

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tan v. Tan*,  
2024 BCSC 2093

Date: 20241031  
Docket: S251783  
Registry: New Westminster

Between:

**Li Wei Tan**

Plaintiff

And

**Kai Tan**

Defendant

Before: The Honourable Justice Basran

## **Oral Reasons for Judgment**

The Plaintiff, appearing in person:

L.W. Tan

The Defendant, appearing in person:

K. Tan

Place and Dates of Hearing and Trial:

New Westminster, B.C.  
October 29, 2024  
(Hearing)  
New Westminster, B.C.  
October 30 and 31, 2024  
(Trial)

Place and Date of Judgment:

New Westminster, B.C.  
October 31, 2024

[1] **THE COURT:** I am delivering these reasons orally. I will order a transcript and when I receive it, I reserve the right to edit them before they are provided to the parties.

### **Introduction**

[2] This matter was set down as a summary trial for two days. The plaintiff is Li Wen Tan and the defendant is his father, Kai Tan. Hong Jiao (“Ms. Jiao”) is the plaintiff’s mother and the defendant’s wife. The three of them emigrated to Canada from China in 2001.

[3] As the plaintiff and the defendant share the same last name, Tan, in the interest of clarity and intending no disrespect, I will refer to the plaintiff as “Li” and the defendant as “Kai”. Li was born on June 4, 1989. He is currently 35 years old.

[4] Li’s notice of application involves a claim for damages from assaults he asserts were committed by Kai in 2003 and on May 28, 2023. Li also seeks to adduce fresh evidence, a purported written agreement dated June 3, 2013 (the “purported written agreement”) allegedly signed by the parties in respect of his claim to be added to the title of the residence owned by Kai and Ms. Jiao.

[5] After reviewing the affidavit evidence that Li and Kai intended to rely on, I concluded that this matter could not be decided by way of summary trial. The parties are sharply divided on the factual background and this matter will require an assessment of credibility. Kai denies assaulting Li and he asserts that the purported written agreement put forward by Li is a forgery.

[6] With the consent of the parties, I converted this matter to a trial and the parties agreed to proceed in that manner commencing on October 30, 2024. They agreed that this matter could conclude in two days with *viva voce* evidence presented by each of them and by several other witnesses.

[7] Li called Blair Johannessen and Bradley Achtem as his first two witnesses. He also testified on his own behalf. Kai testified on his own behalf and did not call any other witnesses.

[8] For the reasons that follow, Li's claim is dismissed. Li has not proven, on a balance of probabilities, that Kai assaulted him, either in 2003, which would in any event be statute-barred, nor on May 28, 2023. Furthermore, I do not accept that the purported written agreement is legitimate. I prefer Kai's evidence that this document was fabricated by Li and Kai's signature was cut and pasted onto it.

[9] Li's claims for defamation as well as aggravated and punitive damages have not been established on a balance of probabilities. Furthermore, I am not prepared to accede to Li's request that the court order and pay for the transcripts of these proceedings.

### **Background**

[10] Both parties in this matter are self-represented. The pleadings are somewhat disorganized. Li's notice of civil claim dated November 30, 2023 refers to an alleged verbal agreement whereby Kai agreed to put Li on title to a property.

[11] The notice of application whereby Li sought to have this matter adjudicated by way of summary trial refers to the purported written agreement, in which Kai agreed to put Li on title to the principal residence where Kai and Ms. Jiao reside. Kai denies that there is either an oral or written agreement by which he agreed to put Li on title to a property.

### **Previous Related Litigation**

[12] Li made virtually identical allegations in previous litigation. He filed a notice of civil claim on June 20, 2023 under Vancouver Registry Action No. S234458 wherein Kai and Ms. Jiao were named as the defendants. In this notice of civil claim, Li alleged that he made cash payments to his parents from 2003 to 2022 in exchange for their promise that they would add him to the title of their residence when the

mortgage was paid off. Kai and Ms. Jiao denied the existence of any such agreement with Li.

[13] The trial of that matter was heard by this court on November 2 and 3, 2023. In oral reasons for judgment delivered on November 3, 2023, cited as *Tan v. Jiao* and indexed as 2023 BCSC 2430 (the “Trial Reasons”), Justice Giaschi dismissed Li’s action on the basis that he had failed to prove his case on a balance of probabilities. In his decision, Giaschi J. noted that Li was below the age of majority at the time of the purported oral agreement: Trial Reasons at para. 9. Justice Giaschi was not satisfied that there was any agreement between Li and his parents involving the title of their residence: Trial Reasons at para. 11. To the extent that Li relied on unjust enrichment, Giaschi J. dismissed this claim on the basis that there was a juristic reason for his parents to manage and control Li’s finances when he was a minor and once he reached the age of majority, which is 19 years old in BC, it was not unreasonable for Li’s parents to request that he contribute to household expenses. Accordingly, Giaschi J. dismissed this action with costs to Kai and Ms. Jiao.

[14] Li appealed Giaschi J.’s trial decision. In oral reasons for judgment delivered on March 6, 2024 cited as *Tan v. Tan* and indexed as 2024 BCCA 113 [*Tan BCCA*], the BC Court of Appeal dismissed the appeal on the basis that Li failed to demonstrate that Giaschi J. committed an error of law or a palpable and overriding error of fact in his analysis of the existence of a contract, unjust enrichment: *Tan BCCA* at para. 37, and in respect of the admissibility of a letter written by Mr. Achtem, a friend of Li: *Tan BCCA* at para. 27.

[15] Li subsequently sought to relitigate these issues in the *Tan v. Tan* action in the New Westminster Registry under Action No. S250395. Justice Walkem dismissed this action on January 24, 2024 on the basis that this claim raised the same issues already dismissed in Giaschi J.’s trial decision. Li sought to appeal this decision to the BC Court of Appeal, but it dismissed his application for a number of orders, including an extension of time to file his appeal, on the basis that the appeal

was bound to fail because Li sought to relitigate issues that had previously been dismissed following a trial and appeal.

[16] On September 26, 2024, Li applied to the BC Court of Appeal to vary its decision on the basis of fresh evidence—the purported written agreement— under Court of Appeal File Number 49739. Justice Riley dismissed this application with Chief Justice Marchand and Justice Newbury concurring.

### **Li's Current Claim**

[17] Li filed this action on November 30, 2023, several months before the BC Court of Appeal decisions arising from Giaschi J.'s and Walkem J.'s trial decisions. In addition to making the same claims in respect of a purported oral agreement between himself and his parents alleging that they agreed to put him on title to their home in exchange for a series of cash payments made from 2003 to 2022, Li seeks to bolster this claim with the purported written agreement.

[18] Li made no reference to this purported written agreement in any of the aforementioned trials or appeals. He says that he forgot about the purported written agreement until he found it in June 2024. Kai denies the existence of any agreement respecting the title of his property and asserts that the purported written agreement is a forgery in which his signature has been cut and pasted into it by Li.

[19] In this claim, Li also alleges that he is entitled to damages in respect of personal injuries he sustained when he was assaulted by Kai in 2003 and on May 28, 2023. This is the first time Li has made these allegations. There is no reference to them in the two previous trials. Li further claims damages for defamation and seeks an order that this court order and pay for transcripts of this entire proceeding.

### **Credibility of the Parties**

[20] Applying the principles in *Bradshaw v. Stenner*, 2010 BCSC 1398, I find that Li's evidence is not at all credible. Specifically, I reject Li's assertion that he simply forgot about the existence of the purported written agreement entered into between himself and his father. This explanation is not believable because Li came to this

court twice seeking to add his name to the title of his parents' property and failed. He appealed those decisions and those appeals were dismissed. Not once in these four previous court appearances is there any reference to the existence of a written agreement.

[21] Furthermore, the notice of civil claim in this matter, which is to a significant extent, a third attempt by Li seeking an interest in his parents' property, does not refer to a written agreement. Li purports to have signed this agreement in 2013 when he was 24 years old. He says that it formalizes the oral agreement that he entered into when he was 14 years old in 2003, which was rejected twice before by this court. Li's explanation that he forgot about the purported written agreement until he found it in June 2024 is not believable and I reject it.

[22] I prefer the evidence of Kai that he did not sign this purported written agreement and at no time did he or his wife agree to put Li on title to their residence in exchange for cash contributions. I also prefer the evidence of Kai in respect of the allegations of assault in 2003 and May 2023. The first allegation is statute-barred, but even if it is relevant to the more recent allegation of assault from last year, I reject Li's evidence of these assaults and accept Kai's account of these events.

### **Is Kai Liable for Injuries Sustained by Li?**

[23] Li testified that his father beat him in 2003 when Li was 14 years old and in ninth grade, because Li did not do well academically. Li asserts that the injuries he purportedly sustained in this beating affected, among other things, his future earning capacity. The only evidence of this alleged assault of Li by Kai is the testimony of Li. Kai denies that he assaulted Li in 2003.

[24] Li called Bradley Achtem to testify on his behalf. Mr. Achtem and Li have been friends for approximately 20 years. Li called Mr. Achtem as a witness in respect of the purported assault in 2003, but Mr. Achtem testified that he has no direct knowledge of any assaults purportedly committed by Kai on Li. Mr. Achtem recalls that Li's parents wanted Li to succeed, and he does not recall Kai threatening, let alone assaulting Li.

[25] Mr. Achtem also testified that he did not see Li give cash to Kai, but Li told him that he had done so.

[26] Li also called Blair Johannessen to testify on his behalf. Mr. Johannessen is a neighbour and friend of Li. He has no direct knowledge of the matters in issue. His evidence consisted largely of character evidence that is both irrelevant and inadmissible.

[27] Li also alleges that Kai assaulted him on May 28, 2023, and that he sustained injuries for which he is entitled to damages. Kai testified that Li assaulted him and Kai defended himself. The altercation arose because Li shut off the gas and the boiler in Kai's residence without Kai's permission. Li asserts that he took this action because he believed there was a gas leak. Kai testified that Li damaged the family home without reason or explanation. He denies that there was a gas leak, and suggests that Li repeatedly shut the gas and, on at least one occasion, the power, to the family residence.

[28] I do not accept Li's version of these events and, instead, prefer the evidence of Kai. I accept that the two parties had a physical altercation on May 28, 2023 but I accept Kai's evidence that he was protecting himself during this incident and in 2003 and that the altercations were initiated by Li.

[29] Li has not proven, on a balance of probabilities, that he was assaulted by Kai and suffered any injuries for which Kai is liable.

**Is the Purported Written Agreement Credible and Capable of Belief?**

[30] Li seeks to adduce fresh evidence in the form of a purported written agreement dated June 3, 2013. The agreement reads as follows:

I, Kai Tan, have received monthly mortgage payments from Li Wen Tan, in the form of cash since 2003.

I will add Li Wen Tan to the land title once the mortgage is paid off on the principal residence.

There is no fixed monthly amount, it is what Li Wen Tan can afford. I am very grateful that my son is contributing to my mortgage payments starting at a very young age.

[31] This agreement is purportedly signed by both parties.

[32] Li testified that in June 2013, he asked his father to formalize the agreement they had dating back to 2003 and Kai agreed to do so. Li recalled that Kai drafted this agreement with his assistance and they both signed it.

[33] Li further testified that he completely forgot about the existence of this agreement until he found a copy of it in his parents' residence in June 2024.

[34] Kai testified that this document is a forgery. He did not draft it, sign it, or agree to any of the terms contained in it, either orally or in writing.

[35] Li's evidence in respect of this purported agreement is not credible. I reject his assertion that he simply forgot about what would have been a pivotal piece of evidence in the previous matters he brought to court on the issue of his entitlement to an interest in his parents' principal residence.

[36] The test established by the Supreme Court of Canada for the admission of fresh evidence consists of four parts:

- a) the evidence could not, by the exercise of due diligence, have been available for trial;
- b) the evidence is relevant in that it bears upon a decisive or potentially decisive issue;
- c) the evidence is credible, in the sense that it is reasonably capable of belief; and
- d) the evidence is such that, if believed, it could have affected the result of the trial.

*R. v. Palmer*, [1980] 1 S.C.R. 759.

[37] As previously mentioned, I accept Kai's evidence in respect of this purported written agreement. Accordingly, I am not prepared to admit this evidence as fresh evidence because it does not meet the requirement of being credible and capable of belief.



[38] Li testified that between 2003 and 2022, he contributed approximately \$240,000 to paying down his parents' mortgage on their principal residence. He testified that he did so by cashing his paycheques while working at fast food outlets, immediately withdrawing cash in those amounts, and giving the cash to his parents. He says he did likewise with scholarship, bursary, student loans, and virtually all other income he earned during the relevant period.

[39] Li provided some evidence from his bank accounts that shows that he deposited cheques and withdrew cash, but there is no documentary or independent evidence to support his assertion that he gave his parents \$240,000 in cash over a 20-year period. I reject this evidence and prefer Kai's evidence that Li did not contribute to paying down the mortgage on the family residence.

**Did Kai Defame Li?**

[40] The test for establishing a defamation claim is:

- a) that the words were defamatory, in the sense that they would tend to lower Li's reputation in the eyes of a reasonable person;
- b) that the words referred to Li;
- c) and that the words were published, meaning that they were communicated to at least one person other than to Li.

[41] Li asserts that Kai defamed him by referring to his mental health issues in the response to civil claim, and by sending a text to a family member that suggested that Li had a brain disability and was unable to get a job.

[42] Li is autistic and, in the past, has been diagnosed with mental health issues. During his direct evidence, he described himself as having post-traumatic stress disorder and anxiety. He also admitted that he receives disability benefits and he has not worked since 2017.

[43] Li thinks that the text sent by Kai to a family member was sent in 2010, but he is unsure. In any event, I reject the assertion that the statement contained therein is defamatory. Li testified that he is mildly autistic, which may be described as a “brain

disability” by someone for whom English is a second language, such as Kai. Also, it may well have been a statement of fact that Li was unable to get a job at the time the text was written. His employment history during his adult life has been sporadic.

[44] I am satisfied that the second and third elements of the test for establishing a defamation claim have been established. The words referred to Li and they were apparently communicated by Kai to a family member.

[45] However, I do not accept that the text message was defamatory, in the sense that they would tend to lower Li's reputation in the eyes of a reasonable person. I have reached the same conclusion in respect of the allegations in the response to civil claim. These are simply allegations in response to the notice of civil claim. I do not interpret any of the statements in the response to civil claim as words that would lower Li's reputation in the eyes of a reasonable person.

[46] Li's claim for damages in respect of defamation is dismissed.

**Request for Transcripts of these Proceedings**

[47] Finally, turning to the request for transcripts of these proceedings, I decline to grant this order. It is incumbent on Li to reflect on these reasons before leaping into yet another court process over these issues. Li seems to think that by recasting his claim as one based on personal injury, fresh evidence, defamation, and a request for transcripts, he is entitled to repeatedly return to court in his quest to obtain an interest in his parents' residence.

[48] The personal injury allegations could have been brought during the first trial. I note that the notice of civil claim in that matter was filed a few weeks after the May 28, 2023 altercation between the parties. I have rejected the fresh evidence application because I do not accept that the purported written agreement is legitimate. I accept Kai's evidence that he did not agree to the terms contained in this agreement and that he did not sign it.

[49] The defamation allegations relate to a text exchange between Kai and one of his relatives approximately 14 years ago. Li asserts that he forgot that he took a screenshot of this exchange on his father's phone and put it on a USB stick until he recently found it. This explanation is not credible.

[50] I am convinced that Li's litigation conduct suggests that he is simply attempting to relitigate matters that have already been decided. During the course of the hearing, I explained *res judicata* to him and he indicated that he understood that this means that he cannot relitigate a claim or issue that has already been litigated.

[51] I am not acceding to Li's request that I order the transcripts of the proceedings over the past three days. Before lurching to file yet another notice of appeal, I urge Li to carefully consider these reasons for judgment, along with those provided previously by this court and the Court of Appeal in respect of matters he has initiated. In my view, Li must carefully reflect before deciding what, if any, further steps he wishes to take. I decline to facilitate yet another appeal by ordering transcripts at this time.

### **Conclusion**

[52] This action is dismissed in its entirety.

[53] Are there any submissions on costs of this trial?

[SUBMISSIONS ON COSTS]

[54] THE COURT: The costs will follow the event. The defendant, Kai Tan, is entitled to his costs of a two-day trial.

[55] That concludes this matter. Thank you.

“Basran J.”