

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *He v. Huang*,  
2024 BCSC 563

Date: 20240409  
Docket: S83990  
Registry: Nanaimo

Between:

**Jian He**

Plaintiff

And

**Hai Huang, Ying Gao, Tian Long Huang**

Defendants

Before: The Honourable Mr. Justice Baird

## Reasons for Judgment

Counsel for the Plaintiff:

G. Phillips  
A. Reed (A/S)

Counsel for the Defendants:

B. Sutton

Place and Date of Hearing:

Nanaimo, B.C.  
March 28, 2024

Place and Date of Judgment:

Nanaimo, B.C.  
April 9, 2024

**INTRODUCTION**

[1] This is a summary trial proceeding brought by the plaintiff, Jian He, pursuant to Rule 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. He seeks an order under the *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 (“FCA”) that the November 24, 2016 transfer (“the transfer”) by the defendants Hai Huang and Ying Gao of their family home (“the property”) at 6626 Dover Road, Nanaimo, B.C., to their son, the defendant Tian Long Huang, was made to defraud him, as a judgment creditor of Hai Huang, of a lawful collection remedy. The parties agree, and so do I, that the matter is suitable for summary determination.

**BACKGROUND**

[2] On February 5, 2018, after the trial of a separate tort action in this court, a jury awarded the plaintiff \$447,450 in damages for injuries suffered as the result of an assault that Mr. Hai Huang committed upon him on August 10, 2013. The day after this verdict was returned, the plaintiff’s lawyer, Mr. Phillips, performed a land title search on the property. He discovered that the transfer had been completed in the very midst of the litigation and that the consideration for it registered on title was “\$1.00 and natural love and affection”. The assessed value of the property at the time was \$485,000, and Hai Huang and Ying Gao owned it free and clear.

[3] By then, the plaintiff’s assault and battery lawsuit against Mr. Huang was well underway. Discoveries were completed on July 15, 2016, and on July 20, 2016, the plaintiff provided Mr. Huang with medical records specifying the nature and extent of his injuries: a perforated eardrum that required surgery to repair, and psychological deficits – depression and post-traumatic stress disorder – that in his doctor’s opinion were attributable to the assault. The same records indicated that these injuries had rendered the plaintiff incapable of working and he had not earned an income for over two years.

[4] I conclude that, if there had ever been any doubt about it, Mr. Huang was on clear notice by mid-July 2016, three months before the transfer, that the allegations made in the plaintiff’s lawsuit were serious and that, if things did not go his way, he

would be obliged to pay the plaintiff a significant sum of money in damages. Mr. Huang was represented by a lawyer throughout the litigation process, Mr. Sutton, who also argued the present *FCA* summary trial application. Mr. Sutton would most certainly have advised Mr. Huang of the financial risk to which he stood exposed, even if he and Mr. Huang hoped that the jury could be persuaded to dismiss the plaintiff's case.

[5] A five-day trial was booked on October 27, 2016, a month after the transfer. Mr. Huang gave notice requiring a jury on January 18, 2017. The trial proceeded from January 29 to February 5, 2018. Mr. Huang formally admitted that he struck the plaintiff and thereby caused the damage to his eardrum, but he claimed to have acted in self-defence. He denied causing any psychological injury to the plaintiff. The jury found against him on both issues. As I have said, they awarded the plaintiff \$447,450 in damages. After required deductions, the plaintiff entered an Order After Trial for \$436,768.76 plus costs and disbursements to be assessed.

[6] No appeal was taken from the jury's verdict. Over four years later Mr. Huang has not paid anything toward satisfaction of the plaintiff's judgment. He claims not to have worked since 2014, when he was only in his mid-fifties. I have been given no explanation for this. He says that he has no income, savings or investments, and he cannot deny that the transfer had the effect of giving away his only valuable asset to his son, now aged 39, upon whom Mr. Huang and Ms. Gao claim to be entirely financially dependent. They say that he pays for all their living expenses and covers all the costs associated with ownership of the property.

[7] The present action under the *FCA* was commenced on March 6, 2018. The three defendants – Hai Huang, Ying Gao, and Tian Long Huang – were examined for discovery on August 26, 2019. It is clear that each of them was aware of the plaintiff's claim at the time of the transfer and realised that, if the plaintiff prevailed, Hai Huang would have to pay the plaintiff a sum of money in damages. All three defendants confirmed that they have lived together on the property for twenty years and intend to continue doing so indefinitely. They claim that the property was

conveyed to Tian Long Huang for the following legitimate reasons (and here I will paraphrase):

- a) At the time of the transfer, Tian Long Huang was engaged to be married, and Chinese custom required his parents to transfer all of their property to him in advance of the wedding to assure his prospective spouse and her family she would be adequately looked after;
- b) It is also Chinese custom that children should continue living with their parents, even after they are married, to take over responsibility for the family finances and payment of all household bills, and to look after their parents in their old age, and ultimately to receive their parents' property in compensation for doing so;
- c) Neither Mr. Huang nor Ms. Gao had any income to pay for the ongoing expense of maintaining the property, and because Tian Long Huang had agreed to pay all of these costs, to permit them to go on living on the property, and to take care of them until they died, they felt it was only fair that title should be transferred to him.

[8] The evidence suggests that Tian Long Huang's engagement with his fiancée, a young woman from Chengdu, China, was reasonably lengthy and probably sincere, but 6 months or so after the transfer, the couple parted company and have not reconciled. There was no marriage. Tian Long Huang remains single without dependents. Title to the property remains in his sole name, with no encumbrances registered against it other than the plaintiff's Caveat and Certificate of Pending Litigation. The property's present assessed value is \$985,000.00.

**WAS THE TRANSFER A FRAUDULENT CONVEYANCE?**

[9] The *FCA*, as far as it is relevant here, provides as follows:

**Fraudulent conveyance to avoid debt or duty of others**

1 If made to delay, hinder or defraud creditors and others of their just and lawful remedies

(a) a disposition of property, by writing or otherwise,

.....

is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.

**Application of Act**

2 This Act does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud.

[10] It is common ground on the present application that there was a disposition of the property without valuable consideration, and there is no doubt at all that one of its effects has been to deprive the plaintiff of the lawful remedy of registering his judgment against title to the property and executing upon it in the usual way. “Creditors and others” include those with an anticipated but not yet extant debt or an unliquidated claim, such as a judgment debt arising from a yet-to-be litigated claim: see *Mawdsley v. Meshen*, 2012 BCCA 91 at paras. 75-76.

[11] This court held in *British Columbia Hydro and Power Authority v. Heathcote*, 2016 BCSC 140 at para. 24, citing *Botham Holdings Ltd. (Trustee of) v. Braydon Investments Ltd.*, 2009 BCCA 521, that “[a]ny disposition of property that has the effect of hindering or delaying creditors, even if it is done for other legitimate reasons, can be found to be void or of no effect because it is a fraudulent conveyance”. The court also confirmed at para. 27 that “where a voluntary disposition is made in exchange for no or for nominal consideration ... a presumption of fraudulent conveyance arises.”

[12] Mr. Sutton concedes, as he must, that because no valuable consideration was exchanged for the transfer, s. 2 of the *FCA* has no application, and the defendants bear the burden of rebutting the presumption that it was fraudulent. It falls to them, in other words, to prove that the transfer was not intended, in part at least, to put the property out of the plaintiff’s reach. No greater dishonest or morally blameworthy intention is required for relief under the *FCA*. Such an intention is a question of fact that may be inferred from the conduct of the defendant and the

effect of the transfer, and it is not necessarily negated if the conveyance under consideration may be said to have had some legitimate purpose or benefit. Where, as here, a transferor calls evidence of his intention, the question is the weight or credit to be given to it: see, generally, *Botham Holdings* at paras. 73-80, 85.

[13] This court confirmed in *Wu v. Gu*, 2020 BCSC 396 at para. 80 that the presumption of fraudulent intention is activated by a transfer of property between near relatives without consideration, that the burden shifts to the defendant to prove the *bona fides* of the transfer, and that such evidence must be scrutinized with “care and suspicion”. In the same decision at para. 84 the court repeated that the intention to put assets out of the reach of creditors may be inferred from the following “badges of fraud”:

- (a) the state of the debtor’s financial affairs;
- (b) the relationship between the parties to the transfer;
- (c) whether the disposition effectively divests the debtor of assets;
- (d) evidence of haste in making the disposition;
- (e) timing of the transfer relative to notice of the debts;
- (f) the presence of valuable consideration; and
- (g) whether the transferor continued in possession after the transfer.

[14] Mr. Phillips argues that the pre-emptive and wrongful object of the transfer was to deny the plaintiff’s ability to execute upon the property to satisfy any judgment that might be granted in his favour, and argues that this case is adorned with multiple “badges of fraud” including that:

- a) the defendant shortly after discoveries were conducted in the assault litigation and the plaintiff disclosed medical evidence indicating the potential scope of his loss and injuries, and only one month after the trial date was set;
- b) the transfer was gratuitous or without valuable consideration; and

- c) Hai Huang has continued in possession of the property and intends to reside there indefinitely, enjoying all of the benefits of the property in exactly the same way as before the transfer.

[15] I agree with the plaintiff that, in light of these factors, the presumption is strong that the transfer was intended to put the property out of the plaintiff's reach. The timing of it, in the very midst of civil litigation in which it had been clearly established by medical evidence that Mr. Huang stood exposed to significant financial liability to the plaintiff, is extremely suspicious.

[16] I am not persuaded by the uncorroborated claim that it is Chinese custom for parents to transfer all of their assets to their children, especially when the parents are comparatively young and profess, for reasons not disclosed, to earn no income to support themselves. I should emphasise, as well, that I have received no evidence of Tian Long Huang's employment or income, or any documentary evidence – municipal tax, insurance, or hydro bills, for example, or bank statements and income tax returns – to confirm or corroborate that he is paying all the family's bills or has the wherewithal to do so. In a case like this, where it is well-established that any claim to legitimate intentions will be closely and sceptically scrutinised, I would expect to see such confirmatory evidence, and I infer by its absence that it does not exist.

[17] I have nothing to go by in this case except the uncorroborated testimony of the defendants concerning their intentions, and having evaluated and weighed their evidence cumulatively, I have decided that it falls well short of rebutting the presumption that the transfer was fraudulent. Even if I were to accept that there may have been some degree of legitimate estate planning involved here, the objectives and overall effect that Mr. Huang and Ms. Gao claim to have desired in that direction could have been achieved by transfer to their son of a joint tenancy in the property, and with it the right of survivorship. The fact that, instead, they divested themselves of the property altogether speaks clearly to an alternative intention. Even in the absence of a presumption, I would have no hesitation in concluding, in all of the

circumstances, that this intention was to deprive the plaintiff of a lawful debt-collection remedy in the event, by no means implausible, that his assault lawsuit succeeded.

**REMEDY**

[18] For the foregoing reasons, I hereby order that the transfer was a fraudulent conveyance within the meaning of that term in the *FCA*. In accordance with *Vancouver Coastal Health Authority v. Moscipan*, 2019 BCCA 17 at paras. 102-105, the transfer remains valid, but I order that the plaintiff may register his judgment against title to the property and execute against it as if it had not been made. To help matters along, I also order the Registrar of Land Titles in Victoria, British Columbia, to accept the Certificate of Judgment in *He v. Huang*, Nanaimo Registry, No. S73740, for registration against title to the property as if Hai Huang were its legal and beneficial owner to the same extent as before the transfer.

[19] In my view, for reasons similar to those given by this court in *Amstel Investments Ltd. v. Correia*, 2005 BCSC 1132, the plaintiff is entitled to special costs throughout this proceeding.

“Baird J.”