IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Zhang v. SkyChain Technologies Ltd.,* 2024 BCSC 2265

Date: 20241122
Docket: S222611
Registry: Vancouver

Between:

Ningtao Zhang also known as Bill Zhang, Vling E-Business Ltd., and 1151152 B.C. Ltd.

Plaintiffs

And

SkyChain Technologies Ltd., MiningSky Technology Ltd., MiningSky Technologies (Manitoba) Inc., SkyRendering Technologies Inc., MiningSky Container Ltd. and 10117749 Manitoba Ltd.

Defendants

Before: Associate Judge Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	D. Sue-A-Quan
Counsel for the Defendants:	P. Kurek S.R. Shuchat
Place and Date of Hearing:	Vancouver, B.C. November 6, 2024
Place and Date of Judgment:	Vancouver, B.C. November 22, 2024

Introduction

[1] **THE COURT:** The defendant SkyChain Technologies Ltd. ("SkyChain") applies for orders:

a) Setting aside the garnishing order before judgment made March 30, 2022, obtained by the plaintiff Vling E-Business Ltd. ("Vling");

b) Setting aside the garnishing order before judgment made March 30, 2022, obtained by the plaintiff 1151152 B.C. Ltd. ("115 BC"); and

c) Releasing the garnished funds, totalling $114,465.96, plus any accrued interest thereon, to SkyChain.

[2] Vling and 115 BC both oppose all of the relief sought.

[3] I have made editorial changes to these reasons to enhance readability. The reasoning and outcome have not changed.

Background

[4] The plaintiff Mr. Zhang was formerly a Director and Chief Executive Officer of SkyChain and all of its subsidiaries, one of which is the defendant MiningSky Technology Ltd. ("MiningSky BC").

[5] The plaintiffs say Mr. Zhang was also authorized to manage the day-to-day affairs of the defendant companies, including without limitation "receiving loans and deciding when to pay out loans". Between 2018 and the end of 2021, he caused certain other companies he controlled, Vling and 115 BC, to make various advances to MiningSky BC and to pay various expenses on their behalf.

[6] On or about February 16, 2022, SkyChain terminated Mr. Zhang as an employee of both SkyChain and MiningSky BC, and he was removed as a Director of both companies.

[7] On February 23, 2022, made demands were made for a payment of:

a) $105,465.96 allegedly loaned by Vling to SkyChain and/or MiningSky BC; and

b) $9,000 allegedly loaned by 115 BC to SkyChain and/or MiningSky BC.

[8] On March 28, 2022, the plaintiffs filed their notice of civil claim. The allegations of fact relevant to the application for garnishing orders before judgment include:

a) In Part 1 - Factual Basis:

i. 79. During Mr. Zhang's employment with SkyChain and the Subsidiary Corporations, funds were loaned to SkyChain and MiningSky BC from time to time by companies in which Mr. Zhang held a controlling interest, and SkyChain and MiningSky BC repaid some of the loans from time to time.

ii. 80. It was an express, or in the alternative, an implied condition of receiving the loans that SkyChain and MiningSky BC would be jointly and severally liable for any funds loaned to either of them by any companies that Mr. Zhang held a controlling interest, and that the loans would be repaid upon Mr. Zhang's departure as an employee of SkyChain or MiningSky BC

iii. 81. Between January 2, 2018 and December 31, 2021, Vling loaned sums of money to SkyChain and MiningSky BC, and SkyChain and MiningSky BC repaid some of those sums of money to Vling with a total net amount of $105,465.96 due and owing by SkyChain and MiningSky BC to Vling as of December 31, 2021.

iv. 82. Between July 31, 2020 and May 5, 2021, 115 BC loaned sums of money to SkyChain and MiningSky BC, and SkyChain and MiningSky BC repaid some of those sums of money to 115 BC with a total net amount of $9,000.00 due and owing by SkyChain and MiningSky BC as of May 5, 2021.

v. 83. The sum of $105,465.96 is a debt owned by SkyChain and MiningSky BC jointly and severally to Vling that is justly due and owing, after making all just discounts.

vi. 84. The sum of $9,000.00 is a debt owed by SkyChain and MiningSky BC jointly and severally to 115 BC that is justly due and owing, after making all just discounts.

b) In Part 2 - Relief Sought:

   i. 1(a) Vling claims against SkyChain and MiningSky BC jointly and severally for a judgment in the amount of $105,465.96; and

   ii. 2(a) 115 BC claims against SkyChain and MiningSky BC jointly and severally for $9,000.

c) In Part 3 - Legal Basis:

   i. 1. SkyChain and MiningSky BC are indebted to Vling and 115 BC in debt claims that are justly due and owing, after making all just discounts.

[9] March 30, 2022, garnishing orders before judgment in the above amounts were issued by the court, with Toronto Dominion Bank named as garnishee. In the affidavit in support of garnishing order before judgment, Mr. Zhang swore that:

a) Para. 3: The nature of the cause of action for which this action is brought by Vling against the defendants, SkyChain and MiningSky BC … is a debt claim for return of funds loaned by Vling to SkyChain and MiningSky BC, jointly and severally.

   i. He attached as Exhibit “A” to the affidavit a copy of the notice of civil claim; and

   ii. He attached Exhibit “B” a spreadsheet which he describes as a “breakdown of debt claim” against SkyChain and MiningSky BC. It is entitled “[MiningSky BC] Transactions by Account as of December 31, 2021”, and has accounting codes "2730 - Due to related parties" and “2731 - Advance from Vling”. The spreadsheet exhibit which was tendered in evidence for this application was frankly illegible. Plaintiffs' counsel printed out a slightly better copy mid-hearing, which was still very difficult to read.

b) Para. 6: The debt claim is based on Vling loaning funds to SkyChain and MiningSky BC, jointly and severally, starting from February 21, 2018 through to May 5, 2021. During this period of time, Vling would advance

certain sums of money to SkyChain and MiningSky BC periodically, which would be repaid by SkyChain and MiningSky BC periodically.

c) Para. 7: Over the course of time between January 2, 2018 and December 31, 2021, Vling advanced a total of $722,873.49 to SkyChain and MiningSky BC, and those companies repaid a total of $617,407.53, with the last repayment being made on August 5, 2021.

d) Para. 8: By December 31, 2021, the total net amount which SkyChain and MiningSky BC owed to Vling was $105,465.96.

e) Para 9: In respect of the cause of action, the defendants, SkyChain and MiningSky BC are jointly and severally justly indebted to the plaintiff, Vling, for $105,465.96 after making all just discounts, and that sum is justly due and owing.

[10] A very similar affidavit was sworn in support of 115 BC's garnishing order before judgment application. The spreadsheet exhibit attached also difficult to read.

[11] In April 2022, the full amount of both garnishing orders before judgment was paid into court.

[12] SkyChain complains that the plaintiffs have not taken any steps to advance the litigation since obtaining the garnishing orders. This constitutes a delay of about 2 years + 7 months.

[13] SkyChain denies that the loans alleged were lawfully made, and denies that it ever agreed to enter into any loan arrangements or obligations with Vling or 115 BC.

Applicable Law

[14] A garnishing order before judgment is an extraordinary remedy. It is essentially a form of prejudgment execution. When funds are intercepted by the order, the defendant is deprived of the use of those funds until trial. The relevant statutory provisions have been interpreted as requiring meticulous and strict

compliance with the statutory prerequisites: See *Bear Ridge Railing MFG Inc. v. D.K. Railings Ltd.,* 2024 BCSC 1995 [*Bear Ridge*], at para. 4.

[15] The prerequisites which are set out in s. 3(2)(d) of the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 (the "*COEA*"), which provides that the applicant must state in a supporting affidavit:

> (i) that an action is pending,
> (ii) the time of its commencement,
> (iii) the nature of the cause of action,
> (iv) the actual amount of the debt, claim or demand, and
> (v) that it is justly due and owing, after making all just discounts.

[16] Subsection (iv) of the *COEA* above has been interpreted as meaning that the claim must be for a liquidated sum. Unliquidated damages, whether arising in tort or contract, cannot be the subject matter of a garnishing order: *Bear Ridge* at para. 6.

[17] Where, as here, the garnishing order before judgment has been made without notice to SkyChain, Rule 8-5(8) of the *Supreme Court Civil Rules* ("*SCCR*"), B.C. Reg. 168/2009, provides that a person affected by an order made without notice can apply to have that order changed or set aside:

> Setting aside orders without notice
>
> (8) On the application of a person affected by an order made without notice under subrule (6), the court may change or set aside the order.

[18] Sections 5(1) and (2) of the C*OEA* also allow a defendant to apply to release all or part of the garnishment if the registrar or judge considers it is just in all the circumstances to do so:

> 5(1) If a garnishing order is made against a defendant or judgment debtor, he or she may apply to the registrar or to the court in which the order is made for a release of the garnishment, and if a judgment has been entered against him or her, for payment of the judgment by instalments.
>
> (2) If, under subsection (1), the registrar or judge considers it just in all the circumstances, he or she may make an order releasing all or part of the garnishment and if he or she does and a judgment has been entered, he or she must set the amounts and terms of payment of the judgment by instalments.

[19] When deciding whether to release a garnishing order, the court will consider whether the plaintiff has satisfied the requirement set out in s. 3(2)(d) of the *COEA*. In *Bear Ridge* at paras. 7-11, Justice Elwood summarized as follows:

> [7] A garnishing order will be set aside on an application by the defendant under Rule 8-5(8) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR] if the order and supporting materials do not meet the statutory prerequisites, including the requirement of a liquidated claim after making all just discounts: *Politeknik*, at para. 25.
>
> [8] A garnishing order will also be set aside on an application under R. 8-5(8) if the plaintiff failed to disclose material facts: *Politeknik*, at para. 27, citing *Ridgeway-Pacific Construction Limited v. United Contractors Ltd*., 1975 CanLII 1581 (BC CA), [1976] 1 W.W.R. 285 (B.C.C.A.), at 287.
>
> [9] If there is a defect in the garnishing order materials, the order must be set aside in its entirety. It cannot be amended or reduced. A plaintiff is only entitled to the benefit of a garnishing order if there has been compliance with the statutory prerequisites: *Politeknik*, at para. 51.
>
> [10] A defendant subject to a valid garnishing order may apply under s. 5 of the *COEA* to be released from the garnishment. If the registrar or judge who hears the application considers it "just in all of the circumstances", he or she may make an order releasing all or part of the garnishment.
>
> [11] On an application under s. 5 of the *COEA*, the court may consider the merits of the action in assessing what is just in the circumstances. By contrast, it is not appropriate to consider the merits on an application under R. 8-5(8), except to determine whether the pleadings disclose a cause of action against the defendant for an unliquidated claim, and whether the plaintiff has given effect to all just discounts: *Politeknik*, at para. 27, citing *Ridgeway-Pacific*, at 287.

[20] In *Sequoia Mergers & Acquisitions Corp. v. CAMACC Systems Inc.,* 2015 BCSC 2197 at para. 21, Justice Fitzpatrick noted other common factors that are considered on an application to release a garnishment:

> [21] In *Key Insurance*, at para. 17, Mr. Justice Voith discussed many of the common circumstances that the court will consider on such an application. These include:
>
> a) the relative strength of the parties' cases (although, needless to say, the court should not determine any issues);
>
> b) whether the defendant is suffering undue hardship; and
>
> c) whether the garnishing order is necessary.

Analysis

Were The Supporting Affidavits Misleading?

[21] SkyChain firstly argues that the affidavit sworn in support of the garnishing orders were misleading for the following reasons:

a) They include the alleged repayment terms which do not exist and which would leave one to believe that SkyChain was jointly and severally liable for the alleged loans;

b) Mr. Zhang mischaracterized some of the entries in the spreadsheet exhibits as loans when they were recorded as interest or investments;

c) Mr. Zhang included interest in his debt calculations without any contractual term permitting him to do so; and

d) Mr. Zhang states that SkyChain repaid Vling and 115 BC for some of the loans, however, the ledgers do not support his assertion. [The issue here is whether payments were made by SkyChain, as opposed to MiningSky BC].

[22] SkyChain says that in other cases, the court has considered affidavits which contain no formula or basis for determining how the actual debt amount was arrived at to be deficient. Further, it would be fatal flaw to add interest to a debt when there is no provision for interest in the contract: *Flintstone Concrete v. Peace River*, 2003 BCSC 1137 [*Flintstone Concrete*] at paras. 87-88:

> [87] Lastly, in *Hooker v. Canadian Timber Management & Reforestations Inc.* [1998] B.C.J. No. 339 (S.C.), the court addressed the consequence of an affidavit which did not provide sufficient detail of the formula used to calculate the debt. The claims arose out of a logging contract. The plaintiff filed the statement of claim, supporting affidavit and a copy of the contract, but nowhere in the documents was there a detailed description of how the final sum owing had been arrived at. It was also apparent that the plaintiff had added a sum for interest, which was clearly not part of the contract between the parties.
>
> [88] The court reviewed the relevant authorities and came to the conclusion that the affidavit filed by the plaintiff was deficient. The affidavit contained no formula or basis for determining how the actual debt amount

> was arrived at. Also, the addition of interest to the debt amount was a fatal error to the order where there were no provisions for interest in the contract. Finally, the court found that the order was defective because it did not state whether the contract upon which the plaintiff was suing, had actually been performed. The order was set aside and the monies returned to the defendant.
> [Underlining added]

[23] The plaintiffs say that all amounts advanced by Vling from April 16, 2018 to December 31, 2021 constituted only loans made by Vling to MiningSky BC for expenses paid by Vling on behalf of MiningSky BC. No amounts transferred by Vling to MiningSky BC on account of “investments” are included in the Vling loan balance owing.

[24] During argument, plaintiffs' counsel noted that a spreadsheet entry which included the description "*Investment from Vling - $12,125*" is followed by entries showing that much and more had subsequently been paid back to Vling. The entry is "*Pay back to Vling - $64,971.??*" [The two numbers after the decimal are illegible]. This brings the running balance below the level it was at before the “*Investment from Vling*” was added to the running balance, arguably cancelling it out.

[25] Regarding SkyChain’s complaint that the plaintiffs have included alleged repayment terms that do not exist, the plaintiffs do allege that SkyChain and MiningSky BC agreed to be jointly and severally liable for the debt. Mr. Zhang does address this point in his supporting affidavits. MiningSky BC disputes this, but that does make the notice of civil claim or supporting affidavit “misleading”. That is simply an issue that SkyChain disputes and which will presumably be addressed at trial.

[26] On my review of the better-quality copy of the Vling spreadsheet, the majority of the entries are exceedingly difficult to read and the description used in several of the entries are confusing or ambiguous. It is not at all clear from the descriptions that can be discerned what the nature and terms of "*Investment from Vling*" was, and whether any of the subsequent repayments to Vling related specifically to a return of that investment, as opposed to repayment of some other debt or expense. This is

something that requires additional explanation, which the plaintiffs simply did not provide in this case.

[27] SkyChain argues that Mr. Zhang's first and third affidavits do not state that interest was payable on alleged loans. It also says he certified consolidated financial statements of the company which stated that the amounts due to “related companies” (i.e. Vling and 115 BC) are “unsecured, non-interest bearing, and have no specific terms of repayment”. They say this is fatal because interest was included in the Vling balance owing calculation.

[28] The plaintiffs say no interest was included in the Vling loan at any point in time; rather amounts were charged for "internet expense" and "insurance expense".

[29] One of the few legible entries on the bottom of the portion of the Vling spreadsheet attached to Mr. Zhang's affidavit does in fact refer to loan interest and internet expense in the same line:

> General Journal 03/31/2021 **Loan Interest** Q4 accrued expense 6350 Internet expense [$]1,500.00 [$]127,965.96
>
> [Bolding added]

[30] This suggests interest was charged by Vling and that it forms part of the balance claimed. As set out in *Flintstone Concrete*, this would constitute grounds to set aside the garnishing order before judgment. If this is simply a typographical error or accounting data entry error, this is not addressed or clarified in Mr. Zhang's supporting affidavit. The spreadsheet is confusing and renders the calculation of the amount owing unclear. This also constitutes grounds for setting aside the garnishing order.

Was There A Failure to Disclose Material Facts?

[31] Secondly, SkyChain argues that Mr. Zhang failed to disclose material facts. This includes:

a) Mr. Zhang was required to obtain director's approval for alleged repayment terms if SkyChain was to be obligated for them;

b) No authorizations or resolutions were passed by SkyChain's directors approving the alleged loans or the alleged repayment terms;

c) The alleged loans were disclosed in SkyChain's consolidated financial statements as liabilities owed by MiningSky BC, with no specific repayment terms; and

d) Mr. Zhang certified the consolidated statements, which expressly state that the alleged loans are unsecured, non-interest bearing and have no specific repayment terms.

[32] SkyChain says any one of these, if disclosed, could have affected the outcome of the application for a garnishing order before judgment, and as such they ought to have been disclosed to the Registrar, to ensure full disclosure of relevant facts. They are relevant to whether the alleged loans were justly due and owing by SkyChain and whether there is a debt at all. They are also relevant to assessment of which defendant the alleged loans were made to, whether the loans were duly made, who is responsible to repay them, and what the repayment terms were.

[33] The plaintiffs say that when the Registrar is considering whether to grant a garnishing order before judgment, the court does not consider the merits of possible defences and an applicant is not obligated to disclose all anticipated defences in the supporting affidavit: *Clarke Communication Contracting Inc. v. Black Diamond Limited Partnership*, 2024 BCSC 465, at para. 77:

> [77] The facts that must be disclosed are limited to those relevant and material to the statutory criteria permitting pre-judgment garnishment under *COEA*: *Yinghe Investment (Canada) Ltd. v. CCM Investment Group Ltd.,* 2023 BCSC 2295 at para. 40. The *COEA* does not oblige an applicant to disclose all possible defences on an ex parte application for a pre-judgment garnishing order: *Cummings* at para. 35, citing *Li v. Westside Preparatory Society*, 2021 BCCA 153 at para. 37.

[34] They also argue that where a loan agreement is silent regarding terms of repayment, there is a presumption that it is payable on demand: *Glacier Creek*

Development Corporation v. Pemberton Benchlands Housing Corporation, 2007 BCSC 286, at para. 58:

> [58] As noted by the court in *Marsuba*, funds advanced to a company by its shareholder may be in the nature of a demand loan even though there is no expectation of repayment until the company is profitable. The fact that an advancement of funds does not contain terms as to time for repayment does not render the advancement something other than a loan. To the contrary, it is presumptively a debt due and owing and payable on demand.

[35] An issue which SkyChain raised in argument was that Mr. Zhang's affidavit blurred the lines regarding who the alleged lenders advanced money to and who was liable. I do not consider any such “blurring” to be fatal in this instance, as the plaintiffs clearly allege that it was agreed that both of these defendants were liable jointly and severally. The question of which defendant received or repaid funds is secondary to their alleged common liability for the full balance owing.

[36] I agree with the plaintiffs that the specific issues identified by SkyChain do not constitute a failure to disclose material facts for purposes of the garnishing order before judgment applications.

Was This A Liquidated Claim?

[37] SkyChain argues that the claims do not qualify as liquidated claims because there is no clear formula for calculating the amount owing. I am satisfied the claim pled and described in the affidavit does constitute a liquidated claim. As noted above, where the difficulty comes in is the lack of clarity with regard to the supporting spreadsheets tendered in evidence to support of the calculation of the balance owing.

Failure To Advance Claim In A Timely Manner

[38] An issue that SkyChain raised in its application and which I raised during argument was the plaintiffs' failure to take any significant steps to prosecute their action after they successfully garnished SkyChain's funds into court. The delay is from April 2022 to October 2024, a period of about 2 years + 7 months. The plaintiffs did not offer any explanation for this delay.

[39] As previously noted, pre-judgment garnishment is an extraordinary remedy which deprives the defendants of their property (money) pending trial. When the plaintiffs choose to take advantage of this extraordinary remedy, it carries with it a corresponding obligation to pursue prosecution of their claim with reasonable dispatch. Their delay is not reasonable in this case.

Conclusion

[40] I have concluded that it is necessary and appropriate to set aside both garnishing orders before judgment and to return the garnished funds, and any interest that has accrued on them, to SkyChain.

[41] The plaintiffs appear to have included interest in the balance allegedly owing to Vling, or if that entry is in error, the spreadsheets tendered in evidence are hard to read and unduly confusing. The inclusion of a reference to an “investment” in the Vling spreadsheet also renders the calculation and characterization of parts of the amounts advanced unclear and ambiguous, which in my view is also fatal to the Vling garnishment. The plaintiffs' unreasonable and unexplained delay of 2 years + 7 months in advancing the prosecution of their action after successful garnishment is also a relevant concern.

[42] SkyChain is entitled to costs of the application in any event of the cause, but not payable forthwith.

“Associate Judge Bilawich”