

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1041192 B.C. Ltd. v. 1084503 B.C. Ltd.*,  
2024 BCSC 616

Date: 20240415  
Docket: S209580  
Registry: Vancouver

Between:

**1041192 B.C. Ltd.**

Plaintiff

And

**1084503 B.C. Ltd., Tao Tommy Yuan, Wen Yan Li,  
Canada Berries Holdings Inc., Canada  
Berries Winery Ltd., Canada Berries  
Enterprises Ltd, Canada Berries Group  
Companies (2015) Ltd, Canada Asia Business  
Network Ltd, Cabn Management & Holdings  
Ltd. and Top Western Cultural Exchange Inc.**

Defendants

Before: The Honourable Justice Giaschi

## Reasons for Judgment

Counsel for Plaintiff:

T.M. Cohen K.C.  
M. Rozee

Counsel for Defendants:

S. Xue

Place and Dates of Hearing:

Vancouver, B.C.  
August 29-30, October 6, 28 and  
December 13, 2022  
March 31, September 8 and  
December 6, 2023

Place and Date of Judgment:

Vancouver, B.C.  
April 15, 2024

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## Introduction

[1] This action concerns \$1,795,853 advanced by the plaintiff to Canada Berries Holdings Inc. (“CBHI”) in 2016 in exchange for 35% of CBHI shares. The other shares in CBHI are held by the defendant 1084503 B.C. Ltd. [108], a company that is wholly owned by Mr. Yuan. CBHI wholly owns Canada Berries Winery Ltd. (“CBW”), Canada Berries Enterprises Ltd. (“CBE”), and Canada Berries Group Companies (2015) Ltd. (“CBGC”). CBW is the registered owner of a berry farm located at 17951 Blundell Road, Richmond (the “Property”).

[2] The plaintiff alleges in its notice of civil claim that through a series of agreements, its investment in CBHI was converted to a shareholder loan and that Mr. Yuan personally guaranteed the repayment of the loan. The plaintiff also alleges various breaches of agreements by the defendants and misuse of CBHI’s funds. The relief sought in the action includes, among other things, judgment for \$1,795,888 plus interest and a declaration that CBW holds the Property on a constructive trust for the plaintiff.

[3] These reasons concern a notice of application filed on April 29, 2022 by the plaintiff seeking 12 declarations and orders, including judgment, summary judgment, and the sale of the Property. The declarations sought are:

- a) A declaration under Rule 22-8 of the *Supreme Court Civil Rules* [Rules] that six of the named defendants are in contempt of court for failure to comply with court orders; and
- b) A declaration under Rule 22-7 that the same six defendants had failed to comply with the Rules.

[4] The six defendants alleged to be in contempt of court and in breach of the Rules are 108, Mr. Yuan, Wen Yan Li (Mr. Yuan’s spouse), CBHI, CBW, and CBE (collectively the “Six Defendants”).

[5] The application has had a tortuous history. It originally came before me on August 29, 2022, and was expected to last 2 days. It did not. There have been 8 days or partial days of hearings. However, during the course of those hearings, there has been significant progress.

[6] On October 6, 2022, by consent, an order was issued that the Property be listed for sale for a period of 60 days and that, if sold, the net proceeds of sale be deposited into a solicitor's trust account.

[7] On October 28, 2022, by consent, an order was issued that Mr. Yuan and CBHI were jointly and severally liable to the plaintiff in the amount of \$1,795,853. This amount was to be paid to the plaintiff from the proceeds of sale of the Property.

[8] On December 13, 2022, March 21, 2023 and September 8, 2023, orders were made extending the listing for the sale of the Property.

[9] On December 6, 2023, the parties appeared before me again. On this date, I was advised that the parties had resolved some of the issues between them and that the plaintiff wished to only proceed with paragraphs 1 and 2 of Part 1 of the notice of application, being the declarations of contempt and failure to comply with the Rules. I was not provided with full particulars on what issues had been resolved and what remained outstanding. I was advised that a payment of \$2 million had been made to the plaintiff and that it had given up its shares in CBHI. There are apparently outstanding issues between the parties, although it is not clear to me exactly what those issues are.

[10] Accordingly, I address only the relief claimed in paragraphs 1 and 2 of Part 1 of the notice of application filed on April 29, 2022. The balance of the relief requested in the notice of application is adjourned generally without prejudice to the right of the plaintiff to file a new application for those orders.

**Facts**

[11] I do not intend to address the relevant facts in detail because it is unnecessary to do so. The evidence before me clearly establishes that the Six Defendants have not complied with their disclosure obligations in the Rules or with the court orders filed on September 13, 2021 and November 30, 2021.

[12] On September 23, 2020, the initial notice of civil claim was filed in this matter. The only defendants named in the original notice of civil claim were the Six Defendants. On November 3, 2021, an amended notice of civil claim was filed, adding the remaining defendants.

[13] On October 21, 2020, the Six Defendants filed a single response to the notice of civil claim.

[14] By letter dated November 12, 2020, the plaintiff requested that the Six Defendants deliver a list of documents within 35 days and requested that the list of documents contain 15 specific categories of documents.

[15] The Six Defendants failed to deliver a list of documents within the 35-day time frame requested in the letter or as required by Rule 7-1(1) of the Rules.

[16] On June 24, 2021, the plaintiff filed an application to strike the response to civil claim for failure to deliver a list of documents or, alternatively, for an order requiring the Six Defendants to deliver a list of documents containing the 15 categories of documents referenced in the letter of November 12, 2020.

[17] The parties resolved the June 24, 2021 application by a consent order which was submitted to the registry by requisition on July 21, 2021 but was not actually entered until September 13, 2021. The consent order included:

1. The Defendants shall list and produce to the Plaintiff, by August 8, 2021, all documents that are or have been in their possession or control and that could be used by any party of record to prove or disprove a material fact, and other documents to which the Defendants intend to refer at trial, including:

[the order lists the 15 categories of documents referenced in the letter of November 12, 2020]

[18] On August 10, 2021, the Six Defendants delivered their list of documents. Part 1 of the list of documents contained 71 documents. On the same day, the plaintiff's counsel requested that the listed documents be provided to her.

[19] The Six Defendants failed to provide the listed documents as requested. As a consequence, additional requests were made for the documents to be provided on August 13, 17 and 19, 2021.

[20] On August 23, 2021, the defendants' counsel advised that further documents had been received, that an amended list of documents would be prepared and that the documents would be provided to the plaintiff within a few days.

[21] On August 25, 2021, the Six Defendants delivered an amended list of documents listing 82 documents.

[22] By letter dated September 1, 2021, plaintiff's counsel advised that the list of documents was deficient and gave the Six Defendants 10 days to rectify the defects. The Six Defendants failed to respond to the request.

[23] On October 1, 2021, the plaintiff filed a second application for, *inter alia*, an order striking the Six Defendants' response to civil claim for failure to comply with their production obligations. That application was adjourned on October 25, 2021 at the request of the Six Defendants, after which they delivered a further amended list of documents.

[24] On October 26, 2021, the Six Defendants delivered yet another amended list of documents.

[25] On November 5, 2021, the adjourned October 1, 2021, application came back before Justice Walker. He ordered, *inter alia*, that Mr. Yuan provide a "fulsome affidavit verifying the Defendants' list of documents" by November 19, 2021.

[26] On November 19 and 25, 2021, the Six Defendants delivered two further amended lists of documents to the plaintiff.

[27] On November 30, 2021, a consent order was made by Justice Fitzpatrick granting the plaintiff leave to cross-examine Mr. Yuan on his affidavit and ordering him to list and produce all of his personal bank account and credit card statements from January 1, 2015, to present by December 6, 2021. It is to be noted that bank and credit card statements had been requested in the November 12, 2020 letter and ordered to be produced in the September 13, 2021 order but not in exactly the same terms as the November 30, 2021 order.

[28] On December 6, 2021, the Six Defendants delivered a further amended list of documents to the plaintiff.

[29] On February 7, 2022, the plaintiff cross-examined Mr. Yuan. The transcript of that cross-examination is in evidence. I do not intend to refer to it in detail. It suffices to say that Mr. Yuan's evidence on cross-examination confirms that the Six Defendants had not taken steps to obtain many of the documents that they were ordered to list and produce.

[30] On April 29, 2022, the plaintiff filed the present application which originally came before me on August 29, 2022.

[31] During an adjournment of this application, prior to the fourth day of the hearing, the Six Defendants delivered two further amended list of documents dated September 23, and October 3, 2022. The additional documents listed were not in evidence at the hearing, but Excel spreadsheets of the newly listed documents were. The combined length of the two spreadsheets was over 15 pages with each page containing approximately 40 documents. I was advised that over 500 new documents were produced, which is likely an underestimation.

### **Analysis**

[32] As indicated, the plaintiff seeks two declarations: (1) that the Six Defendants are in contempt of court for failing to comply with the court orders; and (2) that the Six Defendants failed to comply with the Rules, in particular, in relation to their production obligations. I will address these declarations in reverse order.

### **Did the Six Defendants fail to comply with the Rules?**

[33] I have no hesitation in finding that the Six Defendants failed to comply with the Rules. The brief summary of facts I have set out above clearly discloses that the Six Defendants have failed to comply with their production obligations under the Rules. Moreover, the Six Defendants do not deny their production has been deficient. In fact, during the course of the hearing, their counsel described their production as deplorable.

[34] However, I decline to make the declaration requested by the plaintiff on the grounds that, the declaration sought is unnecessary. The plaintiff no longer requests a particular remedy for the breaches of the Rules and the declaration alone serves no obvious purpose.

### **Should the Six Defendants be held in contempt?**

#### ***Legal Principles***

[35] Rule 22-8 addresses contempt, as follows:

#### Rule 22-8 — Contempt of Court

(1) The power of the court to punish contempt of court must be exercised by an order of committal or by imposition of a fine or both.

(2) If a corporation wilfully disobeys an order against the corporation, the order may be enforced by one or more of the following:

- (a) imposition of a fine on the corporation;
- (b) committal of one or more directors or officers of the corporation;
- (c) imposition of a fine on one or more directors or officers of the corporation.

(3) Instead of or in addition to making an order of committal or imposing a fine, the court may order a person to give security for the person's good behaviour.

(4) A person who is guilty of an act or omission described in Rule 12-5 (25) or 22-7 (5), in addition to being subject to any consequences prescribed by those rules, is guilty of contempt of court and subject to the court's power to punish contempt of court.

(5) If the court is of the opinion that a person may be guilty of contempt of court, it may order, by warrant in Form 115 directed to a sheriff or other officer of the court or to a peace officer, that the person be apprehended and brought before the court.



(6) If a person referred to in subrule (5) is apprehended and brought before the court, the court in a summary manner may adjudge the innocence or guilt of the person and punish the person for the contempt, if any, or may give the directions it thinks fit for the determination of the person's innocence or guilt and punishment.

(7) If the court is of the opinion that a corporation may be guilty of contempt of court, it may order, by its warrant in Form 115 directed to a sheriff or other officer of the court or to a peace officer, that any director, officer or employee of the corporation be apprehended and brought before the court.

(8) If a director, officer or employee referred to in subrule (7) is apprehended and brought before the court, the court in a summary manner may adjudge the innocence or guilt of the corporation and punish the corporation for the contempt, if any, or may give the directions it thinks fit for the determination of the corporation's innocence or guilt and the punishment to be imposed.

(9) The court may order the release of a person apprehended under subrule (5) or (7) on receiving an undertaking in Form 116 from that person.

(10) A release order under subrule (9) must be in Form 117.

#### Proceeding for contempt

(11) A party applying for an order for contempt must serve the alleged contemnor with a copy of the filed notice of application and all filed affidavits in support of it at least 7 days before the hearing of the application.

(12) An application under subrule (11) must be supported by affidavit setting out the conduct alleged to be contempt of court.

(13) The court may give directions as to the mode of hearing the application, including an order that the matter be transferred to the trial list under Rule 22-1 (7) (d).

(14) If the court is satisfied that a person has actual notice of the terms of an order of the court, it may find the person guilty of contempt for disobedience of the order, even though the order has not been served on the person.

(15) The court at any time may direct that the punishment for contempt be suspended for the period or on the terms or conditions the court may specify.

(16) The court, on application by or on behalf of a person committed to prison for contempt, may discharge that person even though the period of the committal may not have elapsed.

(17) If the court orders a person be committed without specifying in days, weeks or months the period of the committal, the sheriff must bring that person before the court at intervals of not more than 7 days, in order that the court may review the committal and determine whether relief as set out in subrule (15) or (16) should be granted.

[36] Pursuant to Rule 22-8(4), a person guilty of an act or omission under Rule 22-7(5) is guilty of contempt. Rule 22-7(5) lists several specific acts or omissions including failing to produce documents:

(5) Without limiting any other power of the court under these Supreme Court Civil Rules, if a person, contrary to these Supreme Court Civil Rules and without lawful excuse,

...

(c) refuses or neglects to produce or permit to be inspected any document or other property,

...

[37] The leading case on civil contempt is *Carey v Laiken*, 2015 SCC 17.

[38] The three elements to civil contempt that must be proved beyond a reasonable doubt are set out in *Carey* at paras 32-35. They are:

(1) the order alleged to have been breached must state clearly and unequivocally what should or should not be done;

(2) the party alleged to have breached the order must have had knowledge of it; and

(3) the party alleged to have breached the order must have intentionally done the act the order prohibited.

[39] *Carey* also addressed the nature of the “intent” required for a finding of contempt. The alleged contemnor need not have intended to disobey the order or intended to bring the administration of justice into disrepute. All that is required is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice: *Carey*, paras. 38-41.

### ***Submissions***

[40] The plaintiff submits that the elements of civil contempt have been proven beyond a reasonable doubt.

[41] The defendants submit that the September 13, 2021 order was not “clear” and that the intent requirement is not made out. More specifically, the defendants submit that the failure to produce the required documents was not deliberate and

was due, at least in part, to communication problems between the defendants and their counsel, and to Mr. Yuan's lack of proficiency in the English language.

### ***Discussion***

[42] I do not intend to address the excuses of the Six Defendants for their failure to produce the various documents ordered in a timely manner. I neither accept nor reject their excuses.

[43] In my view, this is not an appropriate case for me to exercise my discretion to find contempt. The Court in *Carey* expressly cautioned against the use of contempt to obtain compliance with court orders or to enforce judgments.

[36] The contempt power is discretionary and courts have consistently discouraged its routine use to obtain compliance with court orders: see, e.g., *Hefkey v. Hefkey*, 2013 ONCA 44, 30 R.F.L. (7th) 65, at para. 3. If contempt is found too easily, “a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect”: *Centre commercial Les Rivières Itée v. Jean Bleu inc.*, 2012 QCCA 1663, at para. 7. As this Court has affirmed, “contempt of court cannot be reduced to a mere means of enforcing judgments”: *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, 1992 CanLII 29 (SCC), [1992] 2 S.C.R. 1065, at p. 1078, citing *Daigle v. St-Gabriel-de-Brandon (Paroisse)*, 1991 CanLII 3806 (QC CA), [1991] R.D.J. 249 (Que. C.A.). Rather, it should be used “cautiously and with great restraint”: *TG Industries*, at para. 32. It is an enforcement power of last rather than first resort: *Hefkey*, at para. 3; *St. Elizabeth Home Society v. Hamilton (City)*, 2008 ONCA 182, 89 O.R. (3d) 81, at paras. 41-43; *Centre commercial Les Rivières Itée*, at para. 64.

[44] These cautions are apposite here.

[45] At the time of the filing of the notice of application, the contempt order may have been a reasonable request given the repeated failure of the Six Defendants to produce the sought-after documents. However, things have changed. The Six Defendants have now produced many, if not most of the documents that they were requested and ordered to produce. Additionally, the parties have obviously resolved many, if not most, of the issues in the action.

[46] Contempt is an order of last resort. Given that there has now been substantial compliance with the production orders, a contempt order is not necessary for this purpose and would serve no other legitimate purpose.

[47] Accordingly, although the Six Defendants were in default of their obligations under the Rules and in breach of the court orders entered September 13, 2021 and November 30, 2021, I exercise my discretion against making the declarations sought on the grounds that they serve no useful purpose.

“Giaschi J.”