

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wu v. Li*,
2023 BCSC 1205

Date: 20230623
Docket: S225079
Registry: Vancouver

Between:

Dan Ni Wu

Plaintiff

And

Yong Long Li also known as Jack Li

Defendant

Before: Master Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

R. Lo

Counsel for the Defendant:

J.C. Fiddes

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. S1913387, *Li et al. v. Wu et al*, involving the same parties to this action, as well as 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 in this action is brought under R. 22-5(8) of the *Supreme Court Civil Rules* for an order that this action be consolidated for trial purposes with five other actions involving the same parties, including the aforementioned action.

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) The fifth action was commenced November 25, 2019, S-191387, 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.

[10] In addition, an oppression remedy petition was commenced, which was brought by Ms. Wu against Mr. Li and other companies, in which they were both shareholders, including Emme Distributors. That claim has 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 was 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."

[11] This action, which is the sixth action, or seventh proceeding, was, commenced on June 22, 2022. 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 the oppression remedy proceedings.

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

[13] On November 24, 2020, the Wu Parties sought and successfully obtained an order to have the trials of the first five actions, including the action in which damages for sexual assault have been claimed, tried together. That order includes a term that:

The parties are at liberty to apply and vary this order on proper notice under the Rules without needing to demonstrate a change in circumstances.

[14] The parties had a different interpretation as to why that specific term of the order was made, with the Wu Parties saying it was because the master was not confident that the order, although sought and being made, would continue to be appropriate as the cases evolved.

[15] Unfortunately, the reasons were not before the Court, so I am unable to make any determination based on the intent of the Court in including that term. In any event, the Li Parties now seek to have this action, the sixth action, consolidated with the first five actions as are, as of now, to be tried together, largely relying upon the arguments made by the Wu Parties at the time of that order as to why they ought to be heard together, submitting that if it is appropriate for their claims, including the sexual assault claims, to be heard together, then it is appropriate to include this further Li claim.

[16] Further, the Li Parties argue that having this one action left orphaned from the other actions could cause prejudice in that it could ultimately proceed to judgment much quicker than the other actions, the effect of which could be a judgment against the Li Parties, despite that the Li Parties may not yet have a resolution on their own claims by which they argue they could have a setoff of up to \$2 million.

Analysis

[17] The parties did not disagree on the test for consolidation. The governing rule is R. 22-5(8).

[18] The court provided a useful summary of the principles for such an application in *Globalnet Management Solutions v. Aviva Insurance Company*, 2013 BCSC 829 at paras. 35 to 39.

[19] In summary, an order to consolidate, which is discretionary, is meant to enable the parties to avoid a multiplicity of proceedings, as well as a risk of inconsistent findings. The factors for consideration include the following, but often come down to whether or not the order makes sense, as noted in *Sohal v. Argitos*, 2010 BCSC 916 at para. 22:

- (1) Will the order sought create a saving in pretrial procedures, (in particular, pre-trial conferences)?
- (2) Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?
- (3) What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?
- (4) Will there be a real saving in experts' time and witness fees?
- (5) Is one of the actions at a more advanced stage than the other?
- (6) Will the order result a delay of the trial of one of the actions?
- (7) If so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which a combined trial might otherwise have?

[20] I would say that in addition to those factors, and in accordance with the comment of *Sohal* in terms of whether or not the order simply makes sense, that such a test is more appropriately one as to whether or not it is in the interests of justice to have the matters heard together.

[21] The Wu Parties argue that these factors mitigate against a consolidation, as the issues in this action involve completely different transactions, namely those arising largely out of the Emme business dealings and transactions which gave rise to the oppression remedy claims. The Emme business dealings were not related to the service agreements on the export operations, which are the subject of the other actions (excluding the sexual assault matter).

[22] They argue that, other than it being the same parties, there is no commonality of issue such that the trial will not be shortened in any way, in that if this action requires five days of trial then, if consolidated, the whole of the trial will need to be extended by the same number of days as would be required for this trial on its own.

[23] In that respect, there is no apparent or obvious savings of time or expense, either in the trial itself or in respect of the pretrial procedures, given that the discovery will also involve different facts, different documents and disclosure, and only some of the same background.

[24] Further, the Wu Parties argue that this action is further along, in that discoveries have been conducted and the matter is largely ready for summary trial. By letter dated December 15, 2022, the Wu Parties put counsel for the Li Parties on notice that they would be setting down a summary trial application for the spring of 2023. Obviously that has not happened as of yet, but I am advised that is because the Wu Parties allowed this application process to go through and unfortunately, as is often the case, it took some time for this application to get on for hearing, notwithstanding that the first notice of application for this relief appears to have been filed in January 2023.

[25] The prejudice to the parties cuts both ways.

[26] As far as the Wu Parties are concerned, if the order is granted they will have this matter tied up, rather than obtaining an efficient and less costly resolution by summary means. If not, then from the Li Parties' perspective, they will be faced potentially with a judgment that is capable of being enforced against them when they have a significant outstanding claim that could be potentially set off against that judgment.

[27] The Li Parties also note that the same argument as to different evidence being led can be said of the sexual assault damage claim, so are perplexed as to why the Wu Parties seek to oppose the addition of unrelated claims now. In other words, if it was good for the goose, it is good for the gander.

[28] While their position here may be entirely inconsistent in that respect, this action and application must be considered on its own footing.

[29] I do agree with the Wu Parties that the prejudice in being denied a summary trial which, if it is an appropriate way to determine this action, of which I make no determination whatsoever, is the least costly and most efficient means for a resolution of this action. The prejudice that could arise to the Li Parties in having a judgment against them can be ameliorated, if appropriate, by a stay of execution. Although, again, I make no determination on the merits of such an application.

Conclusion and Orders

[30] As such, I dismiss this application, but I do so with liberty for the Li Parties to bring a further application as may be appropriate, including seeking an order for the trials to be heard together, as opposed to consolidated, if:

- a) judgment is not pronounced after any summary trial, for example if the Court does not find it suitable for summary determination, or
- b) to prevent a situation where the summary trial is not advanced by the Wu Parties, if no summary trial is set at least nine months before any trial is scheduled to commence in the other actions.

[31] 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.

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

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

[34] CNSL J. FIDDES: Yes.

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

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

[37] 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.

[38] 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.

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

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

[41] THE COURT: Thank you.

[42] CNSL R. LO: Thank you.

“Master Robertson”