

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Liang v. Barnard*,  
2024 BCSC 2181

Date: 20241112  
Docket: S2110147  
Registry: Vancouver

Between:

**Yue Liang, 1153625 BC Ltd., 2134551 Alberta Ltd., and  
2134504 Alberta Ltd.**

Plaintiffs

And:

**Mitchell Barnard, Ryan Mason, Thomas Walker, Metta Beverage Corp.,  
Metta Beverage Inc., Clearwater Farms Ltd., 2134514 Alberta Ltd.,  
and 2243229 Alberta Ltd.**

Defendants

Before: Associate Judge Robertson

## Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

G. Allen  
D.C. Wierenga

Counsel for the Defendants:

J.J. Mayfield

Place and Date of Hearing:

Vancouver, B.C.  
November 12, 2024

Place and Date of Judgment:

Vancouver, B.C.  
November 12, 2024

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] The application before the court today is for the production of what I will colloquially refer to as "cross referencing of documents" from the list of documents produced by the defendants to determine if documents, namely attachments to disclosed emails, remain missing.

**Background**

[3] By way of background, the action itself is one arising from an investment between the plaintiffs and the defendants whereby the plaintiffs claim to have made an investment into an energy drink business sold under the brand name of "Metta." As part of that investment, the plaintiff, either individually or through her various companies, invested approximately \$1.5 million by way of a share purchase in the defendant companies. For the purposes of this application, it is not necessary to identify what was invested into which company and by which specific plaintiff.

[4] In addition to the investment transactions, a separate conflict arose between the parties relating to a specific herb that is an ingredient of the energy drink. Specifically, the plaintiffs allege that the defendants suggested that the plaintiffs purchase a farm for the purpose of growing that herb, which she then did through one of the Alberta numbered companies named as a plaintiff. The allegation in respect of this second element of the claim is that one of the Alberta numbered companies named as a defendant, which was operating the farm under a management agreement, misused the farm for purposes other than the growing of the herb. In particular, rather than grow the herb, they grew greens and silo mushrooms, the profits for which are alleged to have been kept for the benefit of one or more of the defendants.

[5] The plaintiff also alleges that she was never aware of the full extent of those alternative farming operations, in particular that she had no knowledge whatsoever of the psilocybin mushrooms. Although, there is some suggestion by the defendants

that the personal plaintiff had some indirect knowledge of the farming of the greens, all of which of course will be determined at trial.

[6] There is, then, a further allegation that one of the defendants prepared a forged or fraudulent lease of the farm property from the plaintiff registered owner, to themselves, for the purposes of entering into the proper licensing with Health Canada as there is a requirement that the licenses have an interest in the lands being used for the farming of psilocybin mushrooms.

[7] In terms of the application itself, there has been significant document disclosure to date. In fact, this matter was ready to proceed to trial in February of this year. However, a trial judge was not available, and as such, the trial was bumped.

[8] The trial is now scheduled again for 20 days commencing January 6, 2025.

**Disclosure Issues Re: Email Attachments**

[9] The document production at issue at this application is best described as a holdover from an issue that arose before the prior trial date, but for which the parties were willing to proceed to trial without it being resolved.

[10] In particular, prior to the previous trial date various iterations of lists of documents were exchanged. The first, or initial one provided by the defendants was what would be best described as a tailored and paired down version, given that at that time the only issue in dispute was a jurisdiction dispute.

[11] Once the jurisdiction issue was resolved, with reasons for judgment being issued in February 2023 whereby this court was found to have jurisdiction, on March 15, 2023 the parties began discussing more fulsome document production, however in a more general nature without specifically referencing the issue that is the subject of this application today, namely attachments to emails.

[12] Ultimately, a formal demand under the *Supreme Court Civil Rules* was made on April 6, 2023. However, the plaintiff demanded a response and production of those documents within nine days. As such, the defendants' written response to that

demand was that, under a strict reading of the Rules, they were entitled to a time period of 35 days to respond, and that further or better details as to the basis for the request was required to be made.

[13] In response to that letter, the plaintiffs filed a notice of application for production of documents generally.

[14] After a back and forth exchange of correspondence, on May 5, 2023, the parties signed a relatively expansive consent order for production of documents. Unfortunately, and for some inexplicable reason, despite that order being signed and submitted to the registry for entry shortly after that date it was not reviewed by the registry until September 2023, at which time it was rejected. The parties re-drafted, re-signed, and re-submitted the order on January 11, 2024, and it was then entered on January 24, 2024, some 8 months after it was agreed to, and only weeks before the scheduled trial date.

[15] Nonetheless, between May 5, 2023, and until this application was served, the parties continued to discuss and deal with the disclosure obligations on the basis of that consent order. In particular, thousands of emails have now been disclosed by the defendants, with various further lists of documents produced.

[16] In the course of that disclosure, the plaintiffs requested that attachments to emails be listed in a way such that each attachment could be linked or mirrored to the parent cover email under which it was sent. In response, the defendants advised that the reason why attachments were not included with the cover emails, and disclosure not done in this way, arose from the manner in which the documents had been saved.

[17] In particular, the various emails were saved or downloaded into a PDF format (notably before the disclosure process was underway), the effect of which is that the attachment was not automatically mirrored, or attached, to the parent email.

[18] The executive assistant on behalf of the defendant companies has deposed that the defendant companies have not been active since 2020. Shortly after they

became inactive they shut down their associated Gmail accounts, but prior to doing so she was asked to save the emails from those accounts. She did so by downloading the emails and the attachments as separate PDFs. Her specific evidence is as follows:

4. The only way that I knew how to download emails from a Gmail account was to download them as PDFs. As this did not preserve the attachments, I endeavoured to also download any attachments as separate PDF documents, which was a cumbersome process. I was not aware of any way to download Gmail emails as "native" emails that would keep the attachments within the emails themselves.
5. To the best of my recollection, I downloaded a PDF of every attachment. I attempted to organize the PDF attachments together with their associated PDF emails. Although I saved emails and attachments as separate documents.
6. In or around April 2023, for the purposes of producing emails in this litigation, I used the same procedure of downloading PDFs of the emails and attempting to locate and download separate PDFs of all attachments. While the BAST accounts are still active, I understand that the defendants no longer have emails in native form from the relevant time period to this litigation.
7. As a result, to the best of your knowledge the only copy of emails from any of the defendants' accounts relating to this matter are the PDFs that I downloaded, and it is no longer possible to access these emails in their native format.
8. I acknowledge the importance of making a sworn statement/solemn declaration and acknowledge the consequences of making an untrue statement.

[19] This process was fully described by defence counsel in their letter to plaintiffs' counsel on May 30, 2023.

[20] No further steps were taken in respect of this issue as the parties prepared for the February 2024 trial date. As noted, that trial date did not proceed, and the issue as to disclosure of the email attachments was raised again in March 2024. In particular, counsel for the plaintiffs provided counsel for the defendants with a representative sampling of documents as disclosed, which illustrated the issue. They identified 11 documents for which they were unable to, or could not easily identify, the attachment referenced in that parent email.

[21] On August 28, 2024, the defendants provided a file share with attachments that they indicated they have found in specific reference to those 11 identified emails.

[22] From the plaintiffs' perspective, that was not a sufficient answer to the outstanding attachment issue. Accordingly, the plaintiffs issued a further demand for the attachments on September 18, 2024. In that written demand, the various issues were summarized as well as the positions being taken by the parties in response to each other, and a further 11 or so documents were identified as having a missing attachment.

[23] The response to that by the defendants was, simply, that it was not proportional to prepare and list the documents as sought by the plaintiffs. However, as had been previously stated by counsel for the defendants, having regard to such issues of proportionality, their view was that the best way forward would be for the plaintiffs to identify which documents they intended to rely upon at trial where there was a potential missing attachment, at which time the defendants would do a further document review to determine if they could cross reference their documents and mirror the parent email to the attachment accordingly, and cross reference them to identification numbers in the original disclosure, or conduct a further search if it was determined that they had not been disclosed, as they had done the two previous times where the plaintiffs had requested such information in respect of an itemized list of emails.

[24] In support of their position that this is the proper way to proceed, the defendants have provided affidavit evidence of what I would describe as a "spot audit" prepared by them of some of their documents. The evidence is that they randomly selected 24 documents to determine whether or not the attachments could be located in the existing lists of documents. For the most part, those were identified and reconciled. In particular, 23 of the 24 attachments, at least by the way they are named, were found to be separately listed.

[25] The plaintiffs submit that what happened after that “spot audit” is why they proceeded with this application and why the order is necessary.

[26] In particular, in the course of providing this information the defendants also went back into their own records and identified approximately 25 or 30 documents that have now been identified as being in respect of these emails, where the attachments do not appear to have been listed separately, or at all, in the list of documents delivered to date by the defendants.

[27] As a result, the plaintiffs submit that they have a reasonable basis to distrust the accuracy and completeness of the defendants’ disclosure.

[28] It is, in their submission, one thing for the defendants to be saying that they do not have to go through and produce this reconciliation because all relevant documents in the defendants’ possession have disclosed to date, with counsel having completed a review of all documents for relevance, such that to the extent attachments are not listed, it is implicitly a result of a determination that the attachments in their separate form were reviewed and determined not to be relevant for the purposes of disclosure. However, it is something different, the plaintiffs submit, where there appears to be some documents that have not been disclosed or produced by the defendants to their counsel for that purpose, and the only reason that is known is due to a “spot audit”.

**Analysis**

[29] The parties do not disagree as to the concepts of relevance with respect to production of documents.

[30] Rather, this application is, in substance, one for a determination as to which party should bear the onus and shoulder the obligation to determine and review records from the purposes of determining if document disclosure is adequate.

[31] Quite simply, the plaintiffs say it is not their job to fulfill the defendants’ obligations for document production, by identifying missing attachments and asking

only for those. Instead, they submit, the defendants have an obligation to produce all documents that are relevant, that being what could prove or disprove any of the material facts in question, and it is not an answer for the defendants to say that the plaintiffs must review the defendants' list of documents, determine what email might be relevant for trial in the potential absence of the attachment to it, so as to identify the instances where the defendants did not fulfill their obligations, so that they may then do so.

[32] The defendants, on the other hand, submit that they have disclosed what they reasonably believe to be all relevant documents. They have identified why some of the attachments would not be disclosed, for example if the attachment was what is referred to as a "junk attachment," that being something that was stripped from the email. Examples of that include signature lines, and logos that are stripped as jpeg files. They could also be an attachment that was embedded or noted to be embedded within the text or the earlier chains of the entirety of the email chains, such that they are not truly attachments on the final version of the email as disclosed, in such case there is no attachment at all, merely an earlier reference to an attachment. The attachment also could simply have been determined to be irrelevant. An example of that was an email where photographs were attached within the email chain. As the email was forwarded, quite small thumbnail images of those photographs were embedded which showed them to be photographs of a warehouse in Shanghai, which is clearly, and no party disagreed, irrelevant to the issues in dispute in these proceedings.

[33] In short, the defendants say that the obligation for production is not one of absolute perfection. They have fulfilled their obligations. They have produced evidence today for the purposes of this application that outlines the steps taken by them in this respect, and having regard to the concepts of proportionality, which are a theme which underscores any application for production of documents, it is not reasonable to expect them to go through and manually reconcile every attachment to the thousands of emails that have been disclosed.

[34] As to that proportionality, the paralegal that undertook the task of the “spot audit” estimates, based on how long that took, that it would take 100 hours in order to mine the documents in the electronic format to find all attachments, and another 30 hours or so in order to cross reference and/or mirror them to the parent email itself.

[35] The suggestion of counsel for the defendants is therefore that the plaintiffs ought to do some of the work themselves by identifying which emails or documents they feel are relevant, a task which is not terribly difficult, the defendants argue, given the fact that this matter was ready to go to trial and joint books of documents were prepared for that purpose.

[36] The defendants argue that by this point in the litigation the plaintiffs know exactly what documents they intend to rely upon at trial, and to the extent there is an attachment to an email being relied upon, or any new documents that may be identified as being part of any revised trial book for the upcoming trial, they can be identified and the job undertaken as has been described by both the paralegal and the executive assistant. That is, in their view, a more proportional way to proceed.

[37] I am advised by counsel that there was no case law specific to the production of emails and attachments or how they ought to be disclosed.

[38] However, counsel was able to locate a decision of the Northwest Territories Supreme Court, *LTS Infrastructure Services Limited Partnership v. Rohl Enterprises*, 2021 NWTSC 9 where this was ordered, despite the recognition that it is a “significant undertaking”:

When I ordered Travelers to go through the production and identify missing attachments in LTS's documents production, which consisted of approximately 130,000 documents, I was aware that this was a significant undertaking that I was placing on Travelers. I did not expect that this would be a one-sided endeavour. Having received the list prepared by Travelers, I expected LTS to go through the list and report back to Travelers on each item on the list, and not conduct a cursory inspection before claiming that the task was too onerous.

This litigation was initiated by LTS and LTS is the party with the document production of 130,000 documents. Each party has obligations as

part of the document production process. As I have previously stated, the document discovery process and litigation on this scale and involving electronic production is not expected to be 100 percent accurate, but that does not absolve a party of the responsibility to address deficiencies when those deficiencies are specifically identified and listed by the other party.

[39] Notably, the court commented as to the expectation of some back and forth, and identification of deficiencies, given the scale of the document disclosure.

[40] Further, counsel for the defendants points out that there is no technical error in the manner in which they have listed the documents, specifically without providing the documents that are attachments or listing them as part of the parent email, relying upon the court's "Practice Direction re: Electronic Evidence". At Appendix 3, Database Field Guidelines, the following instruction appears:

Attachments to **Discoverable Documents** will be separately listed and numbered.

Attachments can be numbered sequentially following the host document. For example, a host document may be numbered XXX.000001 (being a 5 page document) and its attachments would be numbered as XXX.000006 (being a 2 page document) and XXX.000008 (being a 1 page document).

[41] As such, as most of what can be said is that the sequential numbering has not been done. However, the documents have been disclosed. That, of course, does not answer the concern that there are some documents that appear to have never made their way into the document disclosure given the request that was ultimately made of the defendants directly, and the recent response which has identified documents which have not been disclosed.

### **Conclusion**

[42] Nonetheless, I am satisfied with the defendants' level of disclosure to date.

[43] I am largely guided by the fact that this matter was ready to proceed to trial without this issue being resolved. I also agree with the defendants that having regard to the concepts of proportionality, that the proposal made by the defendants is one that overall fits into the interests of justice in terms of how to proceed to ensure that to the extent there is a document that is an attachment to an email, the defendant

fully investigates whether or not it has been produced, cross references the attachment by reference to the specifically disclosed documents as identified by them and, if the attachment cannot be identified or located in this manner, conducts a further review or investigation of their own private documents to determine if it can be located elsewhere.

[44] Given that there was a joint book of documents already prepared for the prior trial date, it is less cumbersome job for the plaintiffs to provide such a list of those documents, then was the case in *LTS Infrastructure, supra*, where there was a list of over 1,000 documents that were disclosed and provided to the disclosing party to answer.

[45] The order I am therefore making is:

Within 21 days of the defendants delivering to the plaintiffs a list of identified emails which attachments, or the particulars of attachments that they are seeking, the defendants will deliver to counsel for the plaintiffs particulars of such missing attachments, either by producing the attachment or identifying and cross referencing where the document has been disclosed and, to the extent the email was not previously disclosed, will provide a further amended list of documents to properly list those missing documents.

(SUBMISSIONS ON COSTS)

[46] THE COURT: Costs will be in the cause. Thank you.

“Associate Judge Robertson”