

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wong v. Grewal*,
2015 BCSC 2394

Date: 20151211
Docket: S158778
Registry: Vancouver

Between:

Allan Wong and 683867 B.C. Ltd.

Plaintiffs

And

Sukhwinder Grewal and Ingreen Investments Ltd.

Defendants

Before: The Honourable Madam Justice Burke

Oral Reasons for Judgment

Counsel for the Plaintiffs:

A. Lau

Counsel for the Defendants:

G.E. Sourisseau
L. Hellrung

Place and Date of Trial/Hearing:

Vancouver, B.C.
December 7-8, 2015

Place and Date of Judgment:

Vancouver, B.C.
December 11, 2015

[1] These are my oral reasons for judgment. I reserve the right to edit these reasons, but the substance will remain the same.

INTRODUCTION

[2] On October 23, 2015, Mr. Allan Wong and 683867 B.C. Ltd. (whom I will refer to collectively as “Mr. Wong”) filed a claim against Mr. Sukhwinder Grewal and Ingreen investments Ltd. (whom I will refer to collectively as “Mr. Grewal”). Mr. Wong seeks rescission of a 2007 purchase of his shares in Solaris Pharmaceuticals Inc. (“Solaris”) by Mr. Grewal or, alternatively, damages in lieu of rescission. The claim arises out of alleged fraud and material misrepresentation by Mr. Grewal in 2007 concerning the value of Solaris and its online pharmacy operations. Mr. Grewal was the Chief Financial Officer and accountant of the pharmaceutical business in which the parties were shareholders and partners. Mr. Wong was the Vice President of Operations.

[3] Mr. Wong has now applied for an order under R. 10-1(1) and (2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, that the defendants pay into court, to the credit of this action, any and all settlement proceeds arising from a recent mediation involving Mr. Grewal, Amarjit Mann, and Navtej Bains, which concerned the separation of their business interests, including Solaris.

[4] Mr. Wong relies upon R. 10-1(1) and (2) and seeks an order for the preservation of property that is the subject matter of a proceeding and/or a specific fund in dispute in a proceeding.

[5] Mr. Wong claims a proprietary interest in the settlement funds, which are substantial, by virtue of his claim for rescission, disgorgement, and constructive trust based on an alleged misrepresentation by Mr. Grewal concerning the value of the business of Solaris in 2007. The interest is claimed on the basis of an allegation of a misrepresentation, breach of fiduciary duty, and unjust enrichment arising from that misrepresentation. Mr. Wong claims a proprietary interest in the shares in particular by virtue of rescission and says the settlement funds reflect assets purchased from

profits generated from Solaris. His proprietary interest in the settlement fund, he says, is thereby established.

BACKGROUND

[6] On May 1, 2004, Mr. Wong and Mr. Grewal became partners and shareholders in a pharmacy business which consisted of Candrug Health Solutions Inc., now known as Solaris Pharmaceuticals Inc. The business was incorporated on May 17, 2002, and expanded to include multiple entities, including Farmacia Para El Mundo (“Farmacia”) and Pharma 24. The group of companies operated an online pharmacy retail business and a number of other ventures. In addition to Mr. Wong and the defendants, the shareholders and partners in the business consisted of Mr. Mann, Mr. Bains, and their respective corporations.

[7] The four partners held equal ownership interest in all businesses and companies, with the exception of two B.C. companies, Solaris and Fakeers Enterprises Ltd., in which Mr. Wong and Mr. Grewal were both minority shareholders.

[8] Mr. Mann, Mr. Bains, and Mr. Grewal, agreed to purchase Mr. Wong’s interest in the business equally, with Mr. Grewal purchasing Mr. Wong’s shares in Solaris and Fakeers.

[9] Mr. Wong says in 2007 Mr. Grewal induced him to sell his interest in the business at an artificially low value by misrepresenting the value of the business.

[10] Mr. Wong alleges in a conversation on November 30, 2007, Mr. Grewal misrepresented to Mr. Wong that Solaris and its online pharmacy operations had devalued since 2004 and were worth approximately \$1,500,000. At this time, 683867 B.C. Ltd. had 10% share ownership plus an additional 6% entitlement to profits, therefore entitling it to 16% of Solaris’s annual profits.

[11] In reliance on what is alleged to be Mr. Grewal's misrepresentation in late 2007, Mr. Wong says he was induced by Mr. Grewal to sell 683867 B.C. Ltd. shares and profit entitlement for the sum of \$240,000.

[12] Mr. Wong also alleges Mr. Grewal either personally, or through his company, misappropriated and embezzled money from the business. Mr. Wong maintains Mr. Grewal owed a fiduciary duty to Mr. Wong, 683867 B.C. Ltd., and the business. Mr. Wong maintains Mr. Grewal breached that duty by, among other things, misrepresenting earnings and profits; devaluing the business through embezzlement or fraud; manipulating and misrepresenting financial information; and other allegations of that nature.

[13] In response, Mr. Grewal says these allegations are completely false. Mr. Wong had decided earlier, in November 2007, to leave the business and offered to sell his shares in Solaris to Mr. Grewal. Mr. Grewal maintains documentation establishes this fact and the allegations should be treated with extreme skepticism. Mr. Grewal says these allegations are part of a bitter dispute between the remaining shareholders of the business who sought to use these to force him to accept less than his one-third interest in the business.

THE APPLICATION

[14] I am dealing with the relatively narrow issue of whether the application of Mr. Wong under R. 10-1(1) and (2) for the preservation of property should be granted. R. 10-1 states:

Property that is the subject matter of a proceeding

(1) The court may make an order for the detention, custody or preservation of any property that is the subject matter of a proceeding or as to which a question may arise and, for the purpose of enabling an order under this rule to be carried out, the court may authorize a person to enter on any land or building.

Fund that is the subject matter of a proceeding

(2) If the right of a party to a specific fund is in dispute in a proceeding, the court may order the fund to be paid into court or otherwise secured.

LEGAL PRINCIPLES

[15] The test as to whether an order preserving property should be made appears to be well settled. As set out in *Osooli-Talesh v. Emami*, 2003 BCSC 1924, and *McKnight v. Hutchison*, 2011 BCSC 36, it is similar to the test used to decide whether an interlocutory injunction should be granted. The court should ask:

- (1) Is there a claim on the evidence and not just on the pleadings to a proprietary interest in the property?
- (2) Is there some evidence to render reasonable the belief of Mr. Wong that the property is threatened with disposition or transfer outside the jurisdiction?
- (3) Is there a substantial question to be decided as to Mr. Wong's entitlement to the property?
- (4) Does the balance of convenience favor the granting of the order?

[16] Turning to issue one:

Issue one: is there a claim on the evidence and not just on the pleadings to a proprietary interest in the property?

[17] Mr. Wong claims a propriety interest in the settlement proceeds resulting from mediation between the shareholders of Solaris, on the basis the shares still belong to him via the remedy of rescission. As Mr. Wong claims a proprietary interest in the shares, he maintains this interest attaches to the funds arising out of the settlement in which Mr. Grewal disposed of his shares in the business.

[18] On an alternative basis, Mr. Wong applies this same reasoning in arguing Mr. Grewal breached his fiduciary duty and/or was unjustly enriched by claims of embezzlement, which results in a constructive trust over the shares and/or the funds resulting from the disposition of Mr. Grewal's shares pursuant to a settlement agreement.

[19] I have concluded Mr. Wong is unable to establish a proprietary interest in the settlement funds. In order to obtain an order under R. 10-1(1) and (2), the plaintiff must assert a right supported by evidence in a specific fund or property that is the subject of the dispute: *Ethiopian Orthodox Church of Canada v. Hohite Semay St. Mary Ethiopian Orthodox Tewahido Church*, 2008 BCSC 797. Mr. Wong must therefore identify a specific fund or property and prove on the evidence an interest in that property.

[20] The relief sought fails to identify a specific fund with any particularity. It alludes to settlement funds in a business dispute that involves the defendants with very little other detail.

[21] Mr. Wong pointed to *Maedou Consulting Inc. v. 0887455 B.C. Ltd.*, 2015 BCSC 2009, as a description of the settlement funds in issue. In that case, it is noted three of the principals referred to in the affidavit material, Mr. Baines, Mr. Mann, and Mr. Grewal, are involved in the pharmacy business. These three were involved in arbitration, “the objective of which is to separate their business interest in the pharmacy businesses by having Mr. Baines and Mr. Mann purchase Mr. Grewal’s interest.” The affidavit material reflects a settlement was reached between the parties as a result of this mediation/arbitration on October 30, 2015.

[22] That material also reflects, however, a number of businesses the group operated, including Fakeers Enterprises Ltd., a Canadian company that owned Farmacia, the Panamanian company through which the bulk of the online pharmacy portion of the business was operated; Gift Solutions Online; Eclipse Medical Inc.; First Pharma; and other pharmacies owned in the lower mainland.

[23] The material reflects the shares at issue were the only asset in which Mr. Wong and Mr. Grewal were not equal shareholders with Mr. Mann and Mr. Baines. For each of the other assets, Mr. Mann, Mr. Baines, and Mr. Grewal all equally purchased a pro rata portion of Mr. Wong’s shares or entitlement.

[24] As the defendants point out, the purchase of the shares of Solaris and Fakeers by Mr. Grewal from Mr. Wong was a small part of a transaction that included 10 categories of assets at the time.

[25] Furthermore, while Mr. Wong initially had a 10% share in Solaris, which Mr. Grewal purchased, Mr. Grewal already owned shares in Solaris.

[26] This very brief recitation of the business interests demonstrates any settlement funds that resolve the business interests between the remaining individuals involve funds that are comingled with other funds potentially arising from the sale of the Solaris shares. Those funds would also include property and businesses acquired after 2007 in which Mr. Wong took no part.

[27] Any funds arising out of the resolution of the business interests between Mr. Mann, Mr. Bains, and Mr. Grewal are comingled with other monies to which Mr. Wong has no claim. As set out in *Ethiopian Orthodox Church of Canada*, the fund is therefore not a specific fund such that R. 10-1(1) and (2) would apply.

[28] I am also not persuaded by the argument that the shares equate to the profits of Solaris that were then used to invest or purchase the assets now reflected in the settlement funds. There is no evidence of this somewhat tenuous connection. Furthermore, it does not appear to be consistent with the business structure set out by both Mr. Wong and the defendants. The material reflects separate corporate entities, perhaps under an umbrella, but does not reflect profits of Solaris used to fund all these entities.

[29] While I find this matter can be disposed of on this basis, I will comment briefly on the remaining factors.

Issue two: is there some evidence to render reasonable the belief of Mr. Wong that the property is threatened with disposition or transfer outside the jurisdiction?

[30] Mr. Wong maintains there is a reasonable chance if a property preservation order is not granted, the property in question (i.e., the settlement funds) will be

threatened with disposition or transferred outside the jurisdiction. Mr. Wong maintains the defendants are sophisticated entities with bank accounts, business interests, and offshore shelters, including Panama, where the proceeds of sale could be hidden.

[31] There is no evidence establishing any property is in jeopardy as required by the case law. While Mr. Wong spent significant time reviewing various transactions directing monies to international jurisdictions, these were, by and large, some significant time ago in 2007 and reflect his belief alone. There is nothing that reflects any recent transactions that lead to any such conclusion.

[32] The affidavit evidence also reflects the shareholders of Solaris, Mr. Mann, Mr. Bains, and Mr. Grewal, had a personal falling out in 2013. While this was unrelated to the operation of the business, it is alleged to have led to Mr. Mann and Mr. Bains making false allegations against Mr. Grewal in an attempt to make him accept less than his one third entitlement of the business. These are said to be the same allegations as here. The dispute which Mr. Grewal describes as “bitter” and these matters have been ongoing until the settlement between these three, most recently, on October 30, 2015. There is no evidence during this time Mr. Grewal attempted to dissipate any of his assets during this dispute.

[33] Mr. Grewal has a wife, children, and parents, whom he takes care of. He is in the process of building a new house for his family in Surrey, B.C. There is nothing on the evidence to indicate his assets will be dissipated or disposed of, and therefore no reasonable belief on this point. This is unlike *Osooli-Talesh*, where there was specific evidence the property would be dissipated if no order was made.

Issue three: is there a substantial question to be decided as to Mr. Wong’s entitlement to the property?

[34] Mr. Wong maintains there is a substantial question to be decided as to his entitlement to the property. If he is successful, his ownership of the shares and his entitlement to the profits will be restored to the status quo prior to the transaction. He points to transactions that he says establish fraudulent behaviour.

[35] I will not comment extensively on this aspect, other than to indicate the material filed to establish the proposition does little more than outline transactions without any context. As an example, Mr. Wong points to a series of transactions that appear to involve “time pieces” and “automobiles,” essentially maintaining their existence cannot possibly be associated with the business and thereby establishing fraud. The material from Mr. Grewal, however, established clearly at least one transaction, in which a vehicle was purchased through one of the companies for Mr. Wong. While Mr. Wong says he does not attack that transaction as fraudulent, it demonstrates the frailty of the allegations as it establishes the reality that such a transaction took place as part of the business and others may be similarly legitimate.

[36] These are serious allegations. Essentially, Mr. Wong appears to take the view once the allegations are made, they must be explained by the defendants, otherwise they are manifestly fraudulent.

[37] As noted by Dillon J. in her brief judgment concerning short leave in this matter, the affidavit of Mr. Wong is replete with conclusory statements about fraud, embezzlement, misrepresentation, and other serious allegations: *Wong v. Grewal*, (4 November 2015), Vancouver S158778 at para. 2 (B.C.S.C.). This continues to be the case, despite the filing of a second affidavit by Mr. Wong and one by Mr. Mann. Attachments reflecting transactions without more are simply insufficient when dealing with such serious allegations. They are without context or any explanation as to how they fit with the claims alleged.

[38] Essentially, Mr. Wong simply deposes as to his belief about the transactions and whether they are legitimate or not. The material is not sufficient to lead to such a conclusion or raise a substantial question to be tried.

Issue four: does the balance of convenience favor the granting of the injunction?

[39] Mr. Wong says the balance of convenience favors granting the order. If he is ultimately successful in the action, but the order is not granted, the property will have been placed beyond his reach, in the hands of the defendants, other creditors,

and/or offshore shelters. On the other hand, if the defendants are ultimately successful, they will have endured only a temporary loss of access to the property, which will have been held safely in court during the interim.

[40] Mr. Wong also says the defendants should not be rewarded for bad behaviour. Public policy requires the court to keep this in mind in considering the balance of convenience. If not, the funds will be dissipated and the defendants will become “judgment-proof.”

[41] On this point, I would simply say the balance of convenience does not support the granting of an injunction and, furthermore, illustrates Mr. Wong seeks to use this application as security for judgment.

[42] Damages would be an adequate remedy for Mr. Wong if the injunction is not granted. Indeed, rescission may not be possible, as Mr. Grewal no longer has the shares at issue. Furthermore, it would appear Mr. Wong acted to alter the status quo by the sale of his shares; he does not allege he was forced to sell his shares. Finally, I note the strength of Mr. Wong’s case is difficult to determine but suffers at this point.

[43] To a great extent, I find this application is in fact more akin to that reflected in *Penner v. Williamson*, [1990] B.C.J. No. 2217 (S.C.) (QL). Mr. Wong is, in effect, seeking to use Rule 10 to require the defendants to furnish security before judgment.

[44] This is made clear by the comment at paragraph 29 of Mr. Wong’s first affidavit, where he deposes:

... I believe that if funds are not paid into court, Grewal will dissipate funds such that there will not be money available to satisfy any judgment that the plaintiffs obtained against the defendants.

[45] As set out in the succinct judgment of *Penner*, R. 10-1(1) does not authorize the court to grant an order that “would be tantamount to making the defendant furnish security before judgment.”

[46] Fundamentally, I conclude Mr. Wong is seeking to use R. 10-1(1) and (2) to furnish security before judgment. As noted in *Penner*, the ownership of the fund itself is not in dispute; it is not identified with any particularity and involves funds that are comingled with other monies to which Mr. Wong does not allege interest. Essentially, Mr. Wong seeks the funds as part of attempting to realize on a possible judgment in the future. This, in my view, is a veiled attempt to have the defendants furnish security before judgment. Mr. Wong is unable to establish the imminent disposition of assets, among other factors, and therefore I would not be inclined to grant this order.

[47] This application is dismissed with costs to the defendants in any event. If there is a dispute as to the nature of the costs, the parties are at liberty to apply to have that matter determined if they file within 30 days of this date.

[48] I will order a transcript of these oral reasons for the benefit of the parties.

“Burke J.”