

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wu v. TopHay Leo Farms Ltd.*,
2025 BCSC 581

Date: 20250331
Docket: S1911050
Registry: Vancouver

Between:

Judd Ying Yu Wu, Jessica Ju Ying Wu and Alfalfa Holdings Ltd.
Plaintiffs

And

**TopHay Leo Farms Ltd., TopHay Agri-Industries Inc., Topagri Holdings Ltd.,
Dingli Investment Co., Ltd., Prospring Holdings (Canada) Ltd.,
Fishlee Investments Ltd., Donghwa Enterprises Limited, Hong Liang
Investment Ltd., Landy North American Investment Company Ltd.,
Jade Paramount Holdings Ltd. Yi Ding, Cheng Ming He, Fei Xu, Dong Chen,
Yi Hong Guan, San Yin Yang, Roger Xue Jiang Ding and Yu Feng Lu**
Defendants

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Plaintiffs:	S. Batkin
Counsel for the Defendants:	R.W. Cooper, K.C. S.J. Foweraker
Place and Date of Hearing:	Vancouver, B.C. March 6, 2025
Place and Date of Judgment:	Vancouver, B.C. March 31, 2025

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Introduction

[1] The plaintiffs appeal from an order of an associate judge denying their request for production of documents. The plaintiffs also appeal from the associate judge’s dismissal of their application to find the defendants in breach of their disclosure obligations.

[2] These applications, while filed in the present action, must be considered in the context of two separate actions between the parties. Those two actions concern the operation of a hay business in B.C., and later in Idaho, and export of hay to Asia. The plaintiffs and defendants worked together in this business for a number of years. The plaintiffs allege that in 2019 they were forcibly removed from the business by the defendants.

[3] The defendants started an action against the plaintiffs for alleged breaches of fiduciary, statutory, and common law duties as a company director and officer. The plaintiffs started this second action against the defendants, seeking remedies for the tort of conspiracy, shareholder oppression, and wrongful dismissal. I understand both actions are to be tried together.

Factual Background

[4] The defendants, Tophay Leo Farms Ltd. (“Tophay Leo”) and its subsidiary Tophay Agri-Industries Inc. (“Tophay Agri”) are in the business of farming, harvesting, compressing and processing hay for export. I will refer to all the defendants collectively as “Tophay”.

[5] In 2012, Judd Ying Yu Wu and Yi Ding incorporated Tophay Agri. Each contributed a shareholder loan of USD \$1.55 million. Tophay Agri purchased a 76-acre farm in Vanderhoof, B.C. and built facilities for hay production and export. Judd Wu and his wife Jessica Ju Ying Wu moved to Vanderhoof where Judd Wu managed the day to day business, while Jessica Wu provided bookkeeping and office administration services.

[6] Yi Ding's role at Tophay Agri was marketing and sales of hay in China. A company was established in China, Xiamen Tophay Import and Export Company ("Tophay China"), for that purpose. Yi Ding managed Tophay China. Logistics for the shipping and transportation of hay were handled by Topfor companies in which Judd Wu held a third interest ("Topfor").

[7] Between 2013 and 2015, other investors became shareholders. Approximately 8000 acres of farmland were purchased in the Vanderhoof area. The corporate structure was reorganized. Tophay Agri became a wholly owned subsidiary of Tophay Leo. Judd Wu put both his shares in and shareholder loans to Tophay Leo in the name of his company Alfalfa Holdings Ltd. ("Alfalfa"). In 2016, a shareholders' agreement provided that Judd Wu and Yi Ding would be two of the three directors of Tophay Leo unless they became permanently disabled.

[8] In 2017, Tophay Agri entered into a joint venture agreement with an Idaho company, Driscoll Brands, LLC ("Driscoll") for the purposes of growing and acquiring hay in the US for export to China and other countries. The joint venture operated through a company called Driscoll Tophay LLC (the "Driscoll Tophay"). Hay grown by Driscoll and purchased from other growers in the US was to be delivered to Driscoll Tophay and then sold by Tophay Agri to Tophay China, which was responsible for sales to purchasers.

[9] Tophay Agri hired Marshall Schneider as its representative in Driscoll Tophay. Mr. Schneider was provided \$63,000 to assist him with moving and purchasing a home in Idaho. It is alleged that Judd Wu did not properly document this transaction.

[10] There was an attempt to remove the Wus and Topfor from their roles in the hay export business in March 2018. However, that attempt was not successful, as Driscoll expressed concerns about removal of Topfor as logistics service provider. At a shareholders meeting in May 2018, Yi Ding and other shareholders of Tophay Leo apologized to the Wus.

[11] The plaintiffs allege that in September 2018, Yi Ding orchestrated a takeover and Judd Wu was removed as a director of Tophay Agri and the Wus' employment was terminated. Topfor was terminated as the logistics services provider and Mr. Schneider was fired on September 12, 2018.

[12] The plaintiffs allege the defendants took steps in February 2019 to remove the Wus from Tophay Leo. The plaintiffs allege Yi Ding convened a meeting of the directors of Tophay Leo on February 8, 2019 despite Judd Wu indicating he was not available. At that meeting, Yi Ding and the defendant Dong Chen resolved to hold a special meeting of Tophay Leo and a related holding company ("Holdings") to consider removing Judd Wu as a director and to amend the shareholders rights to allow the companies to redeem shares of any shareholder at any price as they might decide. These resolutions were passed at the special shareholders meeting held on February 28, 2019.

[13] In May 2019, the defendants started an action against the plaintiffs, alleging that Judd Wu had caused Topfor to overcharge for logistics services, obtained kickbacks, failed to maintain proper accounting records, caused unauthorized payments to be made and engaged in related party transactions, caused the improper repayment of \$350,000 to himself, and had improperly used Tophay's Vanderhoof offices for the plaintiffs' own business.

[14] On July 19, 2019, Tophay Leo resolved to redeem Alfalfa's shares for \$0.42, effective August 19, 2019. Tophay Leo did not repay Alfalfa's shareholder loan of approximately USD \$1.5 million. Alfalfa rejected the payments and demanded an accounting or valuation of its shares.

[15] The plaintiffs started this action in October 2019, alleging wrongful means conspiracy, shareholder oppression and wrongful dismissal.

[16] On June 2, 2020, Tophay served a list of documents, which listed an MNP valuation report of Tophay Leo as at February 28, 2019 (the "2019 Valuation Report"). The value of Tophay Leo was nil, according to the 2019 Valuation Report. Tophay

refused demands by the plaintiffs to produce the information or documents provided to MNP for the preparation of the 2019 Valuation Report (the “2019 Valuation Documents”).

[17] On October 15, 2021, the plaintiffs filed an application seeking the production of the 2019 Valuation Documents and financial records of Tophay from February 29, 2019 to the date of the application.

[18] On October 28, 2021, Tophay produced most of the 2019 Valuation Documents.

The Elwood Order

[19] The parties entered into a consent order before Justice Elwood on December 10, 2021, for the inspection by the plaintiffs’ expert of the buildings and processing plants on the farmlands to provide an appraisal report (the “Elwood Order”). The defendants had resisted the inspection as they say the buildings contain proprietary equipment and processes which would harm their business if disclosed to the plaintiffs. To protect the defendants’ confidentiality, the consent order provided access to the plaintiffs’ experts but not to the plaintiffs personally. Information about the equipment inside the plants was not to be provided to the plaintiffs without written consent of counsel for the defendants or a court order.

The Plaintiffs’ First Document Production Application

[20] On April 11, 2022, the first document application was heard by Justice Mayer. Tophay argued financial records after February 28, 2019, were not relevant and contained confidential business information. Tophay was directed to file a bifurcation application if it sought to be excused from producing financial records post-February 28, 2019.

[21] The defendants filed a bifurcation application on May 10, 2022. They sought severance of the shares valuation issue, and argued that any production of financial records post February 28, 2019 should be deferred until after the oppression claim had been determined on the merits.

[22] In April and May 2023, Justice Mayer heard the balance of the first document application and the bifurcation application. Reasons were released on June 9, 2023, indexed as 2023 BCSC 992. Justice Mayer granted the Wus' and Topfor's application for the records to be listed. He also found the financial statements of Tophay Agri, Tophay Leo, and Tophay Holdings Ltd. for the years ended December 31, 2018 through 2021, including any partial-year financial statements for 2019 and year to date statements for 2022, should be listed. The Court's reasoning for doing so was that the documents "may be relevant to assessing the value of the Wu Parties' interest in Tophay at various times, including up to the time of trial": at para. 57.

[23] The defendants sought bifurcation. They argued the claim that Tophay Leo and Holdings should purchase all of Alfalfa's shares for fair market value and that directions be given for the valuation of the shares should be deferred until after the court has ruled on the oppression claim, to reduce the prejudice to them flowing from production of financial records for the period after February 28, 2019. The defendants argued these records contained "current sales revenue, cost of goods sold, and profits or other sensitive and confidential business information or trade secrets" and that the plaintiffs were business competitors: at para. 59.

[24] Justice Mayer dismissed the defendants' bifurcation application. He held that the issue of the fair market value of Alfalfa's shares was inextricably interwoven with other issues in the trial. He found at para. 64 that "the threshold question of whether there was shareholder oppression in respect of the redemption of the Alfalfa shares in Tophay Leo will turn on the fairness of the redemption price paid for them at \$0.42". He found the issue of liability for oppression could not be separated from the fairness of the \$0.42 redemption price. Evidence with respect to the value of Tophay after February 2019 may be relevant for the purpose of assessing the plaintiffs' damages from oppression, as the trial judge may determine that a later valuation date is appropriate: at para. 67. In the conspiracy claim, the trial judge may find the defendants decided to redeem the plaintiffs' shares to prevent them from benefitting from an anticipated growth in the value of Tophay, and may determine a later date for valuation is appropriate: at para. 71. With respect to the severance application,

Mayer J. held there is “simply no way to disconnect the factual and legal arguments concerning the Wu Parties’ and Topfor’s claims from the valuation of the Wu Parties’ shares in Tophay”: at para. 72.

[25] The defendants also applied to defer production of financial records post February 2019, arguing that if no oppression were found, no valuation of the plaintiffs’ shares would be required: at para. 73. Justice Mayer dismissed this application. He found the discovery of these documents could not be postponed as they may have been relevant to the determination of whether there was oppression or a conspiracy, as the question of the value of the shares is inextricably woven with both claims: at para. 76. Justice Mayer found that if there were any risk that disclosure could be detrimental to Tophay’s business interest, the implied undertaking rule is generally considered to be sufficient: at para. 78.

Production of Records After June 2023

[26] The defendants served an amended list of documents on September 13, 2023. The list did not include a valuation report prepared by MNP of Tophay Leo as of March 31, 2021 (the “2021 Valuation Report”). The plaintiffs had received a Chinese translation of the 2021 Valuation Report from one of the defendants. The 2021 Valuation Report listed the value of Tophay Leo as approximately \$68 million, and the value of Tophay Agri as approximately \$54 million.

[27] On October 27, 2023, the plaintiffs sent the defendants a copy of the Chinese translation of the 2021 Valuation Report. The plaintiffs demanded an explanation as to why it was not previously disclosed. They also demanded an English copy of the report, all information and documents provided to MNP for this valuation (the “2021 Valuation Documents”), any other valuations, any appraisals of real estate assets, and all documents where the defendants used valuations or appraisals for financing or business transactions. The plaintiffs also sought information about the settlement of the action against Mr. Schneider for the alleged loan from 2017 (the “Schneider Settlement Documents”).

[28] On February 29, 2024, the plaintiffs filed a second production application, seeking the production of the 2021 Valuation Documents, production of the Schneider Settlement Documents, and an order pursuant to Rule 22-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR] for special costs, and that the defendants be given a clear warning that another failure to produce would result in the striking of their response.

[29] On March 28, 2024, the plaintiffs received some documents, including an appraisal report of Tophay's property dated March 29, 2023 and the agreement to settle the Schneider action. On April 2, 2024, the defendants filed an affidavit of Yi Ding in response to the production application. In the affidavit, Yi Ding identified and set out his concerns over the production of four emails with attachments sent in May and June 2021 to MNP for the 2021 Valuation Report. Yi Ding deposed that these emails and attachments contain confidential information regarding the operations of Tophay and Driscoll Tophay. The emails discuss and attach five-year projections for Tophay Agri and Driscoll Tophay, and include business plans and details of cost of goods sold and operating expenses. He deposed these documents contain highly confidential proprietary intellectual property and production improvements developed by Tophay to improve and optimize the hay production process, developed after the plaintiffs were removed from their positions. He deposed he believes that the plaintiffs are in competition with Tophay, and disclosure of this information to the plaintiffs would harm Tophay. He deposed the 2021 Valuation Report was only used internally and was not used for business transactions or loan applications. Yi Ding deposed he believes the plaintiffs have been withholding documents about the nature and extent of their Topfor companies.

[30] Jessica Wu filed an affidavit on April 18, 2024, where she set out the following: (i) other documents show the 2021 Valuation Report was used to solicit investors in China; and (ii) a Chinese presentation shown to potential investors also included information from the 2021 Valuation Report. She deposed the plaintiffs are not competitors of Tophay.

Decision of the Associate Judge

[31] The associate judge in an unreported oral decision on May 7, 2024 dismissed the plaintiffs' application for production of the four emails and attachments provided by the defendants to MNP for the 2021 Valuation Report. The associate judge found the plaintiffs had not met the onus to show these documents related to a matter in question, and that the defendants had shown the documents were not relevant: at para. 17. Further, the associate judge held that even if the documents were shown to be material, they ought not be produced as they are confidential and the implied undertaking rule may not be adequate to protect the defendants' intellectual property: at paras. 18–20.

[32] With respect to the production of documents where the defendants used valuations or appraisals for loan applications or business transactions, the associate judge dismissed this application:

[28] At its core, the case concerns the valuation of the business at the time the plaintiffs allege they were forcibly removed from Tophay Leo and Tophay Agri and when their shares were forcibly purchased. The defendants argue that documents relating to loan applications that did not result in loans, or proposed business arrangements that did not in actual transactions, are not relevant to the valuation and are an unwarranted intrusion into the business affairs of the companies. That is the case.

[29] The plaintiffs have not established that documents the defendants may have used for loan applications or prospective business transactions may be relevant to a matter in question in the action. The application therefore must fail.

[33] The associate judge also dismissed the plaintiffs' application for a remedy pursuant to R. 22-7, finding that the plaintiffs "have not established that the defendants have refused or neglected to meet their obligation to disclose documents": at para. 31.

Issues on Appeal

[34] I would frame the issues on appeal as the following:

1. Did the associate judge err in declining to order disclosure of the four emails and attachments provided by the defendants to MNP for the preparation of the 2021 Valuation Report?

2. Did the associate judge err in declining to order disclosure of documents where the defendants used valuations or appraisals for loan applications or business transactions?
3. Did the associate judge err in dismissing the plaintiffs' request for an order pursuant to R. 22-7 due to the defendants' non-disclosure?

Standard of Review

[35] The standard of review on an appeal of an interlocutory order of an associate judge is set out in *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holding Ltd.*, 2011 BCSC 999, leave to appeal ref'd 2011 BCCA 390:

[7] ... The standard of review to be applied on an appeal to a judge of this Court from a master's decision has been settled since early 1990:

- 1) Review of a purely interlocutory decision of a master is a true appeal and the master's decision is not to be interfered with unless it is clearly wrong.
- 2) A question of law, a final order or a ruling that raises questions vital to the final issue in the case are reviewed by way of a rehearing on the merits based on the record before the master; even where an exercise of discretion is involved, the judge appealed to may quite properly substitute his or her own view for that of the master.

(Abermin Corp. v. Granges Exploration Ltd. (1990), 1990 CanLII 1352 (BC SC), 45 B.C.L.R. (2d) 188 (S.C.) [Abermin]; Northland Properties Ltd. v. Equitable Trust Co. (1992), 1992 CanLII 2360 (BC SC), 71 B.C.L.R. (2d) 124 (S.C.) [Northland].)

[36] Justice Gropper in *Genesis Fertility Centre Inc. v. Yuzpe*, 2017 BCSC 1037 at para. 17 described the instances that can constitute a "clearly wrong" decision:

- [17] A "clearly wrong" decision is made where:
- a. the master abuses her discretion by acting arbitrarily or capriciously;
 - b. the master exercises her discretion under a mistake of law;
 - c. the master erred in law or principle;
 - d. the master misdirected herself;
 - e. the master disregards a principle;
 - f. the master misapprehends facts or takes into account irrelevant factors; or
 - g. the order of the master would result in an injustice.

[37] An order for document disclosure is interlocutory and not a final order, as it does not dispose of an issue at trial: *Stephen v. McGillivray*, 2007 BCSC 1086 at para. 14. In my view, the orders appealed from are interlocutory. The orders concern production of documents and remedies for non-compliance with disclosure obligations. The orders do not dispose of any issue at trial. As such, I find the standard of review for this appeal is the “clearly wrong” standard, and this appeal is not a rehearing on the merits.

The Production of the Four Emails and Attachments

[38] Was the associate judge clearly wrong in not ordering disclosure of the four emails and attachments provided by the defendants to MNP for the preparation of the 2021 Valuation Report?

[39] The plaintiffs argue the associate judge did not properly apply the ruling of Mayer J. Justice Mayer had found financial information and valuation of Tophay up to the date of trial to be relevant to the claims of oppression and conspiracy. The financial information and documents as to value after February 2019 are relevant, as the issue of the valuation of the shares is inextricably interwoven with the oppression and conspiracy claims. The plaintiffs argue Mayer J. had found any confidentiality concerns can be addressed through the implied undertaking rule, and the associate judge did not explain why he departed from that reasoning.

[40] The defendants argue the associate judge was not clearly wrong. As I understand it, the defendants argue the four emails and attachments were not the type of documents that were the subject of Mayer J.’s ruling. These emails and attachments ought not be disclosed as they contain similar proprietary information ordered protected by Elwood J. in December 2021. These emails and attachments also contain information about third parties, such as Driscoll Brands, LLC. and Driscoll Tophay, who are not parties to this action. The defendants argue disclosure of this information to the plaintiffs, a competitor or potential competitor, would be harmful. The defendants say the associate judge’s finding that these four emails and attachments are not relevant is not clearly wrong.

[41] In my view, when read in light of Mayer J.'s ruling, I find the decision of the associate judge not to order disclosure of the four emails and attachments clearly wrong. With respect, the associate judge did not properly apply the reasoning in Mayer J.'s decision to the documents in dispute.

[42] Justice Mayer found that financial information and information for valuation of the shares up to the date of trial to be relevant. This clearly covers the emails and attachments, as they were provided to MNP by the defendants for the purpose of preparation of the 2021 Valuation Report. The defendants obviously believed the documents were relevant to valuation.

[43] The associate judge found the plaintiffs had not proven these documents are relevant, but did not say why. The associate judge did not provide reasons as to why these documents are to be distinguished from the documents that Mayer J. found ought to be disclosed. I find there are no distinctions and Mayer J.'s ruling covers these documents. They ought to be disclosed.

[44] The associate judge found even if the documents are relevant, they ought not to be produced due to confidentiality concerns and the harm that disclosure may cause the defendants. The associate judge found the plaintiffs may be linked to a business competitor and that the implied undertaking rule may not be sufficient to protect the defendants' intellectual property. However, the associate judge did not provide his reasons for why he believed the implied undertaking rule to be insufficient. Justice Mayer had found it generally ought to be sufficient. The associate judge did not reference this finding and did not engage in any analysis of why the implied undertaking rule would be insufficient in these circumstances.

[45] With respect, I find the associate judge was clearly wrong in not ordering disclosure due to confidentiality concerns, and finding that the implied undertaking rule would not be sufficient protection. The associate judge did not reference any particular reason for why the implied undertaking rule, or conditions as set out in the Elwood Order, would not be sufficient. The Elwood Order recognized that confidential proprietary information of the defendants can be disclosed with conditions. In my view,

it was clearly wrong of the associate judge not to consider if the emails and attachments can be disclosed subject to conditions.

[46] I would set aside the associate judge's dismissal of the production of the four emails and attachments and order production to plaintiffs' counsel and plaintiffs' expert only, unless the parties agree or by further court order.

The Production of the Loan Applications and Business Transactions

[47] Was the associate judge clearly wrong in not ordering disclosure of documents where the defendants used valuations or appraisals for loan applications or business transactions?

[48] The associate judge found the documents indicated above were not relevant. He found that neither loan applications that did not result in loans nor proposed business arrangements that did not result in actual transactions to be relevant to the valuation of Tophay. He found that ordering disclosure of them constituted an unwarranted intrusion into the defendants' business affairs.

[49] For the same reasons as stated above, I find documents of loan applications or business transactions where the defendants relied on valuations or appraisals to be relevant. In my view, the associate judge was clearly wrong in finding these documents to be irrelevant, as he did not properly apply the reasoning in Mayer J.'s ruling. Justice Mayer made clear that all financial information and valuation information up to the date of trial was relevant to the plaintiffs' claims of oppression and conspiracy. The defendants' use of valuations and appraisals to solicit funds from investors is relevant to valuation of the companies. These documents may show how the defendants' viewed the valuations, if they believed they were accurate, and the defendants' view of how the value may change in the future. I find the associate judge's reliance on the fact that the loans may not have been obtained or business transactions not concluded was in error, as this fails to consider how these documents may show the defendants' view of the valuations or appraisals.

[50] I would set aside the associate judge's order dismissing the production of these documents and order them disclosed.

The Rule 22-7 Application

[51] Was the associate judge clearly wrong in dismissing the plaintiffs' request for an order pursuant to R. 22-7 due to the defendants' non-disclosure?

[52] The plaintiffs had sought special costs and a warning that if the defendants failed another time to produce documents, the defendants would have their response struck.

[53] Rule 22-7 provides the court the discretion to grant certain relief for non-compliance with the rules. The plaintiffs argue there has been a repeated pattern of non-disclosure by the defendants which have gone unexplained, such as the failure to produce the 2021 Valuation Report (until after the plaintiffs sent a Chinese version and demanded the English version). The plaintiffs argue there was delayed disclosure of other documents, such as the Schneider settlement documents and the 2023 appraisal. The plaintiffs argue Yi Ding has provided false evidence in his affidavit about only using the 2021 Valuation Report internally and not for business transactions. The plaintiffs argue the associate judge did not reference any of these instances and instead found the defendants understand their disclosure obligations and have taken appropriate steps to comply.

[54] I do not find the associate judge's dismissal of the R. 22-7 application to be clearly wrong. The associate judge recognized the defendants' disclosure efforts. The associate judge assessed the defendants' conduct in complying with their disclosure obligations. The defendants had complied with many of the plaintiffs' disclosure requests prior to the hearing of the production application before the associate judge. While the associate judge did not reference the examples the plaintiffs cited to show non-disclosure and delayed disclosure, his assessment of the defendants' overall conduct was not clearly wrong. An order pursuant to R. 22-7 is discretionary. The defendants have also accused the plaintiffs of non-disclosure, as outlined in Yi Ding's affidavit which was before the associate judge. The associate judge's assessment of

the defendants' conduct was one that was open to him on the evidence. In the circumstances, I do not find the associate judge's decision to dismiss the plaintiff's R. 22-7 application to be clearly wrong.

Conclusion

[55] The Court makes the following orders:

[56] The plaintiffs' appeals of paras. 1 and 4 of the associate judge's order of May 7, 2024 are allowed. The defendants shall disclose within 30 days of the date of this order the following:

- (a) the four emails and attachments, as listed in the plaintiffs' argument in Part 5, provided to MNP for the preparation of the 2021 Valuation Report. The production of these documents will be to plaintiffs' counsel and plaintiffs' expert only, unless the parties agree or by further court order; and
- (b) all documents wherein the defendants and/or their shareholders used valuations or appraisals, such as loan applications or business transactions for which valuations or appraisals were relied on.

[57] The plaintiffs' appeal of the dismissal of their application for an order pursuant to Rules 22-7(2), (5), and (6) of the *SCCR* is dismissed.

[58] In my view, the plaintiffs have been substantially successful. The plaintiffs will have costs of this application in the cause.

“Chan J.”