

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wonderland Entertainment Inc. v. 1381274  
B.C. Ltd.*,  
2024 BCSC 392

Date: 20240307  
Docket: S236437  
Registry: Vancouver

Between:

**Wonderland Entertainment Inc.**

Plaintiff

And

**1381274 B.C. Ltd., Ying Zhao, 1278803 B.C. Ltd.,  
Sophie Wong and Yue Xu also known as Vivia Xu**

Defendants

Before: Associate Judge Hughes

## **Reasons for Judgment**

Counsel for Plaintiff:

F. Lamer

Counsel for Defendants:

R. Lo

Place and Date of Hearing:

Vancouver, B.C.  
January 18, 2024

Place and Date of Judgment:

Vancouver, B.C.  
March 7, 2024

[1] The defendants apply, pursuant to s. 236 of the *Business Corporations Act*, SBC 2002, c. 57 (*BCA*) for an order that the plaintiff post security for costs, and consequent orders.

[2] Wonderland Entertainment Inc. (“Wonderland”) is a BC company incorporated on June 19, 2019, and is currently a commercial tenant operating an indoor children’s playground in the Tsawwassen Commons area (the “Premises”). The defendants 1381274 B.C. Ltd. (“138”), 1278803 B.C. Ltd. (“127”) and Yue Xu are shareholders in Wonderland. Ying Zhao is the owner of 138 and Sophie Wong is the owner of 127. Ying Zhao and Sophie Wong are former directors of Wonderland.

[3] On May 17, 2023, the applicants in this proceeding commenced an action in the Vancouver registry, no. S233714 (the “First Action”) against Wonderland, seeking repayment of shareholder loans. On June 14, 2023, Wonderland filed a counterclaim alleging that the applicants caused Wonderland to breach a commercial sublease agreement between Wonderland and the landlord of the Premises.

[4] The applicants obtained a garnishing order before judgment in the First Action and \$122,378.16 was paid into court. On June 22, 2023, Fitzpatrick J. ordered the release of \$70,300 of the garnished funds to Wonderland on condition that it must disclose to the applicants up-to-date and particularized accounting details every month going forward.

[5] On July 19, 2023, Fitzpatrick J. granted summary judgment in the amount of \$132,000 plus interest (the “Judgment”), and adjourned the application to strike the counterclaim. On August 21, 2023, Branch J. dismissed the counterclaim without prejudice to Wonderland bringing a fresh action, and ordered that the funds remaining in court pursuant to the garnishing order be paid out to counsel for the applicants on account of the Judgment.

[6] This action was commenced on September 19, 2023, pursuant to Branch J.'s order, pleading similar material facts as were plead in the counterclaim in the First Action.

[7] As at the date of this hearing, the sum of \$79,921.94 plus interest remained owing by Wonderland to the applicants on account of the Judgment.

### **Legal Basis**

[8] Section 236 of the *BCA* provides:

#### **Court may order security for costs**

**236** If a corporation is the plaintiff in a legal proceeding brought before the court, and if it appears that the corporation will be unable to pay the costs of the defendant if the defendant is successful in the defence, the court may require security to be given by the corporation for those costs, and may stay all legal proceedings until the security is given.

[9] The purpose of security for costs is to protect the defendant from the likelihood that, in the event of its success, it will be unable to recover its costs from the plaintiff (*Fat Mel's Restaurant Ltd. v. Canadian Northern Shield Insurance Co.*, 1993 CanLII 1669 (BCCA) at para. 15).

[10] While the courts are generally cautious in granting security for costs in relation to an impecunious natural person, the same cannot be said against corporate plaintiffs (*Bronson v. Hewitt*, 2007 BCSC 1751 at para. 41, cited with approval in *Ocean Pastures Corp. v. Old Masset Economic Development Corp.*, 2016 BCCA 12 at para. 21). Corporate plaintiffs are treated with less generosity and flexibility than natural persons (*Kropp v. Swanese Bay Golf Course Ltd.*, [1997] B.C.J. No. 593 (BCCA) at para. 11).

[11] The test for an application under s. 236 of the *BCA* was recently summarized in *Success Group Holdings Ltd. v. Fraser Valley (Regional District)*, 2023 BCSC 243 at paras. 11-13:

[11] There is a two-stage legal test on an application for security for costs. The onus is initially on the applicant, at the first stage, to satisfy the court that there is a *prima facie* case that the respondent would be unable to pay the

applicant's costs if the respondent's claim fails (*Integrated Contractors Ltd. v. Leduc Developments Ltd.*, 2009 BCSC 965, para. 11).

[12] If this threshold test is met, the onus then shifts to the respondent to show that it has sufficient exigible assets to satisfy an award of costs, or that there is no arguable defence to its claims (*Integrated Contractors*, paras. 12-13).

[13] If the respondent is unable to satisfy the court on either of these two points, the court may then exercise its discretion to make an order that the respondent post security for costs, taking into consideration the following legal principles set out by the BC Court of Appeal in *Kropp (c.o.b. Canadian Resort Development Corp.) v. Swanese Bay Golf Course Ltd.*, 1997 CanLII 4037 at para. 17:

- a) The court has complete discretion whether to order security, and will act in light of all the relevant circumstances;
- b) The possibility or probability that the plaintiff company will be deterred from pursuing its claim is not, without more, sufficient reason for not ordering security;
- c) The court must attempt to balance injustices arising from use of security as an instrument of oppression to stifle a legitimate claim on the one hand, and use of impecuniosity as a means of putting unfair pressure on a defendant on the other;
- d) The court may have regard to the merits of the action, but should avoid going into detail on the merits unless success or failure appears obvious;
- e) The court can order any amount of security up to the full amount claimed, as long as the amount is more than nominal;
- f) Before the court refuses to order security on the ground that it would unfairly stifle a valid claim, the court must be satisfied that, in all the circumstances, it is probable that the claim would be stifled; and
- g) The lateness of the application for security is a circumstance which can properly be taken into account.

[12] A *prima facie* case that the corporate plaintiff may be unable to pay costs can be satisfied by showing the absence of assets in British Columbia (*Kraft v. B.C.B.C.*, 2000 BCSC 1493 at para. 13 and citing *Ruko of Canada Ltd. v. Canadian Imperial Bank of Commerce* (1991), 49 C.P.C. (2d) 105).

### **Discussion**

[13] Wonderland was incorporated in 2019 for the purpose of operating an indoor children's playground. It entered into a commercial sublease agreement in June 2020, however no rent was payable until the business opened in the fall of 2022.

Prior to the opening, the plaintiff was engaged in acquisition and installation of the indoor play structures used in the operation of the business.

[14] The defendants seek security for costs in the amount of \$52,829.60, and has provided a draft bill of costs to support the amount claimed. The plaintiff agrees that the costs estimate is reasonable.

[15] Wonderland owns no real property in BC. Its largest asset is the play structure used in the business, which Wonderland values at \$933,923 on its balance sheet. However, the explanation provided is that \$933,923 is the sum total of what has been spent by way of capital expenditure in order to build the facility currently being used as a play structure for children. It was not disputed that Wonderland currently lacks liquid assets sufficient to pay a costs award.

[16] Wonderland's evidence is that it requires revenue of \$63,000 per month in order to meet its expenses. The financial documents provided to the defendants monthly, pursuant to Fitzpatrick J.'s order, show fluctuating revenues that do not yet meet that threshold.

[17] Wonderland says that the defendants do not meet the first part of the test, being whether there is a *prima facie* case that the plaintiff would be unable to pay costs if their claim is unsuccessful. Wonderland acknowledges that it is presently unable to pay, but says that by the time this case is decided, which could be two years from now, its business will be sufficiently established such that it will then have the ability to pay.

[18] The plaintiff relies on *Cozystay Holdings Inc. v. Lake Okanagan Resort (2013) Ltd.*, 2022 BCSC 687, where the court declined to order security for costs. In that case, the plaintiff argued that it was a viable and well-recognized company, provided evidence that it operates vacation rental services in numerous geographical locations, earns revenue, and has money readily available in its chequing account to pay for costs (*Cozystay*, para. 17). The court was satisfied that the plaintiff had

sufficient cash to pay the estimated costs, and found that the defendant had not met the threshold test of establishing a *prima facie* case.

[19] The case at bar can be distinguished from *Cozystay* in that the plaintiff is not yet a viable company, having been in operation for just over a year and not yet generating sufficient revenue to meet its monthly needs. It has little cash readily available, and has not yet paid anything towards the \$79,921.94 balance outstanding on the Judgment. The notice of civil claim, filed September 19, 2023, pleads that the plaintiff was on the verge of bankruptcy in June 2023 (NOCC, Part 1, para. 26). Based on the totality of the evidence before me, I am satisfied that there is a *prima facie* case that the plaintiff will be unable to pay costs.

[20] The onus then shifts to the plaintiff to show that it has sufficient exigible assets to satisfy an award of costs, or that there is no arguable defence to its claim. Wonderland's submissions were primarily aimed at the first part of the test. It has not shown evidence of sufficient exigible assets, and did not take issue with whether there is an arguable defence.

[21] Considering the principles in *Swaneset*, the plaintiff has not argued that posting security will stifle its claim, and no evidence was provided by Wonderland as to whether or not it has the ability to raise the funds needed to post security.

[22] I am satisfied in all the circumstances that the test for security for costs has been met, and that such an order is appropriate.

### **Conclusion**

[23] Pursuant to s. 236 of the *BCA*, the plaintiff shall pay to or deposit with the Registrar of this court security for costs in the amount of \$52,829.60.

[24] This action is stayed until such time as the plaintiff has deposited security for costs.

[25] The defendants are at liberty to apply to dismiss this action if security for costs is not paid into court by May 31, 2024.

[26] Upon completion of discoveries in this action, the defendants are at liberty to apply to increase the amount of security for costs.

[27] Costs of this application are payable to the defendants in the cause.

“Associate Judge Hughes”