

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Zhang Estate v. Yin*,
2025 BCSC 952

Date: 20250520
Docket: S2010412
Registry: Vancouver

Between:

**Junjie Tao, Executor of the Estate of Tong Zhang aka
Tony Zhang, Deceased**

Plaintiff

And:

**Hang Yin, Yan Chun Liu, Yu Yin, 1011066 B.C. Ltd., 1079770 B.C. Ltd.,
1032734 B.C. Ltd., 1085842 B.C. Ltd., 1079775 B.C. Ltd., and
1084960 B.C. Ltd.**

Defendants

And:

Chunli Zhang

Defendant by way of Counterclaim

Before: The Honourable Mr. Justice Funt

Reasons for Ruling – Withdrawal of an Admission (Mid-Trial)

Counsel for the Plaintiff:

M.J. Hewitt
D. Yaverbaum
C. Yang

Counsel for the Defendants:

V. Pappas
R. Gagnon
J. Spencer
A. Wang

Counsel for the Defendant by way of
Counterclaim:

(No appearance expected)

Place and Date of Hearing:

Vancouver, B.C.
May 16, 2025

Place and Date of Judgment:

Vancouver, B.C.
May 20, 2025

1.0 Introduction

[1] The application before me was brought on the 28th day of this trial, currently set for 45 days.

[2] It was anticipated that the plaintiff's case would close today, which was the next scheduled day of trial.

[3] The defendants have applied to withdraw an admission made in their Amended Response to Civil Claim filed March 31, 2025. The admission was also in the original Response to Civil Claim filed on December 1, 2020. The sought withdrawal of the pleaded admission also constitutes a mid-trial amendment.

[4] The admission reads:

The facts alleged in paragraph 37 of Part 1 of the Notice of Civil Claim ("NOCC") are admitted.

[5] Paragraph 37 of Part 1 of the Notice of Civil Claim reads:

In reliance on the Representations, in or around 2016, Mr. Yin and the plaintiff entered into an oral agreement (the "Surrey Project Agreement") with respect to the Surrey Project. The terms of the Surrey Project Agreement include:

- (a) The Surrey Property would be purchased for \$6 million CDN;
- (b) Mr. Yin and the plaintiff would each provide half of the funds to purchase the Surrey Property;
- (c) The Surrey Project would be managed by Ms. Yin;
- (d) The ownership of and profits from the Surrey Project would be divided amongst the parties as follows:
 - (i) The plaintiff – 50%; and
 - (ii) Mr. Yin – 50%.

[6] The defendants say that they did not intend to admit that the plaintiff, Mr. Tony Zhang ("Mr. Zhang Jr."), now deceased, entered into an oral agreement with Mr. Yin. Mr. Zhang Jr.'s Estate is now represented by Ms. Junjie Tao.

[7] The defendants say that the subject oral agreement to which reference is made in the Second Amended Notice of Civil Claim (and which was in the Notice of

Civil Claim) was between Mr. Yin and Mr. Chunli Zhang (“Mr. Zhang Sr.”), and not Mr. Zhang Jr.

[8] In their written submissions, defendants’ counsel explain their failure to bring the application earlier, as follows:

28. The admission in paragraph 1 of the RTCC [Response to Civil Claim] was made by the Defendants’ original counsel in this action at a different law firm. Since that time, the Defendants have had three new sets of counsel, albeit at the same law firm, through no fault of their own. The admission was simply overlooked by all new sets of counsel.

2.0 The Law

a) Withdrawal of an Admission

[9] Under our Rules of Court, a party is not entitled to withdraw an admission “except by consent or by leave of the court”: Rule 7-7(5).

[10] Our Court of Appeal in *Sidhu v. Hothi*, 2014 BCCA 510, listed the following factors a court should consider, at para. 25:

- (a) whether the admission was made inadvertently, hastily, or without knowledge of the facts;
- (b) whether the “fact” admitted was or was not within the knowledge of the party making the admission;
- (c) where the admission is one of fact, whether it is or may be untrue;
- (d) whether and to what extent the withdrawal of the admission would prejudice a party; and
- (e) whether there has been delay in the application to withdraw the admission and any reason offered for such delay.

b) Mid-Trial Amendment to Pleadings

[11] With respect to mid-trial amendments, *Ferguson v. Mapleguard Apartments Ltd.*, 2024 BCSC 123, Justice Donegan, as she then was, stated:

[56] The Court of Appeal recently discussed the law around mid-trial amendment of pleadings in *Sperring v. Shutiak*, 2023 BCCA 54 [*Sperring*]. The Court in *Sperring* again affirmed the criteria identified by Justice Harvey in *Macdonald v. Macdonald Estate* (1996), 21 B.C.L.R. (3d) 379, 1996 CanLII 1360 (S.C.) [*Macdonald*] to be applied when considering whether to permit

such amendments. The Court identified the criteria, articulated as questions, at para. 95 as follows:

- (a) is it inconsistent with the pleadings already filed on behalf of the party seeking the amendment;
- (b) is it inconsistent with evidence already tendered by that party and his witnesses at trial and on discovery;
- (c) if it had been asked for at the outset of the trial, would it have changed the whole course of the trial;
- (d) would it be unfair to the opposite party;
- (e) is it necessary for the purpose of determining the real issues raised or depending upon the pleadings?

[57] Referring to two of the Court's previous decisions, also affirming the five-part test from *Macdonald*, the Court in *Sperring* went on:

[97] In *Khera*, Justice Newbury, writing for the Court, observed the following when discussing the appropriate consideration of late amendments:

[16] The test normally applied is the five-part one which the trial judge here took from *Macdonald v. Macdonald Estate* (1996), 1996 CanLII 1360 (BC SC) 21 B.C.L.R. (3d) 379 (B.C.S.C.), quoted at para. 8 of her reasons. She dealt with each of these factors with some care, concluding that the defendants had not established "any real prejudice", that there was no obvious inconsistency between the evidence tendered by the plaintiffs at trial and the amendment, and that the amendment would not likely have changed the course of the trial had it been sought from the outset.

[98] In *Olson*, Justice Frankel wrote:

[71] In *Gatien v. Avini*, 2015 BCCA 383 at paras. 30 –31, 389 D.L.R. (4th) 463, and *Century 21 Coastal Realty Ltd. v. Khera*, 2018 BCCA 298 at para. 16, 14 B.C.L.R. (6th) 311, this Court endorsed the test for determining whether to grant an amendment set out in *MacDonald v. MacDonald Estate* (1996), 1996 CanLII 1360 (BC SC), 21 B.C.L.R. (3d) 379 at para. 40, (S.C.). ...

As Justice Rowles stated in *Langret Investments S.A. v. McDonnell* (1996), 1996 CanLII 1433 (BC CA), 21 B.C.L.R. (3d) 145 at para. 34 (C.A.):

Amendments are allowed unless prejudice can be demonstrated by the opposing party or the amendment will be useless. The rationale for allowing amendments is to enable the real issues to be determined. The practice followed in civil matters when amendments are sought fulfils the fundamental objective of the civil rules

which is to ensure the just, speedy and inexpensive determination of every proceeding on the merits.

[Emphasis in original.]

3.0 Analysis

[12] The original Notice of Civil Claim was filed on October 16, 2020. The Second Amended Notice of Civil Claim was filed on December 20, 2024.

[13] On July 24, 2022, Mr. Zhang Jr. succumbed to leukemia.

[14] The base of the plaintiff's claim (originally Mr. Zhang Jr., and now Ms. Tao, as Executor), is set forth in the Second Amended Notice of Civil Claim, as it was in the original Notice of Civil Claim, as follows:

The Scheme

9. Commencing in 2015, and between 2015 and 2018, Mr. Yin developed a scheme to convert the plaintiff's funds in whole or in part to his own use, and to closely-related parties and controlled entities (the "Scheme"). The full particulars of the Scheme are best known to Mr. Yin, but included the following elements:

- (a) while resident in China, the plaintiff was invited by Mr. Yin to invest with him in real estate projects in British Columbia;
- (b) to induce the plaintiff to make those investments, the following representations were made to the plaintiff by Mr. Yin:
 - (i) the invested funds would be used in profitable real estate investments in British Columbia;
 - (ii) the investments would be secured and protected; and
 - (iii) profits on the investments would be divided as agreed (the "Representations");
- (c) the Representations were false and were made by Mr. Yin knowing that they were false, without belief in their truth, or reckless as to whether they were true or false;
- (d) in reliance on the Representations, the plaintiff entrusted to Mr. Yin funds for the purpose of investment in real estate in Canada;
- (e) contrary to the Representations, and at times that are best known to them, Mr. Yin did not segregate and did maintain the plaintiff's investments for the purpose of protecting his investments or producing a return. Rather, he commingled the plaintiff's investment funds with other assets and funds in order

convert the plaintiff's funds, investment and profit, to his own use as he saw fit, the particulars of which are best known to him; and

- (f) further and contrary to the Representations, Mr. Yin and others under his control subsequently mortgaged the properties purchased with the plaintiff's funds and converted the proceeds of those mortgages to their own use as then saw fit, some particulars of which are set out below and the full particulars of which are best known to him.

10. In furtherance of the Scheme, Mr. Yin involved his wife, Yan Chun Liu, and his daughter, Yu Yin, in the Scheme through their active participation in the establishment of and control over British Columbia companies created for the purpose of owing real estate assets acquired with, *inter alia*, the funds entrusted to him by the plaintiff.

11. Mrs. Liu and Ms. Yin agreed to and did actively participate in the Scheme with knowledge of its purpose or reckless and wilfully blind to that fact. Alternatively, they were negligent in failing to make any or sufficient inquiries into the nature and purpose of the transactions in which they were involved, including as aforesaid.

[15] In sum, the plaintiff's claim (now Ms. Tao, as executor) is based on oral contracts that Mr. Zhang Jr. had with Mr. Yin.

[16] The defendants, in their Amended Response (filed March 31, 2025), as they did in their original Response, plead:

21. In response to the whole of the NOCC and to paragraphs 9 to 12 and 15 of Part 1 of the NOCC in particular:

- (a) At no time did the Defendants, or any of them, invite, induce, or discuss these real estate investment opportunities with the plaintiff. At all material times, the Defendants' discussions regarding investment opportunities were with Zhang Sr;
- (b) At no time did the Defendants, or any of them, make any representations, as alleged or at all, to the plaintiff;
- (c) At no time did the plaintiff entrust any funds to the Defendants, or any of them, as alleged or at all. Any and all funds transferred to the Defendants, or any of them, for the purposes of real estate investment were provided by Zhang Sr.;
- (d) At no time did the Defendants, or any of them, exercise their discretion or power over the Investment Funds (as defined in the NOCC) as alleged or at all. At all material times, all decisions regarding the use or transfer of Investment Funds were made based upon discussions with and agreement of Zhang Sr.;
- (e) At no time did the Defendants, or any of them, owe any duty, fiduciary or otherwise, to the plaintiff, as alleged or at all;

- (f) It is expressly denied that the plaintiff has suffered any loss or damage, as alleged or at all, and the plaintiff is put to the strict proof thereof;
- (g) In the alternative, if the plaintiff has suffered any loss or damage, which is expressly denied, such loss or damage was not caused by the Defendants, or any of them, and the plaintiff is put to the strict proof thereof;
- (h) In the further alternative, if the plaintiff has suffered any loss or damage, as alleged or at all, which is expressly denied, the plaintiff has failed to act reasonably to mitigate such loss or damage.

[My emphasis]

[17] In sum, the defendants say that the “Investment Funds” (approximately \$40 to \$45 million) were Mr. Zhang Sr.’s funds and that any related financial dealings were with Mr. Zhang Sr. and not Mr. Zhang Jr.

[18] On January 13, 2025, the defendants filed a Counterclaim against Ms. Tao, as Executor of Mr. Zhang Jr.’s estate. In the Counterclaim, the defendants plead:

- 8. In their Response to Civil Claim, the Defendants plead that they did not have any business agreements in place with the Plaintiff, but instead had entered agreements for real estate investments with the Plaintiff’s father, Zhang Sr.

[19] The defendants’ Counterclaim is consistent with paragraph 21 of their Amended Response (and Response) as set forth above.

[20] The issue is whether the late withdrawal of the admission and concomitant mid-trial amendment will prejudice the plaintiff.

[21] The defendants say that the Amended Response (and Response and Counterclaim) generally plead that any of the subject oral contracts to which Mr. Tao (as Executor) says were between Mr. Zhang Jr. and Mr. Yin, were between Mr. Zhang Sr. and Mr. Yin.

[22] In sum, the defendants say that Ms. Tao (as Executor) and Mr. Zhang Jr., while alive, understood that the defendants were saying that Mr. Zhang Jr. did not have a claim as against Mr. Yin or the other defendants with respect to any of the pleaded oral contracts.

[23] During argument, Mr. Pappas, counsel for the defendants, emphasized the introductory wording of paragraph 21 of the Amended Response: “In response to the whole of the NOCC...”, and, as such, it can be “inferred from the face” of the Amended Response (and original Response) there was “never an intent to admit that there as a contract” between Mr. Zhang Jr. and Mr. Yin.

[24] With respect to paragraph 37 of the Amended Notice of Civil Claim, Mr. Pappas further notes that paragraph 32 of the Amended Response (and the Response) states specifically:

32. In response to the whole of the NOCC and to paragraphs 36 and 37 in particular, following discussions, Zhang Sr. and Mr. Yin entered into an oral agreement to acquire the Surrey Coffee Shop on the following terms:
- (a) Zhang Sr. and Mr. Yin would acquire the Surrey Coffee Shop through 107 Ltd.; and,
 - (b) Zhang Sr. and Mr. Yin would each contribute 50% of the purchase price for the Surrey Coffee Shop, in exchange for each of them acquiring 50% of the shares in 107 Ltd.

[25] Mr. Pappas emphasized that paragraph 32 of the Amended Response expressly pleads that any oral agreement with respect to the Surrey Property was between Mr. Zhang Sr. (not Mr. Zhang Jr.) and Mr. Yin.

[26] With this further context of the pleadings, Mr. Pappas submits that the defendants did not clearly admit that Mr. Zhang Jr. (and not Mr. Zhang Sr.) was the party who dealt with and entered into oral contracts with Mr. Yin.

[27] Standing back in reviewing the pleadings and, in particular, paragraphs 21 and 32 of the Amended Response, I find that there was not a clear admission by the defendants that Mr. Zhang Jr. entered into oral contracts that are now the subject of Ms. Tao’s claim (as Executor of Mr. Zhang Jr.).

[28] During submissions, Mr. Pappas stated that his clients agree with the terms of the agreement as set forth in paragraph 37 of the Amended Response but, as noted, say that any oral contract was with Mr. Zhang Sr. and not Mr. Zhang Jr.

[29] I find that with the terms of the oral contract admitted, as now described, possible prejudice to the claim now continued by Ms. Tao, as Executor, is reduced.

[30] With the confusing Response (and the now Amended Response which was filed after Mr. Zhang Jr.'s death) with respect to the Surrey Property, and the denials by the defendants that Mr. Yin had any of the other pleaded oral contracts with Mr. Zhang Jr., I am satisfied that Mr. Zhang Jr. knew that he would probably have to prove that the pleaded oral contracts were with him and not his father.

[31] I am satisfied that one of the "real issues to be determined" is whether Mr. Zhang Jr. was a party to the pleaded oral contracts. It is not unusual that where there is an oral contract, disputes as to the parties to the oral contract may arise.

[32] In sum, the fact that the defendants wished to plead that Mr. Zhang Jr. was not a party to the pleaded oral contracts would not have been wholly unanticipated.

4.0 Conclusion

[33] I will allow the Amended Response to be amended so that only the terms of the Surrey Project Agreement as currently set forth at paragraph 37 of the Amended Response are admitted (but without Mr. Zhang Jr. admitted as a party to the Surrey Project Agreement).

[34] During submissions, Mr. Pappas agreed that the plaintiff could recall any witness previously called by the plaintiff to testify to any aspect related to, or flowing from, the defendants' application to amend. The plaintiff has the Court's leave to do so. In this manner, I am satisfied possible prejudice to a fair trial resulting from the confusing Amended Response (and Response) is addressed.

5.0 Costs

[35] Ms. Tao, as Executor, will, in any event of the cause, have costs awarded to her for a one-day hearing and steps and time for any related aspects.

[36] When costs are addressed after Reasons for Judgment for the trial are released, I will entertain the scale of costs.

“Funt J.”