IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chongqing Shenggang Trading Co., Ltd. v. Yang,*
2024 BCSC 2102

Date: 20241120
Docket: S230893
Registry: Vancouver

Between:

Chongqing Shenggang Trading Co., Ltd.

Plaintiff

And

Yi Fan Yang aka Bill Yang

Defendant

Before: The Honourable Justice Greenwood

Reasons for Judgment

Counsel for Plaintiff:	C. Wong
Counsel for Defendant:	J. Liu
Place and Date of Trial:	Vancouver, B.C. April 29, 2024 June 28, 2024
Place and Date of Judgment:	Vancouver, B.C. November 20, 2024

Overview

[1] The plaintiff, Chongqing Trading Co., Ltd., seeks an order enforcing a default judgment obtained in China against the defendant, Yi Fan Yang, for outstanding debts and interest arising from the importation of lumber into China. After an attempt to locate and serve Mr. Yang was unsuccessful, the Chinese court proceeded based on a notice published in a court newspaper. Default judgment was granted ordering Mr. Yang to repay outstanding debts arising from lumber importations, along with interest, and legal expenses.

[2] The plaintiff seeks an order enforcing the Chinese judgment by way of summary trial. Mr. Yang agrees that the matter can be resolved by way of summary trial on affidavit evidence, but argues that the Chinese judgment should not be enforced because it was a product of fraud, and the requirements of natural justice were not observed.

[3] For the reasons that follow, I have concluded that Mr. Yang never received actual notice of the Chinese proceedings, and was not aware of them until after the default judgment was obtained. While the Chinese court attempted to serve Mr. Yang, and the plaintiff sought to supplement that effort, I am unable to conclude on the evidence before me that Mr. Yang ever received the relevant court documents. I accept his evidence that he was not aware that the Chinese proceedings were taking place and did not have an opportunity to defend the claim. Accordingly, I conclude there is a breach of natural justice and would decline to enforce the Chinese judgment.

Background

[4] Mr. Yang immigrated from China to Canada in 2007 and is a Canadian citizen. He is a resident of British Columbia, but has travelled to China for business and family purposes since his immigration.

[5] On January 9, 2014 the plaintiff and Mr. Yang entered into a framework agreement related to the importation of lumber into China. The plaintiff was to act as

an import agent for Mr. Yang. This included assisting with customs and arranging letters of credit to pay for lumber shipments that were arranged by the defendant. Once the lumber arrived, Mr. Yang was responsible for repaying the plaintiff along with interest, expenses and fees.

[6] The goal of the framework agreement was to develop the timber import business from North America. Mr. Yang was to act as a supplier to Sichuan Quanyou Home Furnishing Co. [“Quanyou”].

[7] A dispute arose over an alleged failure to repay the plaintiff for lumber imported into China in 2014. On July 26, 2014, Mr. Yang met with the plaintiff’s legal representative and it is alleged that he acknowledged the debt, but was still in the process of selling the lumber.

[8] The plaintiff alleges that Mr. Yang did not pay for lumber that was imported, and after a number of extensions were granted, he stopped responding to their communications. The plaintiff brought legal proceedings against Mr. Yang for collection of the debts owing.

[9] On November 19, 2018, the plaintiff brought an action in the Intermediate People’s Court for recovery of the debts and interest. I will address the various attempts to serve Mr. Yang under a separate heading since that is a central issue in these proceedings. What is clear is that Mr. Yang was not present when the proceedings in China took place. The plaintiff obtained default judgment.

[10] The Chinese Judgment was granted on June 27, 2021. It included a defined amount of the debt (RMB 3,386,752.97), pre and post judgment interest at rates agreed to in the contract, and legal expenses. There was a 30 day appeal period.

[11] Mr. Yang became aware of the Chinese proceeding no later than March 8, 2023, when his Chinese lawyer obtained a copy of the court file. After that date, he filed appeals to both the trial court and higher court but did not hear back from either court. He also filed a petition for a retrial which is an application that can be made under Chinese law. Mr. Yang’s application for a retrial alleged that he was not

properly served, and that the judgment obtained against him was based on fraudulent evidence.

[12] On October 10, 2023, the Chinese court dismissed his petition for a retrial on the basis that he was served in accordance with Chinese procedural rules, and he had not provided any evidence to substantiate his allegation of fraud.

[13] Mr. Yang obtained additional evidence and resubmitted his petition for a retrial on January 8, 2024. He is still waiting for a decision on his new application. He has also sought to have the case reviewed by the Chongqing Municipal People's Procuratorate for fraud, and a Chinese prosecutor has been assigned to the case.

[14] Mr. Yang is currently in China, and is unable to leave. There is a Chinese court order prohibiting him from leaving China due to the allegation that he ignored a summons for the Chinese action and related enforcement proceedings.

[15] The plaintiff attempted to enforce the judgement in China but was unsuccessful. Upon hiring a private investigator, it was discovered that Mr. Yang owns a house and has assets in British Columbia, which led to the present application.

Evidence of Attempts at Service

[16] The action in the Intermediate Court was commenced in November 2018. The first attempt to serve Mr. Yang was undertaken by the Chinese court which mailed the documents to an address in Chengdu, China. The documents were returned as "rejected by recipient." No details are provided as to who, if anyone, rejected the documents and they were not left at the address.

[17] Mr. Yang deposes that the address in Chengdu where the documents were sent is a property owned by his brother. It is unoccupied, but Mr. Yang stays there occasionally when he returns to Chengdu for a visit. He further deposes that the Chinese mail system no longer includes door to door delivery in all cases, and mail that is not picked up from distribution centres can be returned as rejected.

[18] On January 6, 2019, the Intermediate Court posted a public notice in the *People's Court Daily* – a court newspaper designed to notify the defendant of the proceedings.

[19] On January 8, 2019, the plaintiff's legal representative emailed a copy of the court documents to Mr. Yang's gmail address. Mr. Yang deposes that he was in China at the time, but he never received such an email. He deposed that he was often unable to receive email to his gmail address due to the Chinese authority's service blockage of google products. He has checked his gmail account junk mail folder and no email was received.

[20] On January 10, 2019, the plaintiff's accountant sent copies of the Chinese court documents by international express post to an address in Richmond, B.C., but it was a rental property that Mr. Yang had not lived in since 2014. He also sent documents to the rental property that Mr. Yang had rented when he first arrived in Canada, but those documents were returned as Mr. Yang had not lived there since 2012.

[21] On January 21, 2019, the plaintiff's legal representative sent a copy of the court documents to Mr. Yang by text message. Mr. Yang deposes that he could not recall if the phone service he had purchased for use in China included the ability to send and receive documents, but he did not receive any documents, or a phone call advising him that there were any documents for him.

[22] There is no dispute that the gmail address and phone number used to attempt service belonged to Mr. Yang, or that he had provided the plaintiff with the address of his brother's property in Chengdu. Mr. Yang was in China throughout the attempts to serve him and during the first two days of trial, but he deposes that he was not aware of the proceedings.

[23] The trial started on May 7, 2019 continued on May 9, 2019, and then was adjourned to another date. On September 25, 2020, the Intermediate Court posted another public notice in the *People's Court Daily*. Judgement was granted on June

27, 2021. On August 29, 2021, the Chinese judgement was published in the *People's Court Daily*.

[24] On January 10, 2022, the plaintiff applied to the Chinese court for enforcement of the Chinese judgement. On May 27, 2022, the Intermediate Court terminated enforcement proceedings as they could not locate any assets owned by Mr. Yang.

[25] Mr. Yang was served in relation to the present proceedings in March 2023, following an attendance at his brother's property in Chengdu, but the parties dispute the circumstances. The plaintiff's legal representative deposes that he attended the residence, identified who he was and explained that he was there to serve court documents. He says that Mr. Yang claimed not to know who he was, threatened him with a knife and then ran away and called the police alleging trespass and assault.

[26] Mr. Yang, for his part, deposed that he was alone in his brother's property when someone knocked on the door saying there was a water leak coming from his unit. When he opened the door, a man and woman barged in. Mr. Yang did not recognize them and thought they were burglars. He grabbed a knife to defend himself. They said they were there to subpoena him, but he was afraid and ran out of the unit to call the police.

[27] The police mediated a settlement between the parties and Mr. Yang accepted service of court documents related to the present application. He provided his brother's address in Chengdu as his then address, but in April 2023, he rented an apartment with two roommates and deposes that he has been living there ever since.

[28] Mr. Yang's lawyer in China obtained a copy of the Chinese court proceedings and the judgement on March 8, 2023. As noted, he filed an application for a retrial, but it was dismissed based on a lack of supporting evidence.

[29] There were further attempts to serve Mr. Yang by courier at his brother's house in Chengdu in November 2023, but the documents were returned as phone calls were unanswered.

[30] On January 8, 2024, Mr. Yang, through his Chinese counsel, filed a renewed petition for a retrial. That application is still pending.

[31] Later, on March 21, 2024, Mr. Yang's Chinese counsel refused to accept documents on behalf of Mr. Yang in relation to enforcement proceedings. Mr. Yang deposes that he was unaware of this inquiry, and had not provided his Chinese counsel with instructions not to accept service.

[32] Mr. Yang deposes that the first time he learned about the nature of the Chinese action and the evidence used against him was when his lawyer obtained the court file on March 8, 2023. Prior to that time, he did not know about the Chinese action and no documents were ever served on him or brought to his attention.

[33] Mr. Yang says that he never received any documents while in Canada, and was never contacted by any of his former landlords informing him of any notices for him.

[34] According to Mr. Yang, once his lawyer obtained a copy of the documents related to the Chinese action, he discovered that the case against him was based on fraud. He says his signature on three contracts were forged, and if he "had ever been given the opportunity to participate in the Chinese action," he would have vigorously disputed the authenticity of the contracts.

Evidence of Chinese Law as to What Constitutes Effective Service

[35] There is expert evidence explaining Chinese law relating to service of documents and what is considered adequate notice for the purposes of legal proceedings.

[36] The methods of acceptable service in China depend on the location of an individual's domicile. If the individual in question does not have a domicile in China,

but they are in China, court documents can be served on them directly. There are eight potential methods of service that may apply depending on the circumstances. These include service on counsel who is authorized to accept service, service by post, service by "email or any other, means by which service may be acknowledged," and if other methods fail, by public announcement.

[37] The expert evidence in this case is that the Chinese court's attempt to serve Mr. Yang at the Chengdu address was not legally effective because neither the court nor the plaintiff were aware of Mr. Yang's residential address. The attempts to serve Mr. Yang by email and text message were not effective because that method of service requires acknowledgment of receipt. Since no other methods were effective, service by public announcement was authorized in accordance with Chinese civil procedure, and would be deemed effective three months from the date of publication.

Evidence of Alleged Fraud

[38] Mr. Yang contends that the Chinese action against him was based on three contracts for the sale of lumber in 2014, and that he never signed any of the three contracts. He contends that his signature on the documents has been forged, and he has tendered the evidence of a handwriting expert to support his claim.

[39] The impugned contracts do not directly involve the plaintiff. They are contracts between the companies that were selling or supplying lumber and Chongqing International Trade Centre [CITC], which was listed as the buyer.

[40] The plaintiff obtained the contracts from CITC and used them to show that Mr. Yang had imported lumber under the framework agreement. It was not the only evidence that was used to establish the importations. Contracts, invoices, signed receipts and customs clearance forms were also in evidence.

[41] According to the plaintiff's legal representative, the impugned contracts are part of the paperwork that is required for customs purposes, and for a letter of credit to be issued under the framework agreement. The only connection to the plaintiff is

that the contracts relate to some of the same transactions that are governed by the framework agreement that they entered into with Mr. Yang.

[42] The plaintiff says it received deposits of 10% from Mr. Yang in relation to the lumber shipments as contemplated in the framework contract, and received executed copies of the impugned contracts from Mr. Yang, and would deliver them to CITC. It was not aware of any problems with any of the paper work it received from CITC until the Chinese proceeding took place.

[43] The plaintiff was required to provide customs authorities with copies of contracts between itself and Quanyou. It says it sent four agreements to Mr. Yang to arrange for the contracts to be executed by Quanyou's representatives. The plaintiff says it received the executed contracts and they were provided to the relevant authorities, but the plaintiff was not aware that the Quanyou company seal on the executed contracts was not authentic until the Chinese court proceeding.

[44] The Chinese court found that the company seal on the Quanyou contracts was not authentic, and on that basis found that it was not in a contractual relationship with the plaintiff and could not be held liable for any debts related to lumber shipments that had been imported. Handwritten notes made by the Chinese court on the list of documents contain entries such as "Quanyou fake," "Quanyou forensic analysis proven to be fake," and "the Quanyou seal is fake."

[45] The Chinese court found that lumber had been imported under the framework agreement and was delivered to consignees designated by Mr. Yang. The decision outlines contracts, bill of lading numbers, customs declaration numbers, and container numbers corresponding to the shipments of lumber. In the absence of any contrary evidence, it accepted the debt owed by Mr. Yang.

[46] In Mr. Yang's application for a retrial, he disputes the authenticity of the documentation relating to lumber imports, and contends that there was no evidence to prove the plaintiff had delivered lumber to him that supported the debt claimed. In rejecting his initial application for a retrial, the Chinese court found that he did not

provide any evidence to prove that the relevant evidence was forged. He has since obtained evidence from a handwriting expert that demonstrates the signature on three of the underlying contracts is not his.

Issues

[47] The issues that have to be decided are as follows:

a) Is the Chinese judgement a final judgement from a court of competent jurisdiction?

b) Can the case be decided summarily as the parties wish?

c) Has Mr. Yang established the defence of fraud?

d) Has Mr. Yang established the defence of natural justice?

Legal Framework

[48] Canadian courts have established liberal rules for the recognition and enforcement of foreign judgments. The focus is not on the merits of the underlying claim, but on providing judicial assistance to a foreign litigant and ensuring that a debt already owed by the defendant is paid. (*Beals v. Saldanha*, 2003 SCC 72, [2003] 3 S.C.R. 416 at paras. 20 & 27; *Pro Swing v. Elta Golf Inc.*, 2006 SCC 52, [2006] 2 S.C.R. 612 at para. 10; *Chevron Corp. v. Yaiguaje*, 2015 SCC 42, [2015] 3 S.C.R. 69 at paras. 27 and 43-44; and *Kriegman v. Dill*, 2018 BCCA 86 at paras. 8-9).

[49] The only requirement to enforce a final judgment from a foreign court is that there be a “real and substantial connection” between the cause of action and the foreign court. Once a real and substantial connection is established, the court must determine whether any defences apply.

[50] There are three recognized defences: (1) the defence of fraud, (2) the defence of natural justice and (3) the defence of public policy (*Beals* at paras. 28, 31-32, 39-41).

Analysis

(A) Is the Chinese judgment a final judgement from a court of competent jurisdiction?

[51] Subject to the establishment of any defences, all a domestic court needs in order to enforce a judgment is proof that a final judgment was rendered by a court of competent jurisdiction, and proof of the amount (*Pro Swing* at para. 10).

[52] In my view, there is no real dispute over the Chinese court's jurisdiction. Not only was the contract entered into in China, but all of the relevant transactions and lumber importations took place in China, and the parties agreed that any disputes under the contract would be resolved by recourse to the court in China where the plaintiff company was located. This is more than sufficient to meet the "real and substantial connection" test in *Beals*.

[53] The only potential issue that arises is whether the Chinese judgment should be considered "final" in light of the possibility of a retrial. On that point, I would adopt the reasoning in *Cao v. Chen*, 2020 BCSC 735 at para. 161, in which Forth J. found that the Chinese retrial system did not disturb the finality of judgment.

[54] It should be noted that the retrial system generally requires that an application for retrial be made within six months of the judgement, a period that has lapsed in Mr. Yang's case. In any event, retrial applications are by no means routine, and even while the application process is still ongoing, a Chinese judgement remains final, effective and enforceable under Chinese law.

[55] In his written submission, counsel for Mr. Yang contends that the Chinese judgment "is not final and conclusive because it was obtained by fraud." In oral submissions he clarified that his position is that the judgment should not be considered conclusive in Canada. He does not contest that it is a final and conclusive judgment under Chinese law for the purposes of this application.

[56] As noted, Mr. Yang has also applied to the Municipal People's Procuratorate to pursue his claim of fraud. That application was accepted at least to the extent of

having a Chinese prosecutor assigned to the file. In my view, that is some evidence that Mr. Yang is taking all the steps that can be taken in China since becoming aware of the Chinese judgement, but it does not detract from the finality of the decision for the purposes of enforcement.

[57] I am satisfied that the Chinese judgment is a final judgment in a fixed amount, and subject to the application of any defences, is suitable for enforcement in this court.

(B) Can the case be decided summarily as the parties wish?

[58] I am satisfied that the issues to be determined in this case can be decided summarily based on the affidavit evidence, the pragmatic realities of the case, and the wishes of the parties.

[59] While there are certain gaps in the evidence, and some credibility concerns, both parties take the position that a summary disposition is appropriate. In my view, it is appropriate to place considerable weight on the wishes of the parties (*Wei v. Mei*, 2018 BCSC 157 at para. 11, aff'd *Wei v. Li*, 2019 BCCA 114).

[60] Summary trial is governed by rule 9-7(15) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, which says that a court may grant judgment on hearing a summary trial application unless the court is "unable" to find the facts necessary to decide the issues of fact or law, or it would be unjust to decide the issues summarily (*Gichuru v. Pallai*, 2013 BCCA 60 at para. 34). The court is entitled to make findings of fact on affidavit evidence so long as it is not unjust to do so, even if there are disputed issues of fact (*Gichuru* at para. 30).

[61] The decision to decide a case summarily is discretionary. A court considering such an application may consider a variety of factors, including the amount involved, the urgency and complexity of the matter, prejudice due to delay, the costs involved in a conventional trial, and whether credibility is a critical factor.

[62] As I understand the plaintiff's submission, this case does not depend on the court making a credibility finding with respect to any single piece of evidence, but depends on the court applying legal principles to the evidence as a whole. For example, in addressing the issue of service, the plaintiff does not directly contest Mr. Yang's evidence that he had no advance knowledge of the Chinese proceeding, but argues that the method of service authorized under Chinese law was sufficient in the circumstances to comply with minimum Canadian standards of fairness. I am satisfied that issue can be decided based on the affidavit evidence.

[63] There are also a number of practical considerations. Mr. Yang is currently unable to obtain travel documents to leave China in light of the default judgment. His ability to attend trial and prepare for a hearing is therefore uncertain. In addition, all of the relevant witnesses are located in China, and a domestic trial would require travel, translation of all the evidence, and considerable expense. I am not convinced that the evidentiary record on the key issue would be any clearer after a trial than it is now based on the affidavit evidence.

[64] For all these reasons, I agree with the parties that the issues may be determined on the plaintiff's summary trial application.

(C) Has Mr. Yang established the defence of fraud?

[65] I am not satisfied that Mr. Yang has established that the foreign judgment was obtained by fraud as that concept has been defined in *Beals* and other cases.

[66] A domestic court can decline to enforce a foreign judgment that is obtained by fraud, but the defence is a narrow one. It is not designed to allow a defendant to relitigate an action that has already been decided (*Beals* at para. 44).

[67] Fraud that goes to the foreign court's jurisdiction can always be raised to challenge the judgment, but fraud going to the merits of a foreign court's decision can only be used where there are material facts that were not previously discoverable that could potentially challenge the evidence relied on by the foreign court (*Beals* at para. 51).

[68] In this case, the evidence of fraud goes to the merits of the Chinese decision. Mr. Yang contends that the Chinese decision was based on fraud, because it was based in part on three fraudulent contracts in which his signature was forged. His claim of fraud is not without some foundation. The evidence of a handwriting expert establishes that the signature on the documents is not his. Nor can it be overlooked that the Chinese court itself found that there were other fraudulent contracts tendered at the hearing.

[69] The difficulty I have with the defence of fraud in this case is that the evidence was not "new" evidence that could not have been discovered had Mr. Yang participated in the hearing. Fraud going to the merits requires a finding that the relevant issue could not have been discovered by reasonable diligence on the part of the defendant (*Beals* at paras. 52-53).

[70] Both the Quanyou contracts and the disputed contracts that are said to contain forged copies of Mr. Yang's signature were generated and relied on to facilitate lumber importations during the life of the contract. Thus, the documents were available. More importantly, the impugned documents were all provided to the parties who appeared as defendants at the Chinese trial.

[71] All of the facts were easily discoverable had Mr. Yang participated in the process. The duty on a defendant to adduce evidence of fraud going to the merits in a foreign proceeding assumes, of course, that the defendant was made aware of the proceedings. In my view, then, the issue comes back to the issue of service, and whether Mr. Yang was made aware of the case against him, and given a fair opportunity to respond to it.

(D) Has Mr. Yang established the defence of natural justice?

[72] One of the defences that may be raised to an application for enforcement of a foreign judgment is a denial of natural justice. A domestic enforcing court must ensure that minimum Canadian standards of fairness were applied. If a fair process was not applied, recognition and enforcement of the judgment may be denied. Natural justice includes, but is not limited to, the necessity that a defendant be given

"adequate notice of the claim made against him," and "an opportunity to defend" (*Beals* at paras. 63 & 64).

[73] In my view, the Chinese court's effort to locate and serve Mr. Yang prior to proceeding by way of public announcement did not comply with minimum Canadian Standards of fairness, and I accept Mr. Yang's sworn evidence that he was never made aware of the case against him until long after the decision was rendered.

[74] The plaintiff made legitimate efforts to send court documents to the attention of Mr. Yang, but I am not satisfied on the facts that he ever received them, or that he acknowledged receipt. His lack of actual knowledge of the claim, and the absence of definitive evidence that the relevant court documents were ever successfully delivered, leads me to conclude that he was never made aware of the case against him, and therefore had no opportunity to respond.

[75] There is no dispute that service by publication in the court newspaper complied with Chinese law, but the method of service authorized under foreign law must also comply with Canadian standards.

[76] In considering what constitutes "adequate notice" for the purpose of service, courts have generally focused on two issues: (1) whether there was actual knowledge of the claim, and (2) whether the evidence establishes that notice of the claim was "received" by the defendant such that knowledge of the claim against them can reasonably be imputed

[77] For example, in *Wei* at para. 27, Newbury J.A. held that the minimum fairness standard did not require personal service, because a foreign legal system may have rules for service that are different than our own. However, she went on to find that minimum Canadian standards of fairness would require that defendants be "made aware of the case they had to meet" and be "given an opportunity to meet it" [emphasis added].

[78] Similarly, in *Lonking (China) Machinery Sales Co. Ltd. v. Zhao*, 2024 BCSC 79 at para. 78, Wilkinson J. found that adequate notice did not require personal

service, but it did require "delivery or knowledge of the actual claim" [emphasis added].

[79] The importance of clear evidence of not only "delivery" but also "receipt" was emphasized in *LLS America LLC (Trustee of) v. Grande*, 2013 BCSC 1745. Grauer J. found that summonses had been forwarded to the defendant's addresses by registered mail but there was no evidence that they were received, and he found that adequate notice was not made out. He found that there was no evidence of receipt to "counter the sworn evidence of the defendants that they did not receive notice" (para. 59).

[80] Grauer J. noted the importance of evidence from which it could be inferred that adequate notice was received:

> [61] What will constitute due service will depend on the circumstances, and the nature of the process. Where, as here, the process is the commencement by summons of a proceeding intended to culminate in a money judgment against the defendant, of which proceeding the defendant is unaware, then I find that due service requires, at the minimum, steps from which it may reasonably be inferred that the defendant received adequate notice that granted him an opportunity to defend. Those steps may consist, for instance, of personal service or *delivery* by registered mail or courier. In the absence of any evidence of such steps, the only reasonable conclusion where the defendants credibly deny actual notice is that they have been deprived of an opportunity to be heard in the defence of the claim against them, offending fundamental principles of natural justice [emphasis added] (*LLS America* at para. 61, see also *Lonking* at para. 78).

[81] In *Novikova v. Lyzo*, 2019 ONCA 821, the Ontario Court of Appeal upheld a motion judge's decision refusing to recognize a divorce order on the basis of a denial of natural justice. The respondent spouse knew of the Russian divorce proceedings, and her parents who lived in Russia had refused to accept documents on her behalf, but she had not received the documents and was not aware of the nature of the proceedings or the fact that the Russian court order would prevent her from obtaining spousal support in Canada.

[82] in *LLS America LLC (Trustee of) v. Stanford*, 2019 BCSC 53, Milman J. found that adequate notice had been provided, but there was evidence confirming both

delivery and receipt of court documents that were sent by registered mail to a UPS store used by the defendant. Milman J. found as a fact that the defendant had actually received the documents before default judgment was taken against him (para. 70).

Did Mr. Yang know about the Chinese proceeding?

[83] In my view, the evidence tendered on this application does not establish that Mr. Yang had any actual knowledge of the Chinese proceeding. He has deposed that he was unaware of the proceeding until he received notice of the default judgment in 2023. There is no evidence that directly contradicts that claim, and no evidence that leads me to conclude that Mr. Yang's claim in that regard is implausible.

[84] The court in China sent court documents to Mr. Yang's brother's house but there was no evidence they were received. They appear to have been sent by regular mail, and the documents were not left at the house. The documents were returned as "rejected" but no details are provided as to who, if anyone, rejected them, or under what circumstances. There is also some evidence that the Chinese mail system no longer delivers to the door in all cases, and that if mail is not picked up from distribution centres it is marked as rejected and returned.

[85] The plaintiff's lawyer attempted to send the documents by email and text message to supplement the Chinese court's efforts, but it is unclear whether the electronic messages that included the court documents were ever in fact delivered. Mr. Yang deposed that he had to open a second email account due to the Chinese authority's blockage of google products. He also deposed that he searched his gmail account after the fact, including the junk folder, and could not locate any court documents. There is nothing in the evidence to contradict that sworn statement.

[86] Mr. Yang also deposed that he never received documents by text. He deposed that he could not recall if the phone service he purchased included sending and receiving documents, but he did not receive a phone call advising him that there

were any documents for him. I can find no evidence that counters Mr. Yang's sworn statement that he did not receive the documents by text.

[87] I do not doubt that the plaintiff attempted to send the documents by email and text, but as in *LLS America LLC (trustee of) v. Grande*, there is no independent evidence they were received. In those circumstances, I am not prepared to say that Mr. Yang's evidence is implausible. It is not unreasonable when relying on service by text or email to require some evidence of receipt before concluding that someone was "made aware" of proceedings against them.

[88] The only other effort at service prior to the start of the Chinese proceeding was the sending of two courier packages to addresses in Canada, but there is no evidence those documents were received, nor any reason to believe they would have been. Mr. Yang had not lived at either address for many years.

[89] When the Chinese proceeding began, the only form of notice that was potentially effective was publication in the *People's Court Daily*, but there is no evidence that Mr. Yang ever saw any of the published notices or was advised about them.

[90] There were also attempts to serve Mr. Yang after default judgment was obtained, but in my view, those are less important since the opportunity to defend the claim had essentially expired.

[91] There is no dispute that Mr. Yang has known about the Chinese proceeding since March 2023, in the aftermath of the police incident, but since that time, he has retained counsel, attempted to appeal, applied for a retrial, filed an allegation of fraud with the Chongqing Municipal People's Procuratorate, and retained and instructed counsel in these proceedings.

Does the evidence establish actual receipt of notice?

[92] The same evidence that leads me to conclude that Mr. Yang did not know about the Chinese proceedings, also leads me to conclude that he did not ever

actually receive the court documents. In my view, it would not be appropriate or fair to impute knowledge on that basis.

[93] What is missing is any evidence of acknowledgment, or something in the nature of a receipt akin to service by registered mail. There is no evidence that would provide assurance that the court documents ever reached Mr. Yang. The situation is similar to the situation in *LLS America LLC (trustee of) v. Grande* where notice was sent by registered mail to addresses associated with the defendant, but there was no evidence of receipt to counter the sworn evidence of the defendant that he never received notice.

[94] Looking at all the evidence cumulatively, I am not satisfied that Mr. Yang ever had knowledge of the Chinese proceedings, or had actually received any of the court documents before judgment was pronounced. I conclude that his denial of actual notice is credible.

Was there adequate notice despite lack of service or knowledge?

[95] As the authorities make clear, personal service is not required because foreign countries may have different legal systems. However, the authorities are equally clear that there must be sufficient evidence from which it can be inferred that a defendant had adequate notice.

[96] In *Wei v. Lai* this was a requirement that defendants be “made aware” of the claim and the case they have to meet. In *LLS America*, it was described as steps from which it could be inferred that the defendant “received adequate notice.”

[97] This raises the issue as to whether Mr. Yang can be said to have received adequate notice, or to have been made aware of the Chinese proceeding by virtue of publication of a notice in the *People’s Court Daily*, even though there is no evidence that Mr. Yang ever read such a notice.

[98] The plaintiff argues that notice by publication was sufficient in the circumstances, because it had attempted all potential avenues of service known to it

before the Chinese Judgment such that it would have met the test substitutional service in British Columbia.

[99] Substitutional service is governed by Rule 4-4 of the *Supreme Court Civil Rules*. However, that rule requires an application to satisfy the court that it be "impracticable to serve a document by personal service" or if the person to be served "cannot be found after a diligent search," or is "evading service" (*Luu v. Wang*, 2011 BCSC 1240 at para. 16).

[100] A logical starting point is to examine the manner in which notice was actually provided in this case. Here the Chinese court made one attempt to serve documents that were returned without explanation or further inquiry, and then proceeded by public notice. While that method of service clearly complies with Chinese law, I do not think it can be said that the steps taken by the Chinese court would have been sufficient to support an order for substitutional service. A single attempt to send documents that are returned without explanation does not demonstrate that service is impracticable, or that a diligent search has been performed. It is clear that in this case, as in *Lonking* at para. 79, proceeding by public notice was merely an "administrative step" rather than a process that required an application and evidence.

[101] From that point forward, the case proceeded based on the public notices in the *People's Court Daily* which is considered sufficient notice under Chinese Law. The Chinese court did not renew its effort to send documents to Mr. Yang until long after the default judgment was a *fait accompli*.

[102] A domestic court enforcing a judgment by a foreign court has a "heightened duty" to ensure that minimum standards of fairness have been applied to the defendant (*Beals* at para. 60 and*Kriegman* at para. 4). The consequences to a defendant who is not given an adequate opportunity to defend a claim can be severe. In this case, for example, Mr. Yang lost the opportunity to raise the defence of fraud in a situation where there is positive evidence of fraudulent documents that were tendered into evidence in the Chinese proceeding. In my view, that reinforces

the need to scrupulously assess whether the service was sufficient in the first place from the standpoint of Canadian standards of fairness.

[103] It is clear from an examination of the caselaw, that the method of substitutional service adopted in accordance with a foreign legal system, and the degree to which it was likely to have made a party aware of the claim is a relevant consideration.

[104] In *Cortes v. Yorkton Securities Inc.*, 2007 BCSC 282, simply sending notice to a defunct address in a foreign government without any attempt to locate the defendant in Canada was found to be a breach of natural justice. Myers J. noted that substitutional service, in and of itself, is not a breach of natural justice, but it must be calculated to apprise the defendant of the action and afford it an opportunity to defend the claim (para. 81).

[105] In *Abokasem v. Benjamin*, 2015 BCSC 2300, aff'd 2017 BCCA 70, service on a party by way of alternative service rather than personal service was found to be sufficient to comply with Canadian standards, but in that case the party was actually aware of the claim.

[106] In *Al-Marzouq v. Nafissah*, 2019 BCSC 1759, service on a defendant in accordance with foreign law where the defendant did not actually receive notice, and was unaware of the claim was found to be breach of natural justice. Substitutional service was not rejected in principle, but there was insufficient evidence about what had been done with the court documents from which it could be concluded that they would have made the defendant aware of the proceedings.

[107] In this case, I accept that the plaintiff was diligent in attempting to supplement the Chinese court's attempts at serving Mr. Yang with notice of the claim. However, I am not satisfied the evidence is strong enough to infer that adequate notice was given, or that knowledge should be imputed to Mr. Yang in the circumstances. I would not draw the inference that substitutional service was sufficient to make Mr. Yang aware of the proceedings.

[108] It is worth noting that the affidavit from the plaintiff's accountant makes it clear that Mr. Yang had always represented himself as Canadian. While he was often in China for business or family purposes, he was the registered owner of a house in Burnaby and had been since 2016. When the plaintiff hired an investigator in 2022, to enforce the Chinese judgement, they quickly discovered Mr. Yang's correct address in Canada. There was no evidence of similar efforts before the Chinese proceeding, either by the court itself or the plaintiff.

[109] There were attempts by the plaintiff to serve Mr. Yang by courier, but they were sent to the wrong addresses. As Mr. Yang points out, the courier slips included a Canadian phone number where the recipient could be reached, but there is no evidence of any attempt to call the number, or to otherwise locate Mr. Yang in Canada.

[110] I have not overlooked the fact that Mr. Yang was in China when service was attempted, but in my view, that alone does not necessarily lead to the conclusion that he could not be found through his Canadian address or phone number.

[111] In short, the only attempts at service in advance of the Chinese proceeding apart from steps taken by the Chinese court itself, consisted of documents sent to old addresses that were no longer valid, and an email and text message for which there is no confirmation of successful transmittal let alone receipt. I do not think it can necessarily said that an order for substitutional service by advertisement or publication would necessarily be granted based on the idea that Mr. Yang could not be found or was evading service

[112] There is also the reality that even had an order for substitutional service been granted in British Columbia, Mr. Yang would have been able to bring an application to have the judgment set aside provided he was able to show a plausible explanation for his lack of knowledge of the proceeding or that he did not wilfully or deliberately fail to respond (Rule 4-7 *Supreme Court Civil Rules*; *Andrews v. Clay*, 2018 BCCA 50 at paras. 28-31; and *Al-Marzouq* at para. 60).

[113] There is no evidence of evasive behaviour prior to the Chinese proceeding, and Mr. Yang has taken steps to address the situation in China since becoming aware of the judgment.

[114] The plaintiff points to the incident that took place in March 2023, as evidence of Mr. Yang's attempt to evade service. The evidence diverges as to what happened, but if Mr. Yang's goal was to evade service, then it made little sense for him to call the police. In any event, this incident was long after the default judgment had already been obtained.

[115] Returning to the underlying principle, I am satisfied that Mr. Yang has demonstrated a reasonable apprehension of unfairness by showing that he was not given adequate notice of the claim against him, and did not have an opportunity to defend the claim. There is no conclusive evidence of personal service, successful delivery, or actual receipt. I find that the evidence relied on by the plaintiff is not sufficient to counter Mr. Yang's sworn statements that he never received notice, and that he had no awareness of the proceeding.

[116] As Grauer J. noted in *LLS America LLC (trustee of) v. Grande*, due service requires at a minimum, steps from which it can be inferred that the defendant received adequate notice. I would not draw that inference on these facts based on actual service or substitutional service.

[117] In the end, I am not satisfied that Mr. Yang knew about the Chinese action in advance, or that he ever received the court documents. Nor am I satisfied that there are facts from which I can infer that he received adequate notice, through the plaintiff's attempts or through publication in *People's Court Daily*. Accordingly, I conclude that enforcing the Chinese judgment would constitute a breach of natural justice.

Conclusion

[118] Mr. Yang has established a breach of natural justice which is a valid defence to an application to enforce a foreign judgment. The Chinese default judgment is therefore unenforceable.

Costs

[119] As the successful party, Mr. Yan is entitled to his costs at Scale B unless there are facts or circumstances I am unaware of, in which case the parties may request an opportunity to make submissions within 30 days of judgment. If no request is made, the costs order will stand.

"Greenwood J."