IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wong v. Chan,*
2025 BCSC 1979

Date: 20251009
Docket: S194980
Registry: Vancouver

Between:

Kam Oi Wong

Plaintiff

And

Jack Chan, Jason Chan, Tammy Khaner and Ocean Village Farm Market Ltd.

Defendants

Before: Associate Judge Robinson

Reasons for Judgment

Counsel for the Plaintiff:	J. Abrioux
Counsel for the Defendants:	J.B. Rotstein S.M. Hirji
Place and Date of Hearing:	Vancouver, B.C. September 18, 2025
Place and Date of Judgment:	Vancouver, B.C. October 9, 2025

Introduction

[1] These reasons are given in respect of an application by the plaintiff to withdraw certain admissions which are deemed to have been made, pursuant to Rule 7-7(2).

[2] The defendants oppose the application on various grounds. Most notably, the defendants argue that the plaintiff has failed to adduce sufficient evidence to justify the order sought.

[3] I am of the view that there is genuine merit to the defendants' position. As discussed more fully herein, the plaintiff's application materials are deficient in many respects. Those deficiencies are fatal to this application and have led me to conclude that the application must be dismissed. For the reasons outlined below, I decline to permit the withdrawal of the deemed admissions.

Background

[4] Distilled to its essence, the within claim concerns a payment made by the plaintiff to the defendants. The plaintiff alleges that the payment constituted an investment in a grocery store, located in Surrey, BC. The defendants do not dispute the payment but contend that it was made as a loan and further contend that the loan was repaid, in full. The resolution of that issue will be determinative of whether and to what extent that plaintiff has (or had) an interest in the defendant, Ocean Village Farm Market Ltd.

[5] Despite being the claim being somewhat straightforward, the path taken in this litigation has been convoluted and uneven. The history is set out in the Court of Appeal's decision referenced at *Chan v. Wong*, 2023 BCCA 180. In the interests of brevity, I will not recite that history in detail. It will suffice to note that the litigation has involved the initiation of multiple, duplicative proceedings requiring significant judicial intervention. The Court of Appeal attributed many of the issues in this litigation to mistakes and unexplained steps taken by the plaintiff's solicitors.

[6] This is notable because, the present application appears to similarly be a result of either a mistake or an unexplained omission on the part of the plaintiff's solicitors.

[7] In saying that, I digress to note and to emphasize that counsel appearing on behalf of the plaintiff in the present application was not previously involved in the litigation.

[8] The present application arises from a Notice to Admit, dated March 27, 2025 and served by the defendants on the plaintiff's solicitors on March 28, 2025. Therein, the plaintiff was requested to admit several facts, including that:

a) The payment made to defendants constituted a loan; and

b) The loan was repaid in full by the defendants.

[9] It is not disputed that the plaintiff was properly served with the Notice to Admit. Moreover, it is conceded that her solicitors failed to respond or to deny the requested admissions within 14 days (which I regard to have arisen on or about April 14, 2025). Accordingly, by operation of Rule 7-7(2), the plaintiff was deemed to have admitted the foregoing facts.

[10] In furtherance of those deemed admissions, the defendants arranged to file an Amended Response to Civil Claim on April 14, 2025. The amendments are significant and include an express denial of the plaintiff's status as a shareholder in Ocean Village Farm Market Ltd ("Ocean Village"). The Amended Response to Civil Claim asserts that monies paid by the plaintiff were in the nature of a loan and the defendants deny that the plaintiff ever acquired any equity in Ocean Village. These allegations are consistent with the deemed admissions.

[11] The Amended Notice of Civil Claim was served on the plaintiff's solicitors by email on April 15, 2025. In the accompanying email, counsel for the defendants wrote:

> … Since Ms. Wong is not a shareholder in Ocean Village Market Ltd. (she has admitted so in her deemed admissions from the notice to admit), it does not seem feasible that she could seek a payment from anyone.
>
> … The defendants will proceed to a summary trial …
>
> [sic]

[12] The foregoing email elicited a response from plaintiff's counsel the following day on April 16, 2025, as follows:

> In my view, Your Notice to Admit is invalid as it is contrary to the evidence that you obtained from my client at discovery and it is contrary to your own client, Jack Chan's evidence.
>
> Should you wish to attempt to enforce this Document served while I was preparing to go on assize in Powell River and subsequently attended the following week, I invite you to do so and I will oppose.
>
> We deny all allegations in the Notice to Admit.

[13] Thereafter, relying in part on the plaintiff's deemed admissions, the defendant served a Notice of Application, filed May 8, 2025 wherein they sought an order dismissing the claim by way of summary trial in accordance with Rule 9-7.

[14] The present application was then brought by the plaintiff on May 22, 2025. The hearing of this application was initially scheduled for June 18, 2025 and the parties appeared before me. However, at the behest of the plaintiff, the hearing was adjourned to June 24, 2025 at which time it was proposed that this application would be addressed concurrent with the defendant's summary trial application. In granting the plaintiff's adjournment request, I expressly ordered that no additional materials were to be added to the application record. I made that order at the request of the defendants to avert the potential prejudice in being denied an opportunity to respond to additional affidavits and arguments not raised in the application as then constituted.

[15] In any event, the application did not proceed on June 24, 2025. On that date, Justice Veenstra adjourned the defendant's summary trial application and ordered that the plaintiffs' application proceed first.

[16] My order of June 18, 2025 was not appealed or revisited prior to the hearing of this application. Accordingly, I denied leave to the plaintiff to proffer an additional affidavit at the hearing. I did not receive or review the new affidavit. Had it been admitted, it may have addressed some of the significant gaps in the evidentiary record. I am unable to draw any conclusions in this regard because, as stated, I did not review the affidavit, and its contents remain unknown to me. Accordingly, the hearing proceeded on the basis of the application record as it has existed on June 18, 2025.

Discussion

[17] As a starting point, this application is subject to determination under Rule 7-7 which states:

> (2) Unless the court otherwise orders, the truth of a fact or the authenticity of a document specified in a notice to admit is deemed to be admitted, for the purposes of the action only, unless, within 14 days after service of the notice to admit, the party receiving the notice to admit serves on the party serving the notice to admit a written statement that
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> > (a) specifically denies the truth of the fact or the authenticity of the document,
> >
> > (b) sets out in detail the reasons why the party cannot make the admission, or
> >
> > (c) states that the refusal to admit the truth of the fact or the authenticity of the document is made on the grounds of privilege or irrelevancy or that the request is otherwise improper, and sets out in detail the reasons for the refusal.
> >
> > […]
>
> (5)(b) A party is not entitled to withdraw … a deemed admission under subrule (2) … except by consent or with leave of the court.

[18] The foregoing undoubtedly confers discretion to the court to grant leave to withdraw deemed admissions. In considering how or when that discretion ought to be exercised, the case law offers some guidance.

[19] A leading case in this regard is the decision of the Court of Appeal in *Munster & Sons Development Ltd. V. Shaw*, 2005 BCCA 564 (“*Munster*”). There, the chambers judge ordered that certain admissions (some of which were deemed

admissions) be withdrawn. In considering whether that order was an appropriate exercise of discretion, the Court of Appeal held that admissions should not be set aside lightly, and stated that the principles that govern the withdrawal admissions are those outlined in *Hamilton v. Ahmed,* (1999), 28 C.P.C. (4th) 139 (B.C.S.C.) at para.11. As a starting point, the test to be applied is whether there is a triable issue which, in the interests of justice, should be determined on the merits and not disposed of by an admission of fact.

[20] In applying that test, all the circumstances should be taken into account including the following:

a) Was the admission made inadvertently, hastily, or without knowledge of the facts;

b) Were the facts admitted not within the knowledge of the party making the admission;

c) Are the facts admitted untrue;

d) Are the facts admitted of mixed fact and law;

e) Will the withdrawal of the admission prejudice a party; and

f) Has there been delay in applying to withdraw the admission.

[21] In allowing the appeal and upholding the admissions, the Court in *Munster* held:

> [12] The judge did not have before her a sufficient evidentiary basis on which to exercise her discretion to set the admissions aside. If it can be said that they were made through counsel's inadvertence, there was no evidence of that adduced and no evidence to explain why the Shaws and 617 did not act without delay to have them set aside. Further, there appears to have been before the judge no evidence that would address any of the other considerations to be taken into account and, in particular, no evidence to the effect that the facts deemed to have been admitted, and those actually admitted, are not true.

[22] Similar concerns arise on the present application. There is no evidence as to why the plaintiff's solicitors failed to respond to the Notice to Admit within 14 days as clearly and expressly mandated by the Rules. I was invited to infer that counsel for the plaintiff was constrained by other matters and prevented from addressing the Notice to Admit. This inference, it was argued, arises from the email of April 16, 2025 cited above. Therein, counsel indicates that the Notice to Admit was served while he was "preparing to go on assize in Powell River". That assertion, it is not augmented or supported by any evidence as to what the preparation entailed or why that preparation prevented counsel from devoting what would likely have been less than 20 minutes over a 14-day period to issue a response. It is also notable that the email is appended as an Exhibit to an assistant in counsel's office. I was not presented with an affidavit sworn by plaintiff's counsel.

[23] In addition, apart from stating "We deny all allegations in the Notice to Admit" (in the same email of April 16, 2025) there is no evidence proffered by the plaintiff or her solicitors that the facts admitted are untrue or outside of the knowledge of the plaintiff. Moreover, at the hearing of this application, it was conceded that not all of the facts for which admission were sought are denied. It is only those two facts set out in the foregoing which the plaintiff now seeks to withdraw. The plaintiff indicated that she was content to admit most of the facts set out in the Notice to Admit.

[24] It is the significant lack of evidence which renders the present application is markedly different and readily distinguishable from the cases in which leave to withdraw admissions was granted and on which the applicant relies.

[25] In *Arsenovski v. Bodin*, 2012 BCSC 35, the Court permitted the withdrawal of deemed admissions on the basis that they were made "inadvertently and neither wilfully nor negligently" (para. 23). The evidence in that case included an affidavit sworn by counsel for the party who had made the deemed admissions. Therein, he deposed that his assistant who usually dealt with correspondence had been on vacation when the Notice to Admit had been served and had thereafter been overlooked due to internal administrative issues. The evidence established that

counsel was unaware of the Notice to Admit until after the 14 days limited for responding had lapsed. Upon becoming aware, counsel proceeded with haste to draft and serve a Reply, a copy of which was also in evidence before the court. The court commented:

> [11] Mr. Thomas accepted responsibility for failing to reply to the notice to admit within the time limits, but prepared a reply which he forwarded to plaintiff's counsel on September 23, 2011 and attached as an exhibit to his September 23, 2011 affidavit.
>
> [12] Mr. Thomas prepared a second affidavit sworn October 17, 2011, which provided further details about what occurred after his firm received the fax containing the notice to admit and why it was not brought to his attention until September 20, 2011. Employees of his firm also provided affidavits casting further light on the error which occurred with respect to the handling of the notice to admit. I should add that to his credit, at no point did Mr. Thomas resile from his initial position that he was responsible for not having filed the reply within the required time limits.

[26] The Court in *Goundar v. Nguyen,* 2012 BCSC 508 (affirmed, 2013 BCCA 251) allowed the withdrawal of an admission made by counsel for the defendant in a personal injury action. Specifically, counsel had admitted liability on behalf of the defendant. Although the admission was not a deemed admission arising from the failure of a party to respond to a Notice to Admit, the Court held that the same principles apply to an express admissions. Ultimately, the Court was satisfied that the admission was a result of inadvertence and error on the part of counsel and noted that:

> [43] The lawyer has set out clearly how she came to make this admission in the face of her own assessment of the case and contrary instructions. She admits she did not remember her instructions had changed and she did not conduct a review of the file before following a prompt from her paralegal to follow up on ICBC's original letter. The initial suggestion by ICBC to canvass plaintiff's counsel regarding the proposal was made without the benefit of Mr. Stewart's evidence, and the relevant instructions not to admit liability were in place at the time the lawyer amended the Response to admit liability. I am satisfied that the defendant has demonstrated that the admission was made inadvertently.

[27] *Piso v. Thompson*, 2010 BCSC 1746 involved deemed admissions arising from the failure to respond to a Notice to Admit. In that case, Master Caldwell (as he

then was) allowed the admissions to be withdrawn. The basis for his decision is clear:

> [8] Plaintiff's counsel, upon receiving the Notice to Admit, put it in the file and forgot about it until he was served with notice of a summary trial application by the defendants seeking judgment on the basis of the deemed admissions.
>
> [9] Plaintiff's counsel simply dropped the ball. He never sent the Notice to Admit to the plaintiff and never sought instructions for a response.
>
> [10] There is little doubt as to what the response would have been had the plaintiff seen the Notice. He has sworn an affidavit stating that he never knew of the Notice but that had he, he would have admitted being in the accident but denied the other three assertions.
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> […]
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> [23] There is no question in my mind that the failure in this case was a sloppy, inadvertent and possibly even negligent failure on the part of former counsel for the plaintiff. I am satisfied that the plaintiff himself cannot be faulted in any way for the oversight; he had neither actual notice of the document in question from his lawyer nor an opportunity to provide a reasoned and considered response.

[28] Each of the foregoing decisions included evidence from either counsel or the party who had made (or was deemed to have made) the admissions in question. No such evidence was before the court on this application. This is not a case where counsel has not "fallen" on his proverbial "sword" or taken any responsibility. It is not even conceded that the failure to reply within 14 days was an error or that the admissions made are untrue. The email from plaintiff's counsel dated April 16, 2025 is not merely a summary of the plaintiff's position. It constitutes the *entirety* of the evidence on which this application is premised.

[29] It is possible that evidence may have been contained in the affidavit on which the plaintiff sought to rely at the hearing of the application, but as discussed, I declined to receive or review that affidavit based on my order of June 18, 2025. In any event, applications before the court are not subject to being determined on the basis of evidence that *might* exist. Rather, it is the record before the court that must prevail.

[30] In this context, the application record includes a Notice of Application which is itself problematic. It sets out factual averments over more than 60 paragraphs spanning 10 pages before even addressing the Notice to Admit. The factual averments appear to have been copied directly from the original Petition filed by the plaintiff. They are unsupported by any accompanying affidavit evidence and generally unrelated to the application itself. The plaintiff relies on a single affidavit, sworn by an assistant from her solicitor's office which is woefully deficient. It offers no meaningful or substantive evidence and instead serves merely as a means by which certain documents, including the email exchange between counsel described above, are attached as exhibits. The absence of any proposed response to the Notice to Admit is both surprising and conspicuous.

[31] The court is thus faced, on this application, with an unexplained failure on the part of the plaintiff or her solicitors, to respond to the Notice to Admit as required by the Rules. Without any basis on which to conclude or infer that the facts admitted are true or not, I cannot say that there is a triable issue insofar as those facts are concerned. Moreover, I am left with no meaningful evidence as to why the plaintiff (or her solicitors) did not or could not respond to the Notice to Admit within 14 days.

[32] In reaching this result, I am mindful of the implications for the plaintiff if she is deemed to have admitted untrue facts and is effectively precluded from advancing her claim as a consequence. At the same time, to grant the relief sought would be to overlook entirely the basic expectations of the court on applications of this kind and to render the Rules largely meaningless. It would be to countenance unexplained noncompliance without an evidentiary basis for doing so.

[33] The present situation may owe to inadvertence or inattentiveness on the part of counsel, but in the absence of any evidence to support that conclusion, it is not one that I can draw. It is equally plausible that the plaintiff or plaintiff's counsel acting on instructions, intentionally opted to forego a response to the Notice to Admit. Perhaps this decision arose from counsel's determination that the Notice to Admit

was “invalid”, as stated in his email of April 16, 2025. Perhaps this decision arose from an initial determination that the facts as set out in the Notice to Admit are true.

[34] The foregoing questions are incapable of being answered based on the evidence before the court. Accordingly, and somewhat reluctantly, I have determined that the application must be dismissed.

Conclusion

[35] As described in the foregoing, this plaintiff’s application is dismissed, and I decline to order the withdrawal of the admissions that are deemed to have been made.

[36] As the defendants have been entirely successful on this application, they shall have their costs at Scale B, in an amount to be assessed.

“Associate Judge Robinson”