022 BCSC 635, and resulting in a judgment in favour of Ms. Wu for approximately \$1M, which has been paid from sales proceeds of corporate assets, with the further sum of \$500,000 being held back in trust "until such time as [the parties'] financial disputes are resolved."

[10] None of the actions have been set for trial. However, counsel for Ms. Wu has given notice in the sixth action that she intends to set that matter for summary trial.

[11] On November 24, 2020, the Wu Parties sought and successfully obtained an order to have the trials of the first five actions, including this one, tried together. By separate reasons given this same date, I dismissed an application to consolidate the trials in the first five actions with the sixth action.

Analysis

Interrogatories

[12] The parties do not disagree as to the relevant law in respect of interrogatories as summarized in *Araya v. Nevsun Resources Ltd.*, 2018 BCSC 808 at paras. 16 to 23.

[13] In addition, the parties did not disagree that interrogatories, as a general proposition, would be appropriate in this case as a matter of efficiency and to assist in preparing for examinations for discovery. It was in that vein that the Wu Parties agreed in principle to answer interrogatories.

[14] Some three pages of interrogatories were then delivered and all questions but one, albeit with some sub-questions, were answered by way of a detailed affidavit which demonstrates that Ms. Wu did make a good-faith effort to answer the questions as clearly and concisely as possible, in keeping with the objective of the interrogatories and the agreement as to their use.

[15] The interrogatories that were not answered are in respect of a supplied list of customers for which the Li Parties request particulars, including the identity of which customers were not customers obtained by Ms. Wu through the service contract, their contact information, and whether, how, what, and when they were paid as agents' commissions.

[16] The principles set out in *Araya* as are most relevant to this case are as follows:

- a) whether the interrogatories are relevant to the issues raised in the pleadings, see *Smith v. Global Plastics Ltd.*, 2001 BCCA 275 (“*Smith*”) at para. 22;
- b) whether the interrogatories are in respect of questions of fact that the respondent can verify from personal knowledge or reasonable inquiry, *Martin v. B.C.* (1986), 3 B.C.L.R. (2d) 60 at paragraph 30; and

- c) whether the interrogatories are being effectively employed in the context of the entire discovery process. Interrogatories are not intended to provide a parallel means of obtaining information that can be obtained on discovery, see *Camp Development Corp. v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 at para. 116.

[17] The Wu Parties argue that the outstanding interrogatory questions are not relevant and that they are not being effectively employed in this case, as they are more appropriately questions to be asked on discovery. The basis for the objection as to relevance is largely based on the Wu Parties' theory of the case, in particular that the service contract was amended by the 2017 version to remove the requirement for the agents' fees to be paid back to the customers. Of course, as noted in *Smith* relevance is based on the pleadings, not one party's theory of the case.

[18] In fact, it is that issue which is the threshold issue; namely, whether or not the agreement was amended.

[19] As to whether or not these questions are more appropriate for discovery, given the nature of the questions, in particular as to the amounts paid out, if any, to each customer may require access to other documents such as bank records or other contemporaneous documents that Ms. Wu may have kept.

[20] In the greater context of the discovery process, answering them prior to the discovery will likely be more efficient and will assist in the preparation for the discoveries. I note in this respect that the questions are in respect of facts that the respondent can verify from personal knowledge or a reasonable inquiry, even if having to go to third party documents in their control.

[21] As such, I make the order that the defendants answer the Question 6 of the interrogatories dated October 31, 2022. That is the relief sought in para. 1 of the notice of application, excluding reference to Question 5 as that has now been answered.

Document Disclosure

[22] As set out in the notice of application, the documents sought to be produced are:

- a) invoices for the agent commissions and documents regarding payments made during the years 2017 to 2019, all of which the Wu Parties confirm have in fact been provided. As such, I will not deal with that aspect of the application
- b) Ms. Wu's personal tax returns, Wu Co.'s corporate income tax returns, and financial statements for the period 2016 to 2020. It is the tax returns and financial statements which the Wu Parties oppose producing at this stage.

[23] The Li Parties state that these records are relevant, given that the position of the Wu Parties is that they were entitled to the agents' fees themselves, and not obligated to pay them over to customers as inducements. If that is the case, they ought to have properly recorded the amounts they received as income in their financial records and in their income tax returns.

[24] As a preliminary matter, the Wu Parties note that on its face, this application is deficient in that the Li Parties have not complied with R. 7-1, which provides for a two-tier level of document discovery. If this request is under the first tier of discovery, as contemplated under R. 7-1(10), then the Li Parties were required to make a written demand that the Wu Parties prepare an amended list of documents containing these documents.

[25] If the request is under the second tier of discovery, as contemplated under R. 7-1(11), the Li Parties were required to make a written demand identifying the additional documents "with reasonable specificity and indicating the reason why such additional documents should be disclosed."

[26] The court in *Ackert v. At Nature's Door Owners' Association*, 2021 BCSC 778 at para. 21, noted that it is not enough to make a demand under "either 7-1(10) or 7-1(11)". It must be clear what rule the party is relying on.

[27] The intent of these rules is to inform the opposing party as to the basis for the request and, if it is in respect of the broader second tier request, to inform them as to the basis for such a broader disclosure request in sufficient particularity so that there can be a reasoned and well-informed answer. These rules, as well as R. 1(13), are meant to promote efficient litigation by enabling parties to enter into a reasonable discussion as to whether or not the documents should properly be produced prior to bringing a court application. Both the demand and the 35-day timeline for response assist with that objective.

[28] It has been stated by this Court that litigants who ignore the processes under the rules risk the application being adjourned or even dismissed entirely if they have not complied with that 35-day requirement and a proper and sufficient demand: see for example, *Sutherland v. Banman*, 2008 BCSC 1194; *Zecher v. Josh*, 2011 BCSC 311; and *Balderston v. Aspin*, 2011 BCSC 730 at para. 26.

[29] On their face, tax returns and corporate accounting records would not be obviously relevant to the issues as raised in the pleadings, namely the obligation to pay or right to retain the agents' commissions and damages in that respect, as would compel production under the first tier of discovery.

[30] As such, I will consider this application as being one made under R. 7-1(11), namely the second tier of discovery. The letter requesting these documents states as follows:

I have had the opportunity to review the documents on your fresh list. I note there is but one agent commission invoice for 2018 and none for 2019. I would be obliged if you could provide us with copies of 2018 and 2019 invoices. As well, there are not listed any documents for any of 2017, 2018, or 2019 demonstrating payment of agents' commission. We would imagine that might include cancelled cheques, receipts, and/or bank records evidencing electronic payment and/or bank transfers and the like. We look forward to receipt of such documents.

[31] The letter not only fails to set out the rule being relied upon and the basis on which they may be relevant, but notably does not reference tax returns at all.

[32] Subsequently, by email some months later, on August 15, 2022, the Li Parties again asked for the production of these tax returns and financial statements, but again without reference to the applicable rule or basis for relevance.

[33] Notwithstanding that the application is deficient given the failure to comply with the requirements of R. 7-1(11), I am not satisfied that the Li Parties have met the burden to show that these records are subject to production at this time under the second tier of discovery, even had a proper demand been made.

[34] Based on the order I have now made with respect to the interrogatories, those questions and those to be asked at an examination for discovery further to them should yield sufficient evidence as to the amount of funds paid on account of agent commissions, and if any were then paid to customers as an incentive. The income tax returns being sought under this further and broader discovery request may ultimately serve to impeach Ms. Wu's credibility if she did not declare the amounts she retained as income, assuming that she did retain them and was not entitled to do so. However, that does not meet the relevance test at this stage, prior to discovery, where a foundation has not been laid as to whether or not these payments were declared as income in tax filings.

[35] Answers to questions as to discovery may reveal that it is appropriate to compel production of the tax returns and financial statements once that proper foundation has been laid. I make no determination in that respect.

[36] I dismiss the application for production of documents, but grant liberty to reapply following Ms. Wu's discovery.

Conclusion and Orders

[37] In summary:

- a) The defendants shall answer Question 6 of the interrogatories dated October 31, 2022 as sought in para. 1 notice of application. I make no order on Question 5 as that has been answered.
- b) I dismiss the application for production for further documents, with liberty to reapply after the examination for discovery of the Wu Parties.

[38] I will now hear submissions on costs. I will say that my gut instinct is that there was divided success, such that it should be that each party bears their own costs. The Li Parties were successful on the interrogatories, but not the documents and the trial consolidation, but largely due to the stage of the proceedings with me finding that the applications are premature, with liberty for them to be brought at a later time. In my view, either each party should bear their own costs or costs should be in the cause, but I will hear submissions as I can be swayed on that.

[39] CNSL J. FIDDES: I vote in favour of what you consider to be appropriate, to make it as short as I can.

[40] THE COURT: Each party bear their own?

[41] CNSL J. FIDDES: Yes.

[42] THE COURT: Or costs in the cause?

[43] CNSL J. FIDDES: Or costs in the cause.

[44] CNSL R. LO: My impression would be for the interrogatory and document production, that one, just each bear their own costs, and for the consolidation application, costs in the cause.

[45] THE COURT: The two applications heard at the same time. My concern with doing it as two separate is that it arguably gives you the right to claim costs for this

application, because you will claim it as a half-day hearing on the consolidation matter, which would defeat the purpose to some extent.

[46] I order that costs will be in the cause for both applications.

[47] CNSL J. FIDDES: Much obliged, Your Honour.

[48] THE COURT: Thank you.

[49] CNSL R. LO: Thank you.

“Master Robertson”