IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Crystal Currency Exchange Inc. v. Wang,* 2024 BCSC 2150

Date: 20241101
Docket: S222403
Registry: Vancouver

Between:

Crystal Currency Exchange Inc.

Plaintiff

And:

Dan Qing Wang (also known as Lisa Wang) and Pu Wang

Defendants

Before: The Honourable Mr Justice Crerar

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	E.W. Hulshof M.L. Teetaert
Counsel for the Defendant, Dan Qing Wang (also known as Lisa Wang):	J. Liu
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. November 1, 2024
Place and Date of Judgment:	Vancouver, B.C. November 1, 2024

[1] **THE COURT:** I have before me an application by the plaintiff that the defendant, Dan Qing Wang (also known as Lisa Wang), amend her list of documents to produce various documents in the appended schedule. Those documents largely consist of financial records and tax records. The essence of this application is the production of records that would show the destination of funds that Ms. Wang transferred into her various accounts.

[2] The defendant Ms. Wang does not take objection to the producibility of financial records for the period when she worked for the plaintiff, Crystal Currency Exchange Inc., during which period she is accused of illicitly transferring over 23 million RMB, diverted from her employer into her own accounts.

[3] Under Rule 7-1(10) and (11) of the *Supreme Court Civil Rules*, the requirement that a given category of documents be produced starts with an analysis of the pleadings in order to determine its relevance. The third amended notice of civil claim alleges that the defendant Ms. Wang unlawfully transferred funds from her plaintiff employer in breach of her contract, and otherwise legally described as unjust enrichment and misappropriation. The claim alleges that Ms. Wang holds these diverted funds in trust.

[4] The relief sought includes a declaration that the defendants hold the misappropriated funds, and any real or personal property or other assets, purchased in whole or in part with the misappropriated funds, in trust for the plaintiff. The claim also seeks a disgorgement of the profits obtained through the use of the misappropriated funds. The claim also seeks the usual accounting and tracing remedies with respect to the use and destination of those funds.

[5] The present debate is one that frequently occurs where fraud or defalcation is alleged against the defendant. It frequently arises where, as here, a freezing *Mareva* order has been obtained against the defendant. Should production be limited to the time period during which the alleged defalcation occurred, or should it extend beyond the period of alleged defalcation such as to permit the plaintiff to learn the

ultimate destination of the funds it says are its own funds that have been misappropriated?

[6] I am sure that there is direct case authority that provides guidance with respect to this regard, beyond the authorities cited by the parties. Both parties point to one of the many *Waxman v. Waxman* decisions in the series of litigation in that name out of Ontario. Specifically: *Waxman v. Waxman*, 2002 CanLII 20932 (ONSC) at paras. 27, 28, and 43.

[7] *Waxman* provides a precedent for either refusing or ordering production of documents that would illuminate the final destination of defalcated funds.

[8] *Waxman* first notes that even where an accounting and tracing remedy is pleaded, those are remedies that may or may not be ordered by the trial court after consideration of all of the evidence:

> [27] I do not accept that it was encumbent upon counsel for the Plaintiffs to explore on discovery and to call evidence at trial about the present whereabouts, value and content of the trust fund. I have no doubt that if Chester and his sons had been questioned at discovery or trial about those matters, they would have refused to answer, *inter alia*, on the ground that such inquiries were inappropriate and premature.
>
> [28] Were courts to require parties to call such evidence at trial, the cost and length of litigation would be greatly increased. Further, the Plaintiffs are entitled to information about present whereabouts and value.

[9] On the other hand, *Waxman* also notes that where the court has issued a *Mareva* freezing injunction, the court and the parties are also entitled to ensure that the order has not been flouted through the ongoing transfer of assets in breach of the freezing order:

> [43] In *First Choice Capital Fund Ltd., supra*, Baynton J. said:
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> **at paragraph 51** In A.J. Bekhor & Co. Ltd. v. Bilton, [1981] 2 W.L.R. 601 (C.A.), Griffiths L.J. stated as follows at p. 621
>
> ... from time to time cases will arise when, although it seems highly probable that the defendant has assets within the jurisdiction, their precise form and whereabouts are in doubt, or in the case of a number of defendants they may collectively have sufficient assets but there may be doubt about the distribution among themselves. In such cases in order that

> the Mareva injunction should be effective both the court and the plaintiff require to know the particular assets upon which the order should bite. It must be remembered that the underlying reason for making the order is the fear that the defendant may remove his assets and this is most effectively prevented by the plaintiff serving a copy of the injunction on whoever is holding the defendant's assets for the time being. Very often this will be the defendant's bankers, but assets can take many forms and be in the hands of many different persons to whom it is desirable to give notice of the court's order. ***To my mind the desirability of the power to order discovery is obvious and it is particularly needed in the case of a defendant who has demonstrated himself to be untrustworthy and evasive ...***
>
> **... If the court has the power to make a Mareva injunction it must have power to make an effective Mareva injunction. If the injunction will not be effective it ought not to be made.**
>
> For the reasons I have already given ***it may be necessary to order discovery to make the injunction effective and I would hold that the court has the power to make such ancillary orders as are necessary to secure that the injunctive relief given to the plaintiff is effective. I therefore agree that a judge does have power to order discovery in aid of a Mareva injunction if it is necessary for the effective operation of the injunction***

at paragraph 52. In Derby & Co. Ltd. v. Weldon (No. 2), [1989] 1 All E.R. 1002 (H.L.), the House of Lords cited the H.A. Bekhor case. Neill L.J. commented on the value of a discovery order in aid of a Mareva injunction in the following colourful way, at p. 1021:

> In the course of this appeal some reference was made to the fact that assets, like the Cheshire cat, may disappear unexpectedly. It is also to be remembered that modern technology and the ingenuity of its beneficiaries may enable assets to depart at a speed which can make any feline powers of evanescence appear to be sluggish by comparison

[44] I would have thought it evident that ***as tracing orders are available to litigants before trial to prevent disposition of all assets where a plaintiff's case appears to be strong, tracing orders should also be available to recover misappropriated trust funds after legal or equitable rights have been conclusively proved at trial.***

[45] Hoffman L.J. said in *Mercantile Group (Europe) AG v. Aiyela, supra* at 115:

> It would be very strange if ***before judgment the plaintiff could …obtain information from third parties about the whereabouts of the debtor's assets*** but was limited after judgment to examining the debtor under RSC Ord 48, r.1

In the same case, Sir Thomas Bingham said at 117:

> …if jurisdiction did not exist the armoury of powers available to the court to ensure the effective enforcement of its orders would in my view be seriously deficient. That is in itself a ground for inferring the likely existence of such powers, ***since it would be surprising of the court lacked power to control wilful evasion of its orders by a judgment debtor …***

[46] Huddart J. in *Mooney v. Orr* (1994), 1994 CanLII 1779 (BC SC), 33 C.P.C. (3d) 31 (B.C.S.C.) said at 50:

> The circumstances of each situation will determine whether justice requires an ***injunction and a listing of assets or the transfer of assets to a receiver, not to enhance the claimant's rights, but to ensure that those reasonable people who pay for the administration of justice in this province are not affronted by the impotence of the court in the face of those who choose to order their affairs so as to keep all their options for themselves.***

[47] In my view, while those cases involve different equitable remedies or processes at different stages of litigation, the same reasoning applies here. I am fortified in my view by the statement of Millett L.J. in *Foskett, supra*, in a passage quoted at paragraph 1654 of my Reasons, at p. 120:

> ***The successful completion of a tracing exercise may be preliminary... to the enforcement of a legal right…or an equitable one.***

[emphasis added]

[10] I am satisfied that the order should be granted in the particular circumstances of this case for several reasons.

[11] First, the plaintiff has already put forward a strong case of defalcation against the defendant Ms. Wang. The plaintiff relies upon an extensive forensic report from MNP LLP confirming many unauthorized transactions, totalling some 23 million RMB, and that Ms. Wang was the only employee who was scheduled to work at the plaintiff's offices on all of the days on which the elicit transactions occurred.

[12] Second, the defendant Ms. Wang's own actions somewhat support the claim of the plaintiff. Specifically, when confronted with one illicit transaction—because that was all that was known at the time—she promptly repaid that full amount to the plaintiff. She then left the employ of the plaintiff and then left the country. It was only after her departure that these many other illicit transactions were discovered. By that point, the defendant had relocated to the People's Republic of China, which is

of course a non-reciprocating nation with Canada and a nation where there are challenges in obtaining information from governmental and financial institutions.

[13] Third, while always in the context of an interlocutory application, the *Mareva* injunction has been considered not by one justice in its initial issuance, but by no fewer than six judges, of which, I understand, I am the most recent. Those judges have considered the evidence, and have continually and repeatedly given judicial sanction to extend the *Mareva* injunction until the resolution of this matter.

[14] The last special circumstance that I would note in the present case is that several of the bank accounts for which greater disclosure is sought in the present application are located in the People's Republic of China. While third-party orders can be readily obtained against Canadian financial institutions—although I do understand that there have been some challenges even in that regard—there is, as best as I know, no power of this Court to compel a Chinese financial institution directly to produce records in the way that one can proceed against, say, a US bank through the mechanisms provided through 28 USC 1785.

[15] In this, I would note the words of Mr. Justice Voith in two decisions.

[16] First, when he was of this Court, in *XY, LLC* v. *Canadian Topsires Selection Inc.*, 2013 BCSC 584, he concluded that there will be some cases such as fraud and conspiracy where the applicant will be unable to provide any evidence of the existence of additional documents: para. 28.

[17] On a similar note, acknowledging the vulnerability of a claimant advancing a fraud or conspiracy or breach of fiduciary or similar claim, Justice Voith, while on the Court of Appeal, in the recent decision of *Wu v. Ma*, 2024 BCCA 196 at para 41, noted a similar principle that where one party is alleged to have committed a fraud or otherwise has greater knowledge of the facts and documents underlying the dispute, there is a greater expectation that evidence will be forthcoming from that party.

[18] I am satisfied that there is a sufficient basis on the pleadings to ground an order for this additional production under Rule 7-1(11) under the secondary grounds, and that the order sought will be issued.

[19] Now, Mr. Liu, remind me of the modification you wanted if the order was granted, and I will consider whether I should grant that or not.

[20] CNSL J. LIU: I think we proposed two applications. The first application is to only order those records in her possession. My friend has mentioned the word "control". I think in the case law, if -- the person's bank has the bank account, that will be deemed as the person having control, but in our case, we just have difficulty getting those records from TD. I am in the Court's hands.

[21] THE COURT: Yes. Well, what I will say, and this may assist you, Mr. Liu. I am not going to make that modification that you are seeking. As your friend points out, typically an order for the secondary level of production and typically where the production has not been forthcoming in the first instance, it is typical to have "power, possession, or control" as the term.

[22] What I will say on the record, though, is if indeed there are unusual circumstances where your client no longer has these records—which ostensibly she should have, as they are her own banking records—and if she can provide compelling evidence why she no longer has these records and can no longer produce these documents, and has compelling evidence as to why she cannot obtain these records from the custodians of these records—that is, the banks and other financial institutions—then she can bring an application for a modification of this order: that I am directly anticipating that. I suppose that might stave off any accusations that she is in deliberate breach of the order if she is not producing these documents in a timely manner.

[23] CNSL J. LIU: Yes. And also, my friend has raised there are gaps. What I propose is to write to the banks and ask them to confirm if that makes the procedure easier. Because most of the documents provided were received directly from the

banks to our office. And the reason my client has given for not having those statements is because of the *Mareva* injunction. The banks, they blocked her access of the online portal to access most of the bank documents.

[24] THE COURT: Well, I do not know if I need to be involved in the logistics of this, even with respect to the Chinese institutions. But I think the order is quite clear. She is going to be in the hot seat if she is not producing these documents directly, and she has a strong incentive to work out some sort of arrangement, be that through direct authorizations to the bank or orders or what not. They probably have to be in China, but I really don't want to get into the weeds here, if that is all right.

[25] CNSL J. LIU: Okay. Yes.

[26] THE COURT: I will hand this order back. I commend both counsel. Mr. Liu, I must say that I was very close to finding in your favour, but for the reasons that I have given. That compliment to your advocacy is all I wanted to say. Thank you all.

"Crerar J."