

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Liu v. Ni*,
2024 BCSC 2117

Date: 20241121
Docket: S187254
Registry: Vancouver

Between:

**Yu Fang Liu, Yan Yang, Wen Li Yang, Wen Tao Yang, and Si Yi Pang an infant
by her litigation guardian Yu Fang Liu, intestate successors of Changbin Yang,
Deceased**

Plaintiff

And

Long Ni, Li Juan Chen also known as Lijuan Chen and Ke Qing Ni

Defendants

Before: The Honourable Justice Kent

Reasons for Judgment

Counsel for Plaintiff: A. Wang

Counsel for Defendants: M. Bromm
T. Xu, Articled Student

Place and Dates of Summary Trial: Vancouver, B.C.
August 29-30, 2024

Plaintiff's Additional Written Submissions October 17, 2024

Defendant's Additional Reply Submission October 22, 2024

Place and Date of Judgment: Vancouver, B.C.
November 21, 2024

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INTRODUCTION AND OVERVIEW

[1] On July 25, 2017, a 54-year-old businessman, Mr. Changbin Yang, was brutally murdered in China at the instance of the defendant Mr. Ni.

[2] Mr. Ni was thereafter prosecuted, convicted and sentenced to death by the Chinese courts. After exhausting appeals, he was eventually executed in 2020.

[3] Mr. Yang had made two series of loans to Mr. Ni, neither of which had been repaid by the time of Mr. Yang's death:

- various loans pre-dating 2014 totalling 530 million RMB including interest (approx. \$100 million in Canadian Dollars) and,
- two loans in April 2017 totalling 31.69 million RMB including interest (approx. \$6 million Canadian Dollars).

[4] The plaintiffs are the intestate successors of Mr. Yang, including his wife (Ms. Liu) and various other family members all of whom, except one, are either permanent residents of Canada or Canadian citizens.

[5] The defendants are Mr. Ni (now deceased), his wife (Ms. Chen) and his daughter (Ms. Ni). Ms. Chen and Ms. Ni. are Canadian citizens.

[6] The plaintiffs' Notice of Civil Claim ("NOCC") has been amended three times and an attempted fourth amendment is pending. The most recent NOCC seeks judgment against all 3 defendants in the amount of approx. \$113.5 million Canadian dollars for "debt, conversion, and unjust enrichment". Other remedies claimed include tracing, accounting, disgorgement and Certificates of Pending Litigation ("CPLs") against five pieces of property in Vancouver said to have been acquired by one of Ms. Chen or Ms. Ni using the proceeds of Mr. Yang's loans.

[7] Mr. Ni was alive when this lawsuit was initiated and he filed a "bare bones" Response to Civil Claim in December 2018. Following his execution in China, his counsel withdrew from the proceeding.

[8] Ms. Chen and Ms. Ni filed a joint Response to Civil Claim, later amended in November 2019. They deny any involvement in, or even knowledge of, the financial transactions between Mr. Yang and Mr. Ni. They plead the allegations of wrongdoing against them “are fabrications from start to finish”.

[9] Ms. Chen and Ms. Ni also allege in their Response to Civil Claim that the claims against them should be dismissed as an “abuse of process” by virtue of a certain debt action brought by the same plaintiffs in the Chinese courts which had resulted in a final 2018 judgment against Mr. Ni only. The Chinese court expressly dismissed the claim against Ms. Chen essentially because the loan proceeds were not used for “marital living expenses or joint business purposes or based on mutual consent”.

[10] Ms. Chen and Ms. Ni now apply to this court:

- to have the entire action dismissed as *res judicata* and an abuse of process;
- to strike out/dismiss the action for want of prosecution; and/or,
- to strike out/discharge the CPLs from title to the three properties they own in Vancouver.

[11] For the reasons that follow, I decline to outright dismiss the action at this time, I grant the plaintiffs leave to further amend their NOCC both to expand and narrow certain claims, however I grant the defendants some relief respecting the CPLs.

THE ABUSE OF PROCESS APPLICATION

Procedural Background

[12] In case this decision is appealed, I describe below the procedural history of this case in some detail.

[13] As noted above, the *res judicata* and abuse of process defences raised by Ms. Chen and Ms. Ni in their Amended Response to Civil Claim filed in November 2019 were founded on certain litigation instituted in China by the plaintiffs. That

pleading referred only to a December 2018 judgment issued by the Intermediate People's Court of Yichang City, Hubei Province.

[14] A copy of the Chinese judgment was attached as a schedule to the Amended Response to Civil Claim. The underlying claim was based on a series of promissory notes ultimately culminating in alleged debt of 31.69 million RMB (yuan) as evidenced by a promissory note issued by Mr. Ni to Mr. Yang dated April 8, 2017, three months before Mr. Yang was murdered. The Chinese court ultimately held:

- Mr. Ni was liable to Mr. Yang's successors (same plaintiffs named in this litigation) in the amount of 27.8 million RMB together with interest calculated at 6% per annum on that amount, commencing July 26, 2017 until the loans are repaid in full;
- the loans to Mr. Ni was personal debt of only Mr. Ni... the monies were used to buy into a company and purchase some land rather than for any living expenses of Mr. Ni and Ms. Chen or for the two of them to run any business together. Under Chinese law, Ms. Chen would only be liable on the loans if the creditor could establish that the debt was 1. used for marital living expenses; or 2. joint business production or operations; or 3. based on mutual consent by and between the husband and wife, none of which had been proved in the case; and,
- all the other claims made by the plaintiffs (including the claim against Ms. Chen personally) were dismissed.

[15] Perhaps unknown to Ms. Chen and Ms. Ni at the time of their 2019 Amended Response to Civil Claim was the existence of a certain Chinese arbitration proceeding between the plaintiffs and Mr. Ni. In November 2014, Mr. Yang and Mr. Ni had consolidated various earlier loans by means of a "Repayment Agreement" into a single personal debt obligation of 519 million RMB including interest. That Repayment Agreement contained a binding arbitration clause.

[16] The arbitration was started in November 2018 in the Yichang Arbitration Commission, ultimately resulting in an award dated April 30, 2019 whereby Mr. Ni was ordered to pay the plaintiffs the principal sum of 172,785,000 RMB (yuan), accumulated interest to August 30, 2015 of 198,288,629 RMB, and further interest of 20% per annum on the unpaid principal from August 31, 2015 to the date of full repayment.

[17] The arbitration award referred to and dismissed certain submissions made by Mr. Ni including that:

- three fund transfers made in 2011 were “funds Mr. Yang entrusted to Mr. Ni to purchase a real property in Canada and were not loans” (dismissed for lack of corroborating evidence); and,
- the arbitration claim should be dismissed on the grounds that a Canadian court [i.e. the Supreme Court of British Columbia] “has accepted the case concerning this dispute” (dismissed for failing to meet the “arbitration exclusion” test prescribed by Chinese law).

[18] The plaintiffs’ original NOCC was issued on June 27, 2018. It alleged,

- Mr. Ni “had repeatedly borrowed money from the deceased [Mr. Yang], in the total amount of 561,690,000 RMB which is approximately \$113,472,727 CAD”;
- [Mr. Yang] had transferred these monies to Mr. Ni from his own accounts and also from the accounts of his various family members;
- the three defendants “are believed to be” the registered owners of at least eight separate properties in Vancouver and Burnaby (legal descriptions provided); and,
- “the deceased and his intestate successors hence have been deprived of the loan proceeds by the defendants’ default payments, fraud and murder”.

[19] The “Legal Basis” for the defendant's alleged liability was stated to include debt, conversion, unjust enrichment, “fraudulent representation and extortion”.

[20] On July 4, 2018, the plaintiffs filed their first amended NOCC pursuant to the “one free amendment” provisions of Rule 6-1 of the *Supreme Court Civil Rules*.

Among other things, the amendments,

- broke down the claimed 561,690,000 RMB debt into two separate loans in the amount of 530 million RMB and 31.69 million RMB;
- specifically pleaded the November 2014 Repayment Agreement between Mr. Yang and Mr. Lee;
- specifically pleaded that each of the eight identified properties had been purchased by Mr. Ni with the Wang loan proceeds and registered, either then or at a later date, in the name of his wife or daughter; and,
- specifically pleaded the *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 and *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164 as another legal basis for the relief sought.

[21] On September 17, 2018, the plaintiffs obtained a “without notice” Desk Order further amending the NOCC to correct certain “typo’s” in dates mentioned in paras. 7 and 12.

[22] By another “without notice” Desk Order obtained May 13, 2019, the plaintiffs amended their NOCC for the third time to reduce the eight properties described in the earlier pleading to five properties. It appears the plaintiffs had come to learn that the Li Juan Chen identified as the registered owners of three of the properties was not the same individual as the person of the same name identified as a defendant in this lawsuit (Mr. Ni’s wife).

[23] As noted above, on November 27, 2019, the defendants Ms. Chen and Ms. Ni also took advantage of the “one free amendment” Rule 6-1(1)(a) to amend their

Response to Civil Claim to plead abuse of process defences based on the December 2018 judgment of the Intermediate People’s Court of Yichang City.

[24] On October 14, 2020 Ms. Chen and Ms. Ni filed an application seeking cancellation of the CPLs on the basis that the plaintiffs’ NOCC “does not plead an entitlement to an interest in land as required by s. 215(1)(a) of the *Land Title Act*”. That application was dismissed by Justice Groves of this court on November 2, 2020. There appear to be no Reasons for Judgment available to explain the basis of the dismissal.

[25] Pursuant to the same order, Justice Groves made directions regarding the address for service of Mr. Ni (whose counsel had withdrawn), adjourned an application for production of documents, and directed that any examination for discovery of Ms. Chen was to take place before January 29, 2021.

[26] Two and a half years later, on August 16, 2023, the defendants Ms. Chen and Ms. Ni filed a Notice of Application for summary trial of this case and an order dismissing the plaintiff’s claims based on the common law of *res judicata* and abuse of process.

[27] The summary trial was set down for a one-day hearing which came before me in chambers on October 20, 2023. Concerns were expressed at the start of the proceeding whether one day could possibly be adequate time to hear the matter in full. In the ensuing discussion, it became clear that, while defence counsel recognized the possibility of the plaintiff seeking recognition and enforcement of the Chinese judgments in British Columbia, he intended to argue no such claim had technically been made and the plea of fraudulent conveyance was also technically unsupported by any alleged facts.

[28] In the end, counsel agreed that the matter should be adjourned *sine die* by consent, however the parties could later set the matter down for two days before any judge of this court. It was expected that counsel for the plaintiffs would immediately

take steps to remedy the technical pleading deficiencies that had been discussed in chambers.

[29] The parties eventually arranged for the summary trial application to proceed before this court on August 29 and 30, 2024.

[30] On August 15, 2024, counsel for the defendants issued a second Notice of Application to also be heard during the August 29-30 2024 hearing. This is the application whereby they seek to have the action dismissed for want of prosecution pursuant to Rule 22-7(7) and/or to have the CPLs cancelled pursuant to s. 252 of the *Land Title Act*, R.S.B.C. 1996, c. 250.

[31] The second application was supported by the affidavit of a legal assistant at the law firm of counsel for the defendants attaching title searches and the first page of the condensed transcripts from the examination for discovery of the two defendants held in January 2021. The transcript pages were presumably for the purpose of establishing the extent of the delay since the plaintiffs last took any formal steps in the proceeding (i.e. three and a half years earlier).

[32] The plaintiffs filed their Application Response to the defendants' want of prosecution application on August 27, 2024, two days before the hearing.

[33] Although it was not brought to light until the hearing started, it turns out that counsel for the plaintiffs had been attempting to secure yet another without notice Desk Order granting a fourth amendment to the plaintiff's NOCC. The application was first submitted at the end of June 2024, however the Registry rejected it because it was accompanied by an affidavit comprising more than 200 pages. Counsel then submitted a "new application package" which was accepted and stamped by the Registry on August 21, 2024 (one week before the hearing).

[34] The proposed fourth amended NOCC contained substantial revisions. In particular, it expressly pleaded the two judgments obtained in China and the limited recovery on those judgments obtained through the Chinese Enforcement Court. It sought an order for formal recognition and enforcement in British Columbia of the

two Chinese judgments, along with a declaration that Mr. Ni had a beneficial interest in the five properties identified in the pleading and that his transfers of the properties to his wife and daughter were fraudulent conveyances.

[35] Plaintiffs' counsel did not tell counsel for the defendants about her without-notice Desk Order amendment application. However, her version of the Application Record filed August 27, 2024 did contain a legal assistant's affidavit to which was attached a copy of the proposed Desk Order and related amendments. This affidavit also purports to explain the delay in prosecution of the action.

[36] I wish to make it clear that the without-notice Desk Order procedure is not available to make multiple amendments to pleadings without first obtaining the consent of the other parties to the litigation. This is particularly so where those other parties have retained counsel who are actively representing the interests of their clients in the litigation. The attempt here by counsel for the plaintiffs to secure a fourth amendment to the NOCC without the consent of defence counsel is completely unacceptable and must not be repeated in this case.

[37] In any event, the defendant's applications were heard as scheduled on August 29 and 30, 2024. Once it came to light that the without-notice Desk Order amendment application was "in the system", I directed its retrieval and advised the parties that the question of any further amendment would be addressed in due course.

[38] One of the factors that the Court considers, whether in the context of the interests of justice generally or simply as a factor related to abuse of process, dismissal for want of prosecution, or the discharge of CPLs, is the nature and extent of any actual prejudice incurred by one or more of the parties.

[39] A notable feature of the defendant's litigation strategy to date was the absence of any sworn testimony by either of the two defendants remaining alive. Instead, counsel was taking technical stances and was invoking presumptions of prejudice which are admittedly available as a matter of law but which may not be

particularly compelling in the absence of evidence regarding actual prejudice. The latter will often be determinative in the exercise of the court's discretion, perhaps all the more so where, as here, the plaintiffs are the victims of a horrific crime perpetrated by one of the defendants.

[40] When counsel for the defendants realised the courts concern about the absence of evidence of actual prejudice, he asked for and was granted the opportunity to adduce the necessary affidavit evidence from his clients.

[41] It is not necessary to describe here the ensuing communications between counsel and the court in an effort to secure dates for a further hearing. Suffice it to say the result was as follows:

- the hearing was adjourned generally although I remained seized of the matter;
- affidavits were filed on September 13, 2024 (from Ms. Chen and Ms. Ni) and on October 16, 2024 (from Ms. Liu);
- further written submissions were tendered on October 17, 2024 (the plaintiffs) and October 22, 2024 (defendants' reply); and,
- the court directed that a continuation of the hearing was unnecessary and that the matter would be determined based on the hearing of August 29-30 as well as the subsequently filed material.

Submissions and Analysis

[42] The defendants' summary trial (dismissal for abuse of process) submissions at the August 29-30 hearing were relatively straightforward:

- the plaintiffs are attempting to relitigate the essential elements of claims previously determined in the Chinese judgments, including additional matters that could have been raised in those Chinese proceedings, all of which amounts to an impermissible abuse of process of the sort described in cases

such as *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. 77, *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26 and *Erschbamer v. Wallster*, 2013 BCCA 76;

- foreign judgments can be recognized in British Columbia and, while China may not be a signatory to various international conventions to which other countries have subscribed, Chinese judgments including Chinese arbitration awards are enforceable in British Columbia at common law so long as the requisite conditions are met, citing cases such as *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, *Beals v. Saldanha*, 2003 SCC 72, *Wei v. Mei*, 2018 BCSC 157;
- the plaintiffs' remedies against the defendants are limited to the enforcement of the Chinese court judgment and arbitration award, each of which simply creates a debt, however the plaintiffs had taken no steps to actually sue upon these foreign judgments in British Columbia; and therefore,
- the abuse of process remedies apply and the entire claim should be summarily dismissed.

[43] While I am inclined to agree with most of the defendant's submissions respecting abuse of process, the problem is that the plaintiffs are now seeking to remedy any cause of action frailties by further amending their pleadings to have the Chinese judgment/award formally recognized and enforced in British Columbia and, as part of that enforcement, to have the registered titles to three Vancouver properties currently owned by Ms. Chen and Ms. Ni (purchased with funds supplied by Mr. Ni) set aside as fraudulent conveyances.

[44] As part of the communications between counsel following adjournment of the August 29-30 hearing,

- the plaintiffs re-drafted their proposed fourth amended NOCC not only to seek recognition and enforcement of the Chinese civil judgment and the Chinese

arbitration award at common law, but also to plead allegations of fact respecting the alleged fraudulent conveyances; and,

- Ms. Chen and Ms. Ni are prepared to consent to the amended pleading being filed so long as it is a condition of the amendment that the plaintiffs are barred from filing any new caveats or CPLs against the defendants' properties.

[45] I attach as an appendix to these Reasons for Judgment a copy of the plaintiffs further revised proposed fourth amended NOCC, the version of the pleading to which the defendants are now prepared to consent, albeit conditionally.

[46] I commented earlier in these Reasons how the plaintiffs are victims of a horrific crime committed by Mr. Ni. They are sympathetic plaintiffs to whom the court is inclined to grant leeway respecting technical or procedural shortcomings.

[47] Although Ms. Chen and Ms. Ni testify in their affidavits that they had no knowledge of Mr. Ni's business affairs, they do not deny that the money used to purchase the properties registered in their name was supplied by Mr. Ni from his business activities in China. At her January 14, 2021 examination for discovery, Ms. Chen confirmed that the purchases had been made with "money that my husband made doing business with other people in China".

[48] Defence counsel has effectively conceded the validity of the Chinese judgments/award in favour of the plaintiffs, although it remains to be seen what findings of fact the trial court might make regarding any fraudulent conveyances, and/or tracing of funds and trusts.

[49] I am inclined to allow the plaintiffs to have their trial in due course regardless of past shortcomings in the prosecution of the case to date.

[50] On the court's own motion, the plaintiffs are granted leave to, within 30 days of the release of these Reasons for Judgment, file their proposed fourth amended NOCC, whether in the form attached as an appendix to these Reasons for Judgment or in such other revised form as counsel may agree. It is a term of the order that the

plaintiffs must not file any further caveats or CPLs against title to any of the defendants' properties without first securing an order of this court to that effect upon proper notice to the defendants beforehand.

[51] Similarly, pursuant to ss. 150 and 151 of the *Wills, Estates and Successions Act*, S.B.C. 2009, c. 13, I grant the plaintiffs in their capacity as intestate successors of Mr. Yang leave to continue this proceeding on behalf of Mr. Yang's estate as against Mr. Ni in addition to their capacity as judgment creditors pursuant to the Chinese judgments referred to above.

[52] In the circumstances, the defendants' application to entirely dismiss the lawsuit as an abuse of process cannot succeed and must be dismissed.

[53] I wish to make it clear, however, that I am not passing judgment on the merits of the abuse of process defences raised by the defendants. It remains to be determined by the trial court whether remedies such as tracing or constructive trust are even available to the plaintiffs in the unique circumstances of this case or whether their remedies are limited to enforcement merely of the Chinese judgment/award as intestate successors of Mr. Yang.

[54] I also grant the defendants liberty to further amend their Response to Civil Claim (i.e. Appendix A, once filed) to more extensively plead *res judicata* and abuse of process issues as a defence to any re-litigation of the matters previously determined or which could have been determined in the Chinese litigation.

Application to Dismiss the Action for Want of Prosecution

Legal Principles

[55] The legal principles governing applications to dismiss a lawsuit for want of prosecution were usefully summarized in a very recent decision of this Court, *Wright v. Wright*, 2024 BCSC 2065:

Legal Principles

[11] The legal test for dismissal of an action for want of prosecution asks three questions: (1) is the delay inordinate? (2) is the delay inexcusable? and

(3), if the first two questions are answered in the affirmative, is it in the interests of justice for the action to proceed despite the existence of inordinate and inexcusable delay?: *Giacomini Consulting Canada Inc. v. The Owners, Strata Plan EPS 3173*, 2023 BCCA 473 [*Giacomini*] at paras. 69-70. The first two questions are related, in that it must be the unexcused delay that is inordinate: *Etcheverry v. Bhatti*, 2024 BCSC 1222 [*Etcheverry*], at para. 5.

[12] *Giacomini* involved a construction dispute, and the court's power to dismiss an action for want of prosecution pursuant to Rule 22-7(7) of the Civil Rules. Here I am dealing with a family law dispute, where the court's power to dismiss for want of prosecution is found in Rule 21-2(5) of the *Family Rules*.

[13] Common to the *Civil Rules* and the *Family Rules* is the object of securing the just, speedy and inexpensive determination of proceedings on the merits: *Civil Rules*, R. 1-3(1); *Family Rules*, R. 1-3(1)(b).

Inordinate delay

[14] Although there is no universal rule as to when time starts to run, the date of commencement of the action is typically identified as the point from which delay is measured: *Wiegert v. Rogers*, 2019 BCCA 334 [*Wiegert*] at para. 32.

Inexcusable delay

[15] The delay should be analysed holistically, not in a piece-meal fashion, and the extent to which it may be inexcusable is highly fact-dependant: *Wiegert* at para. 32. As the Court explained in *Giacomini* at para. 40:

[40] Whether the reason offered by the plaintiff for the delay amounts to an excuse also depends on the circumstances. As a rule, unless a credible excuse is offered, the natural inference is that inordinate delay is inexcusable: *Irving* at para. 8. The evidence led to explain delay may go to the issue of whether the delay was intentional and tactical, or whether it was the result of "dilatoriness, negligence, impecuniosity, illness or some other relevant cause": *0690860 Manitoba Ltd. v. Country West Construction Ltd.*, 2009 BCCA 535 at para. 27. A party who intentionally delays the prosecution of an action may be said to assume the risk of dismissal. Where the delay is also tactical, in the sense of intended to prejudice the defendant, this will weigh more heavily against the plaintiff in the analysis: *Ralph's Auto Supply (B.C.) Ltd. v. Ken Ransford Holdings Ltd.*, 2020 BCCA 120 at para. 47. Where the reason for the delay is a lack of diligence on the part of plaintiff's counsel, this might amount to a reasonable excuse in some cases, but in others it might not: *0690860 Manitoba Ltd.* at para. 29; *Wiegert* at para. 33.

Interests of justice

[16] Courts have identified a non-exhaustive list of factors to consider when assessing the interests of justice: *Giacomini* at paras. 66 and 71. They are:

- * the prejudice the defendant will suffer defending the case at trial;
- * the length of the delay

- * the stage of the litigation;
- * the impact of the delay on the defendant's professional, business or personal interests;
- * the context in which the delay occurred, in particular whether the plaintiff delayed in the face of pressure by the defendant to proceed;
- * the reasons offered for the delay;
- * the role of counsel in causing the delay;
- * the public interest in having cases that are of genuine public importance heard on their merits; and
- * the merits of the action.

...

[18] The applicant refers to several cases decided post-*Giacomini* in which delays of between four and a half and eight and a half years have been considered:

Ghag v. Ghag, 2024 BCSC 400 (under appeal)

- * six years delay inordinate;
- * delay excusable;
- * interests of justice would have favoured action proceeding.

Domirti v. Crescenzo, 2024 BCSC 422

- * eight years delay inordinate;
- * delay inexcusable;
- * not in the interests of justice to allow action to proceed.

Kyle v. Zimmer, 2024 BCSC 500 [Kyle]

- * six years delay inordinate;
- * delay inexcusable;
- * dismissal not contrary to interests of justice.

Ramirez Carabentes v. Ivanhoe Cambridge Inc./Ivanhoe Cambridge I Inc., 2024 BCSC 520 (eight and a half years) [Ramirez]

- * eight and a half years delay inordinate;
- * delay inexcusable;
- * interests of justice favour dismissal.

Etcheverry

- * four and a half years delay inordinate

* delay inexcusable (except for 1 year, attributable to pandemic)

* interests of justice favour dismissal.

Submissions and Analysis

[56] The defendants point out that this litigation was first filed almost six and a half years ago and the plaintiffs have been utterly lethargic in prosecuting the matter.

[57] The last step taken by the plaintiffs to advance the litigation towards trial was conducting examinations for discovery of the defendants in January 2021, and even then this was because of a deadline that had been imposed by Mr. Justice Groves.

[58] Throughout the six years plus of litigation, the defendants have been unable to deal with their own properties, either to refinance them or sell them, as they remain tied up with CPLs. CPLs are an extraordinary form of pre-judgment execution and counsel submits any delay in having the related litigation decided on its merits results in continued prejudice without more.

[59] Counsel points out that even the threat of dismissal on the merits by way of the October 2023 court application failed to galvanize the plaintiffs to make some sort of effort to immediately remedy the shortcomings in their litigation conduct. Instead, their inaction continued, until they were once again confronted with a further application for dismissal.

[60] In her August 27, 2024 affidavit, Ms. Liu attempts to explain the delay in prosecuting this action.

[61] First, she refers to the Chinese litigation which she says was pursued in the hopes of making a recovery from Mr. Ni's assets in China. Although the judgments were obtained in December 2018 and April 2019 respectively, attempted recovery in China has only yielded 2.89 million RMB, a tiny fraction of the outstanding awards.

[62] Ms. Liu points out that Mr. Ni's incarceration in China meant he was unable to testify in the BC proceedings but his testimony was available for the Chinese litigation.

[63] Ms. Liu says her counsel had booked a 14 day trial in the BC action starting June 27, 2022, but the borders were closed in China because of the Covid-19 lockdown in that country and it was uncertain whether the plaintiffs would be able to travel to Canada for the trial. She implies this was the reason why that trial did not proceed.

[64] According to Ms. Liu, the plaintiffs' information was that Mr. Ni had supposedly used the monies he had received from Mr. Yang for investment in certain coal mines in China and they were hoping to enforce the Chinese judgment/award on those coal mines before waiting to see whether it was necessary to continue attempted recovery in Canada. When enforcement investigations were resumed in spring 2023 after the Chinese government relaxed their Covid-19 restrictions, it ultimately led to the conclusion that the monies had not in fact been used for coal mines in China and that further recovery in that country was not going to be made.

[65] Lastly, Ms. Liu pleads for sympathy. She points out that her husband was the sole breadwinner for the family and that his murder has traumatized her two daughters and left her in a deep depression. She says that as a further result of her husband's murder, "our children and I [i.e. not the defendants] are the ones who are suffering from financial hardship".

[66] I conclude that the delay in bringing this matter to trial in Canada has been inordinate and that the plaintiffs' stated reasons for the delay are weak and unconvincing. While the Chinese litigation might well have justified a hiatus so enforcement in China might be attempted, and the Covid pandemic/lockdown may have delayed investigation into possible recoveries in China, the plaintiffs have been aware throughout that the defendants were sitting on property in Vancouver worth many millions of dollars. There is little logic for Ms. Liu and her children (Canadian

citizens and residents of Vancouver) to delay attempted recovery on readily available assets located in their home province of BC.

[67] Nevertheless, the simple fact of the matter is that the plaintiffs have recovered substantial judgments in China and, as defence counsel tacitly concedes, those judgments will likely be recognized and enforceable in this jurisdiction. Their action in that regard therefore has merit and it is also entirely possible that the claim respecting fraudulent conveyances might succeed. These merits militate against summary dismissal of the action at this time.

[68] Plaintiffs' counsel finally appears to have gotten her house in order; the pleadings have been amended to properly frame a viable claim and a new trial date has been secured for January 2026. The only meaningful prejudice caused to the defendants by the delay is financial (inability to access equity), something that is capable of being remedied.

[69] And, as stated earlier above, the sympathetic circumstances of the plaintiffs and the interests of justice strongly militate in favour of allowing them to have their claims proceed on the merits at trial.

[70] In the result, I dismiss the defendants' application to dismiss this action for want of prosecution.

Application to Discharge the CPLs from Title

[71] Defence counsel submits "at a bare minimum, the CPL should be cancelled forthwith pursuant to s. 252 of the *Land Title Act*" and in that regard "the plaintiffs suggest that the cancellation of the CPL should be done from the bench without a reserve period, with reasons and the remainder of the application to follow".

Legal Principles

[72] The legal principles governing the discharge of CPLs from title was recently reviewed at length by the Court of Appeal in *GMC Properties Inc. v. Rampart Estates Ltd.*, 2023 BCCA 172 as follows:

Legal Framework

[37] As Justice Fenlon explained in *Berthin v. Berthin*, 2018 BCCA 57, a CPL is an extraordinary pre-judgment mechanism under the Land Title Act which is intended to protect a claim to an interest in land prior to the resolution of litigation. By registering a CPL against the land in issue, the claimant prevents the property owner from defeating the claim by transferring the land to a third party: *Berthin* at para. 32.

[38] Section 215(1) of the *Land Title Act* is located in Part 14: Registration of Title to Charges. It sets out the preconditions for valid registration of a CPL. Section 215(1) provides:

215(1) A person who has commenced or is a party to a proceeding, and who is

- a) claiming an interest in land, or
- b) given by another enactment a right of action in respect of land,

may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the pleading or petition by which the proceeding was commenced, or, in the case of a certificate of pending litigation under Part 5 of the *Court Order Enforcement Act*, a copy of the notice of application or other document by which the claim is made.

[39] Pursuant to s. 216(1), after a CPL is registered, and subject to exceptions, "the registrar must not make any entry in the register that has the effect of charging, transferring or otherwise affecting the land described in the certificate until registration of the certificate is cancelled in accordance with this Act".

[40] Entitlement to a CPL must be founded on the state of the pleadings when it was registered: *Bilin v. Sidhu*, 2017 BCCA 429 at para. 62. Where the pleadings are incapable of supporting a claim to an interest in land, the court may cancel the CPL in the exercise of its inherent jurisdiction, with immediate effect. The authority to cancel a CPL on this basis is a necessary corollary to the litigant's right to register a CPL under s. 215: *Bilin* at paras. 51, 55; *Yi Teng* at para. 31; *Berthin* at para. 44; *NextGen Energy Watervliet TWP, LLC v. Bremner*, 2018 BCCA 219 at para. 7. In other words, "[i]f the claim could not give rise to an interest in land, the CPL will be ordered to be cancelled because, essentially, it was improperly registered from the start": *Bajwa v. Singh*, 2016 BCSC 916 at para. 20.

[41] On an application to cancel a CPL for non-compliance with s. 215(1), the court does not analyse the merits of the claim brought by the claimant. Rather, the question is whether the facts pleaded, assuming they are true, are capable of supporting a claim to an interest in land. As Justice Mackenzie explained in *Yi Teng*, "[t]his connotes a nexus or causative link between the facts alleged and the interest to which they would give rise if the facts were ultimately proved": at para. 39. As she also noted, evidence is not considered

on an application to cancel a CPL for non-compliance with s. 215(1): at para. 13.

[42] Where a CPL has been validly registered in accordance with s. 215(1) of the *Land Title Act*, it may be cancelled under one of several provisions in Part 16: Cancellation of Charges. In particular, an application to cancel a CPL may be brought: under s. 252(1), where no step has been taken in the proceeding for one year; under s. 253, where the underlying action has been discontinued; under s. 254, where the underlying action has been dismissed; under s. 255, where the party initiating the proceedings requests its cancellation; and, under s. 256(1), where the property owner claims the CPL is causing or likely will cause hardship and inconvenience.

[43] The continued presence of a validly registered CPL is presumptively prejudicial to a property owner. For this reason, a claimant is obliged to prosecute their claim diligently. Section 252 of the *Land Title Act* is intended to ensure that claimants do so without undue delay: *Kultak Financial Inc. v. Grewal*, 2018 BCCA 94 at paras. 34-35; *Motz v. McKean*, 2009 BCSC 1133 at paras. 7-8. Its underlying purpose "is to keep property from being tied up in dormant litigation": *Wiest v. Middelkamp*, 2004 BCSC 882 at para. 15.

[44] Section 252 is the first of the Part 16 provisions that deal with applications for cancellation of a CPL. To repeat, s. 252 provides:

252(1) If a certificate of pending litigation has been registered and no step has been taken in the proceeding for one year, any person who is the registered owner of or claims to be entitled to an estate or interest in land against which the certificate has been registered may apply for an order that the registration of the certificate be cancelled.

(2) An application under subsection (1) must be made to the court in which the proceeding was commenced and must be brought

- a) as an application in that proceedings, if the applicant is a party to the proceeding, or
- b) by petition, if the applicant is not a party.

(3) The registrar must, on application and on production of a certified copy of the order of the court directing cancellation under subsection (1), cancel the registration of the certificate of pending litigation.

[45] In *Lawn Genius Manufacturing (Canada) Inc. v. 0856810 B.C. Ltd.*, 2016 BCSC 1915, Justice Bernard conducted a thorough review of the jurisprudence on s. 252. In doing so, he discussed the discretion of the court not to cancel a CPL where the preconditions are met, the presumption of prejudice, and the meaning of a "step" for purposes of s. 252:

[12] ...The court retains the discretion not to cancel the CPL, even where the statutory prerequisites are met, if cancellation would not be fair and equitable: see *Kal West Mechanical Inc. v. Bush*, 1999 CarswellBC 774 (S.C.) at para. 6; and *Tomczyk v. Toronto Dominion Bank* (1982), 36 B.C.L.R 149 (S.C.).

Where the statutory prerequisites are met, prejudice to the landowner is presumed and the respondent must show that the prejudice is either not serious or outweighed by other factors that suggest cancellation of the CPL would be unjust: see *Wiest v. Middelkamp*, 2005 BCSC 1626 at para. 12 and *Motz Bros. Holdings Ltd. v. McKean*, 2009 BCSC 1133 at para. 12. The meaning of "step" in s. 252 of the Act is informed by case law in which the definition of that term in the analogous provisions in the Supreme Court Civil Rules is discussed. The step must be either required or permitted by the *Supreme Court Civil Rules*, and it must move the action forward towards trial or resolution; see *Motz Bros. Holdings Ltd. v. McKean*, 2009 BCSC 1133 at paras. 9-10; *Canadian National Railway Co. v. Chiu*, 2014 BCSC 75 at para. 7; *Easton v. Cooper*, 2010 BCSC 1079 at paras. 6-13; and *Khan v. Johal*, 2006 BCSC 1547 at paras. 11-15 ...

[46] The test to be applied on a s. 252(1) application is less onerous than the test applied on an application to dismiss a claim for want of prosecution: *Kultak Financial* at para. 35. In *Wiest v. Middelkamp*, 2005 BCSC 1626, Justice Halfyard described the test on a s. 252(1) application:

[12] In an application of this kind, where the applicant shows that no step has been taken in the proceeding for a period of one year, the court retains a discretion to disallow the remedy. However, prejudice to the owner of the land will be presumed, and the respondent bears the onus of proving that the prejudice is not serious or is outweighed by other factors which would make it unjust to cancel the certificate of pending litigation. See *Kal West Mechanical Inc. v. Bush* 1999 Carswell B.C. 774 (Cole, J.) and *Wilson v. Hrytsak* (1997) 34 C.L.R. 2d 65 (Master Joyce).

[13] In my opinion, the factors relevant to the exercise of the court's discretion in this type of application include the following:

- a) Whether the respondent has given an acceptable explanation for the delay in prosecuting the claim;
- b) Whether, despite the presumed prejudice, no actual prejudice would be incurred by the applicant if the order was not granted; and
- c) Whether the respondent's claim for an interest in the land has at least a reasonable prospect of succeeding.

[47] A property owner may also apply under s. 256(1) for cancellation of a CPL on the basis that it is causing or likely will cause "hardship and inconvenience". However, where the applicant succeeds in establishing hardship and inconvenience a cancellation order does not follow automatically. Rather, under s. 257, upon being satisfied that an order for

security is proper, that damages will provide adequate relief to the claimant and that security is in fact provided, the court has a discretion to cancel a CPL or it may refuse to cancel and order the claimant to give an undertaking as to damages and security: *Yi Teng* at para. 28.

[48] Sections 256 and 257 provide, in relevant part:

256(1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit

- a) particulars of the registration of the certificate of pending litigation,
- b) that hardship and inconvenience are experienced or are likely to be experienced by the registration, and
- c) the grounds for those statements,

apply for an order that the registration of the certificate be cancelled.

...

257(1) On the hearing of the application referred to in section 256(1), the court

- a) may order the cancellation of the registration of the certificate of pending litigation either in whole or in part, on
 - i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and
 - ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court, or

b) may refuse to order the cancellation of the registration, and in that case may order the party

- i) to enter into an undertaking to abide by any order that the court may make as to damages properly payable to the owner as a result of the registration of the certificate of pending litigation, and
- ii) to give security in an amount satisfactory to the court and conditioned on the fulfillment of

the undertaking and compliance with further terms and conditions, if any, the court may consider proper.

...

(4) On hearing the application referred to in section 256(2) and on being satisfied that

a) the facts set out in the affidavit are consistent with the records of the land title office, and

b) there is nothing in the pleading or petition by which the proceeding was commenced or notice of application attached to the certificate that expressly or by necessary implication alleges that the owner is not a purchaser in good faith and for valuable consideration

the court may make an order declaring that the owner's indefeasible title or charge is not affected by the certificate of pending litigation or the outcome of the proceeding.

...

[49] Where the underlying action involves a claim for specific performance, an applicant must satisfy the Court on a s. 256 application that it is plain and obvious the claimant seeking specific performance would not succeed at trial. In other words, if there is a triable issue as to whether damages would provide an adequate or appropriate remedy for the claimant, a s. 256 application should be dismissed and the matter should proceed to trial: *Yi Teng* at para. 29.

[50] Sections 256 and 257 constitute a "statutory code for balancing the rights of the parties where adverse consequences caused by the registration of the CPL prejudices the land owner": *Liquor Barn Income Fund v. Becker*, 2011 BCCA 141 at para. 28.

Submissions and Analysis

[73] It will be recalled that in October 2020 Ms. Chen and Ms. Ni filed an application in this action seeking cancellation of the CPLs on the basis that the plaintiffs' NOCC did not plead entitlement to an interest in land as required by s. 215 (1)(a) of the *Land Title Act*, R.S.B.C. 1996, c. 250. That application was dismissed by Justice Groves, although no Reasons for Judgment are available to explain the basis of the dismissal.

[74] It is noteworthy that, while the defendants now seek to have the CPL discharged pursuant to s. 252 of the *Land Title Act*, they do not invoke s. 256-7 of the Act (the "hardship and inconvenience" discharge option). This is presumably a

deliberate tactical decision by the defendants to avoid the possibility of the defendants being required to provide an undertaking as to damages and/or satisfactory security in exchange for the discharge.

[75] Counsel for the defendants recognizes that, although the registration of a CPL is an extraordinary pre-judgment remedy, the court nevertheless retains discretion to decline cancellation if the resulting prejudice to the landowner is either not serious or is outweighed by other “interest of justice” factors. He points out, however, that in this particular case, the delay in prosecuting the matter to trial “is so egregious that even the existence of a meritorious case should be afforded little if any weight” here.

[76] The affidavit of Ms. Ni explains how her parents bought the 2159 West 47th Ave. property for her in May 2016. It has always been and remains a rental property in which Ms. Ni does not reside. She collects the rent and pays the related property expenses from that rent and from her employment income. Among other things, she states:

- “I have never done anything wrong to any of the plaintiffs and I did not participate in any fraud”; and,
- “I have no plan to sell the Property, but even if I were to do so, I am not going to remove assets from BC or hide them from anyone. I intend to continue to oppose the plaintiffs’ claims against me through the proper process, not by being sneaky or dishonest”.

[77] In her September 13, 2024 affidavit, Ms. Chen describes how the family moved to Vancouver in 2011. She had obtained her permanent resident status the previous year. She and her husband signed an agreement to purchase the matrimonial home (925 West 33rd Ave.) in December 2010 and moved into the property in March 2011. Her husband was working in China but he flew to Canada several times a year to visit his family.

[78] She described the marriage as “a typical relationship in that part of China” i.e. she was a stay-at-home mother, while her husband was the breadwinner for the family. She says she “was only aware in a general sense” of what her husband did for a living and that, in accordance with her culture, she “would not pry into his business affairs”. Her husband “always ensured there was money in the bank for [her] to use to pay our bills and to take care of the children”.

[79] Ms. Chen also describes how in 2011 she purchased two rental properties at 5112 Granville St. and 1527 West King Edward Ave., “making the down payments with the money that [her husband] earned for our family”. She sold the West King Edward Ave. property in April 2016, using a portion of the net proceeds to purchase the 2159 West 47th Ave. property for her daughter.

[80] Ms. Chen stated that once her husband was arrested, “he was obviously no longer able to support the family” and “since that time, I have been living off the remaining sale proceeds of [the West King Edward Ave. property], which originally amounted to about \$900,000 but which are now basically exhausted”. She is not employed and notes that she “essentially has no English and for that reason I am very shy about venturing outside the Chinese community in the Lower Mainland”.

[81] Ms. Chen says “I have no plans to sell [the Granville St. property]”, however,

It is too big and expensive for my needs and means; I want to sell it and purchase a smaller house. That will allow me to extract some equity to pay off the debts I have mentioned and to live on, and will decrease my monthly expenses.

[82] In short, Ms. Chen pleads dire financial straits as the basis for discharging the CPLs. She wants to sell the large matrimonial home and use some of the net proceeds to cover her future living expenses. The proceeds from the previous property sale have been exhausted and she has been borrowing money from her brother to make ends meet.

[83] Ms. Liu’s reply affidavit is filled with inadmissible evidence stating her speculation and belief that Ms. Chen’s plea of poverty is simply untrue. I note she

claims her own “financial hardship” in general terms but provides no detail of how she has been supporting herself and her family since the death of her husband.

[84] Counsel for the plaintiffs essentially accuses Ms. Chen of attempting to perpetrate a sham on the court. She says, again without any supporting evidence, that the defendants want the CPLs discharged from the properties so the net proceeds can be put out of reach of the plaintiffs who will then be left holding a dry judgment with no recovery.

[85] I am satisfied that the pleadings, at least as they will shortly be framed, establish a sufficient interest in the land (i.e. a trust or setting aside title as a fraudulent conveyance) sufficient to warrant ongoing registration of the CPL against the properties. The question is whether the inordinate delay in prosecuting the action combines with Ms. Chen's need for sale proceeds to cover her living expenses to warrant some relief from the intrusive pre-judgment interim remedy that the CPLs represent.

[86] I am also satisfied that, even though the defendants are not formally seeking relief pursuant to s. 256-7 of the *Land Title Act*, the court nevertheless has inherent jurisdiction and retains discretion under s. 252 of the Act to consider financial hardship caused by a CPL and to craft an appropriate remedy that is in the interests of justice in the particular circumstances of any given case. That is what I intend to do here.

[87] Since both Ms. Ni nor Ms. Chen have stated under oath that they do not intend to sell their respective rental properties, and since the ongoing registration of the CPLs against title to those properties is not causing either of them any financial hardship, I decline to discharge those CPLs for the time being and the application for such a discharge is therefore dismissed.

[88] However, I accept the uncontroverted evidence of Ms. Chen that she has to sell the matrimonial home to generate funds to cover ongoing living expenses and, given the plaintiffs' inordinate delay in prosecuting the litigation, I think it is only fair

to permit such a sale to occur, albeit on terms that continue to provide some ongoing protection to the plaintiff's interests as a potential judgment creditor.

[89] The matrimonial home on West 33rd Ave. in Vancouver has a current assessed value (for property tax purposes) of approximately \$5 million. The only information before me regarding a mortgage on the property relates to a \$1.7 million mortgage granted to CIBC at the time of the original purchase in 2011. It is probably safe to assume there is considerable equity available in the property.

[90] I am prepared to discharge the CPL from the West 33rd Ave. property for the purposes of any sale of that property by Ms. Chen and I am prepared to allow her to retain \$750,000 from the net proceeds of any such sale to cover her future living expenses (including legal costs) provided however that the plaintiffs' CPL is registered on title to any replacement property purchased by Ms. Chen in first priority behind any purchase financing registered against title. The replacement property shall stand as a substitute security for the West 33rd Ave. property for all purposes in this action.

[91] It may also be that the plaintiffs would be satisfied with some form of security other than the re-registration of the CPL on any replacement property, such as, for example, the retention of a certain amount of the net proceeds in a trust account to the credit of the current litigation. If that occurs to the satisfaction of all parties, the court is prepared to endorse such an outcome.

[92] There is, however, a limit to the Court's tolerance of unnecessary delay in prosecuting an action.

[93] The proposed discharge and re-registration of the CPL (or posting of alternative security) is subject to a condition that the plaintiffs proceed to trial in this matter as scheduled in January 2026 or on such other date as the parties may hereafter agree. If that does not occur, then the defendants are granted leave to reapply to the court for an immediate discharge of all CPLs registered against all the

defendants' properties and/or release of any alternative security that may have been posted.

[94] The parties are also granted leave to re-attend before the court for further directions regarding, or orders to implement, the conditional discharge and re-registration of the CPL for the purposes described above.

Summary and Conclusion

[95] For the reasons set out above, the court makes the following orders:

1. The plaintiffs are granted leave to, within 30 days of the release for these Reason for Judgment, file their proposed fourth amended NOCC, whether in the form attached as an Appendix to these Reasons for Judgment or in such other revised form as counsel may agree.
2. The plaintiffs must not file any further caveats or CPLs against title to any of the defendants' properties without first securing an order of this court to that effect upon proper notice to the defendants beforehand.
3. Pursuant to ss. 150 and 151 of the *Wills, Estates and Successions Act*, the plaintiffs in their capacity as intestate successors of Mr. Yang are granted leave to continue this proceeding on behalf of Mr. Yang's estate as against Mr. Ni in addition to their capacity as judgment creditors pursuant to the Chinese judgments.
4. The defendants have liberty to further amend their Response to Civil Claim to more extensively plead *res judicata* and abuse of process issues as a defence to any re-litigation of the matters previously determined or which could have been determined in the Chinese litigation.
5. The defendants' applications to dismiss this action as an abuse of process or for want of prosecution is dismissed.

6. The defendants' application to discharge the CPLs filed by the plaintiffs against the 5112 Granville St. and 2159 West 47th Ave. property is dismissed.
7. Subject to the parties first agreeing on the procedure by which this may be accomplished, the CPL registered by the plaintiffs against the 925 West 33rd Ave. property may be discharged for the purposes of enabling the defendant Ms. Chen to sell that property and Ms. Chen may retain \$750,000 from the net proceeds of any such sale to cover her future living expenses, provided however that the plaintiffs' CPL is registered on title to any replacement property purchased by Ms. Chen in first priority behind any purchase financing also registered against title.
8. Should any sale of the 925 West 33rd Ave. property and the purchase by Ms. Chen of a replacement property occur, that replacement property shall stand as a substitute for the 925 West 33rd Ave. property for all purposes in this action.
9. The parties are at liberty to put in place some form of security arrangement other than the re-registration of the plaintiffs' CPL on any replacement property purchased by Ms. Chen including, without limitation, the retention of an agreed amount of the net sale proceeds from the sale of the 925 West 33rd Ave. property in a trust account to the credit of this litigation.
10. The plaintiffs must proceed to trial in this matter as scheduled in January 2026 or on such other date as the parties may hereafter agree. If that does not occur, then the defendants are granted leave to reapply to the court for an immediate discharge of all CPLs registered against all of the defendants' properties and/or release of any alternative security that may have been posted.

11. The parties are also granted leave to re-attend before the court for further directions regarding, or orders to implement, the discharge and re-registration of the CPLs for the purposes described above.

[96] The defendants, Ms. Chen and Ms. Ni, requested leave to speak separately to costs, and to address a number of factors including the plaintiffs refusal to admit facts, the reprehensible nature of the abuse of process, and the existence of certain settlement offers.

[97] The court's preliminary view is that, even though most of the relief sought by the defendants has been dismissed, the defendants have obtained some success with respect to the release of security. As well, the plaintiffs' failure to come to grips with the legal issues in this case and to properly frame the required pleading at the outset of the litigation, followed by an inordinate delay in prosecution and a misconceived attempt to secure substantial amendments through an inappropriate desk order procedure are all matters that should not be rewarded by an award of costs.

[98] In the result, the parties shall each bear their own costs of these applications, however should either party wish to seek an alternative outcome, they must schedule a hearing on the matter at any convenient time in the next three weeks.

“Kent J.”

Appendix A

SCHEDULE "B"

Schedule "A"

No.S187254

Vancouver Registry

In the Supreme Court of British Columbia

Between:

Yu Fang Liu, Yan Yang, Wen Li Yang, Wen Tao Yang, and Si Yi Pang an infant by her
litigation guardian Yu Fang Liu, intestate successors of Changbin Yang, Deceased

Plaintiffs

and:

Long Ni, Li Juan Chen a.k.a Lijuan Chen, and Ke Qing Ni

Defendants

AMENDED NOTICE OF CIVIL CLAIM

(Original Notice of Civil Claim filed on June 27, 2018, the first amendment filed on July 4, 2018, the second amendment filed on September 19, 2018, and the third amendment filed on July 24, 2019)

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiffs

Part 1: STATEMENT OF FACTS

1. The Plaintiffs, Yu Fang Liu, Yan Yang, Wen Li Yang, Wen Tao Yang, and Si Yi Pang an infant by her litigation guardian Yu Fang Liu, are the intestate successors of the deceased Mr. Changbin Yang (the “Deceased”), have an address for service of 208-4250 Kingsway, Burnaby, British Columbia, V5H 4T7.
2. The Defendants, Long Ni, businessman; Li Juan Chen a.k.a. Lijuan Chen, the defendant Ni Long’s wife, homemaker; Ke Qing Ni, the defendants Long Ni and Li Juan Chen a.k.a. Lijuan Chen’s daughter, student, have a residential address at 925 West 33rd Avenue, Vancouver, British Columbia, V5Z 2K6.
3. The Plaintiffs Yu Fang Liu, Wen Li Yang, Wen Tao Yang, and Si Yi Pang are all permanent residents of Canada. The Plaintiff Yan Yang, is a Chinese citizen.
4. All the Defendants are permanent residents of Canada.
5. The Deceased died intestate on July 25, 2017. He was survived by his wife, Mrs. Yu Fang Liu, and his adult children Ms. Yan Yang, Ms. Wen Li Yang, Mr. Wen Tao Yang, as well as his infant daughter Si Yi Pang. At the time of the Deceased’s death, Yu Fang Liu, Yan Yang, Wen Li Yang, Wen Tao Yang, and Si Yi Pang were the intestate heirs of his Estate.
6. In about 2007, the Defendant Long Ni made promise to the Deceased and the Deceased’s families that he would give high interests up to 50% per annum if the Deceased and the Deceased’s families would lend money to him for his investment in Chinese mining industry.
7. From May 27, 2008 to April 8, 2017, the Defendant Long Ni had repeatedly borrowed money from the Deceased and the Deceased’s families, in the total amount of

¥ 561,690,000 RMB, which is approximately \$113,472,727 CAD (the “Proceeds”). The Proceeds include the loan in the amount of ¥ 530,000,000 specified by the Defendant Long Ni as investment fund and another personal loan to the Defendant Long Ni in the amount of ¥ 31,690,000.

8. The Deceased had transferred the Proceeds to the Defendant Long Ni from his own and his wife Yu Fang Liu’s accounts, his mother-in-law Shu Qing Liu’s account, his son-in-law Zhenyu Chen’s business account, etc., to the defendant Long Ni’s accounts or the accounts that the defendant Long Ni designated.
9. On November 26, 2014, the Defendant signed a Repayment Agreement with the Deceased and agreed that:
 - a. up to November 26, 2014, the outstanding balance for the Proceeds is ¥ 519,000,000 RMB, including the principal and the interests;
 - b. the Defendant Long Ni will pay back ¥ 300,000,000 RMB by June 30, 2015 and pay back the rest of the Proceeds by August 30, 2015; and
 - c. If the Defendant did not pay back the Proceeds as agreed, the Defendant Long Ni will pay the Deceased an interest at 20% annually.
10. The Defendant Long Ni did not pay back the Proceeds as agreed except that the Defendant Paid ¥ 3,000,000 RMB on July 28, 2014 and another ¥ 3,000,000 RMB on April 20, 2015 to the Deceased, as the 30% annual interest for part of the Proceeds in the amount of \$10,000,000 that the Deceased loaned to the Defendant Long Ni on April 15, 2013.
11. On February 20, 2017, the Defendant Long Ni acknowledged in writing that the outstanding balance for the Proceeds is ¥ 530,000,000 RMB and the Defendant Long Ni confirmed that he would pay back the Proceeds in the whole amount of ¥ 530,000,000 RMB by the end of September 2018. And if the Defendant Long Ni did not pay back the Proceeds, he would pay the Deceased an interest at 2% monthly.
12. On April 8, 2017, the Defendant Long Ni borrowed another ¥ 31,690,000 RMB from the Deceased.
13. The Deceased claimed the debts from the Defendant Long Ni many times before his death but did not receive any payment from the Defendant Long Ni. To avoid the repayment for the Proceeds, the Defendant Long Ni murdered the deceased on July 25, 2017 in China

and the defendant Long Ni is charged with murder and ~~is currently~~ was prisoned in Hubei Province, China.

14. The Defendant Long Ni acknowledged his responsibility to repay the Proceeds and renewed the borrowing receipts of the Proceeds as per the Deceased's requests at various times up to and including April 8, 2017.
15. Using the Proceeds that the Plaintiffs loaned to the Defendants, the Defendants acquired, preserved, maintained, or improved some properties in Canada, including but not limited to § 5 freehold non-strata ~~and strata~~ properties in Vancouver, British Columbia, particularly as below:

- a. 925 West 33rd Avenue, Vancouver BC V5Z 2K6 PID: 010-819-894
Legal Description: LOT 12 BLOCK 816 DISTRICT LOT 526 PLAN 6963

(the "West 33rd Property")

The Defendant, Long Ni, purchased the "West 33rd Property" on or about March 3, 2011 with the Proceeds that he borrowed from the Plaintiffs. The "West 33rd Property" was registered in the names of the Defendants Long Ni and Li Juan Chen originally, and on or about April 13, 2018, the Defendant Long Ni, transferred his undivided one-half interest in the West 33rd Property to the Defendant, Li Juan Chen, who is the Defendant Long Ni's wife.

- b. 2159 West 47th Avenue, Vancouver BC V6M 2M6
PID:012-205-613
Legal Description: LOT 31 OF LOT 8 BLOCK 1 DISTRICT LOT 526 PLAN 3776
(the "West 47th Property")

The Defendant Long Ni purchased the "West 47 Property" on or about May 30, 2016, with the Proceeds that he borrowed from the Plaintiffs. The "West 47 Property" was registered in the name of the Defendant Ke Qing Ni, who is the child of the Defendants Long Ni and Li Juan Chen a.k.a. Lijuan Chen.

- c. 5112 Granville Street, Vancouver BC V6M 3B6

PID:011-042-273

Legal Description: LOT 1 BLOCK 871 DISTRICT LOT 526 PLAN 5887

(the “Granville Property”)

The Defendant Long Ni purchased the “Granville Property” on or about June 29, 2011, with the Proceeds that he borrowed from the Plaintiffs. The “Granville Property” was registered in the name of the Defendant, Li Juan Chen, who is the Defendant Long Ni’s wife.

- d. 4688 West 14th Avenue, Vancouver BC V6R 2Y6

PID: 003-921-620

Legal Description: LOT 3 of LOT 1 BLOCK 160 DISTRICT LOT 540 PLAN 4414

(the “West 14th Property”)

The Defendant Long Ni purchased the “West 14th Property” on or about December 5, 2013, with the Proceeds that he borrowed from the Plaintiffs. The “West 14th Property” was registered in the name of the Defendant, Li Juan Chen, who is the Defendant Long Ni’s wife..

- e. 2306 West 12th Avenue, Vancouver BC V6K 2N9

PID:012-032-468

Legal Description: LOT 10 BLOCK 402 DISTRICT LOT 526 PLAN 3944

(the “West 12th Property”)

The Defendant Long Ni purchased the “West 12th Property” on or about January 25, 2018, with the Proceeds that he borrowed from the Plaintiffs. The “West 12th Property” was registered in the name of the Defendant, Li Juan Chen, who is the Defendant Long Ni’s wife.

(the “5 Properties”)

16. At or before the dates on which the Defendants acquired legal titles to the 5 Properties, and/or preserved, maintained, or improved the 5 Properties, the Defendant Long Ni made a transfer or disposition of his property to the Defendant Li Juan Chen and the Defendant Ke Qing Ni, with the intention to delay, hinder, or defraud the Plaintiffs, of their just and lawful remedies.
17. The Defendant Long Ni's transfer, or disposition of his property to the Defendant Li Juan Chen and the Defendant Ke Qing Ni, into the 5 Properties, was either a fraudulent conveyance or a fraudulent preference.
18. The property of the Defendant Long Ni which was transferred to, or disposed of, in favour of the Defendant Li Juan Chen and the Defendant Ke Qing Ni, was used by the Defendant Chen and the Defendant Ke Qing Ni to acquire, and/or preserved, maintained, or improved the 5 Properties, and the Defendant Bai's property is equitably traceable into the 5 Properties.
19. The Defendant Long Ni holds an equitable and beneficial ownership interest in the 5 Properties.
- ~~16.20.~~ The Deceased and his intestate successors hence have been deprived of the Proceeds by the Defendants Long Ni's default payments, fraud, and murder.
- ~~17.21.~~ The Defendants used some of the Proceeds that were borrowed from the Plaintiffs to acquire, preserve, maintain, or improve the 5 Properties, and thus the Defendants are holding the titles of the 5 Properties in trust for the Plaintiffs and the Plaintiffs are entitled to a constructive trust and a beneficial interest in the 5 Properties, and in any other properties or interests that acquired, preserved, maintained, or improved by any of the defendants using some or all of the Proceeds.
22. In or around December 2017, the Plaintiffs started an action against the Defendants Long Ni and Li Juan Chen, asking for repayment of a portion of the Proceeds, in the amount of ¥ 31.69M RMB, with belief that this amount was used by the Defendants personally, as the Defendant Long Ni alleged.

23. In or around December 2018, the Plaintiffs received a Civil Judgement against the Defendant Long Ni, as below:
- a. the Defendant Long Ni to repay the principle of the loans to the Plaintiffs, in the amount of ¥ 27.8M RMB;
 - b. the Defendant Long Ni to pay the corresponding interests, calculated at 6% annually, commencing July 26,2017, until the loans are repaid in full, within 10 days of the effective date of this judgement; and
 - c. the Defendant Long Ni to pay the court filling fee and the preservation fee, in the amount of ¥ 203,657RMB, and ¥ 5,000 RMB.
- (the “Chinese Civil Judgement”)
24. The “Chinese Civil Judgement” became final and effective in February 2019.
25. Receiving no payment from the Defendant Long Ni, starting from August 2019 the Plaintiffs exhausted all their financial resources to enforce the Chinese Civil Judgement in China. But up to date, the Plaintiffs only received ¥ 131,275.26 RMB from the Chinese enforcement Courts.
26. In or around November 2018, the Plaintiffs started an arbitration against the Defendant Long Ni in China, asking for repayment of the balance of the Proceeds, in the amount of ¥ 51.90M RMB, with belief that this amount was used by the Defendant Long Ni for business purpose, as the Defendant Long Ni alleged.
27. On April 30,2019, the Plaintiffs received an Arbitration Award against the Defendant Long Ni, as below:
- a. the Defendant Long Ni to repay the principle of the loans to the Plaintiffs, in the amount of ¥ 172,785,000 RMB,
 - b. the Defendant Long Ni to pay the interests up to August 30,2015 in the amount of ¥ 198,288,629 RMB;

- c. the Defendant Long Ni to pay the interests loss for the period from August 31, 2015 to the date of full repayment, calculated at 20% annually on the base amount of ¥172,785,000 RMB; and
 - d. the Defendant Long Ni to pay the arbitration fee, in the amount of ¥1,158,891.
(the “Chinese Arbitration Award”)
28. The Chinese Arbitration Award became final and effective on April 30, 2019.
 29. Receiving no payment from the Defendant Long Ni, starting from July 2019, the Plaintiffs exhausted all their financial resources to enforce the Chinese Arbitration Award in China. But up to date, the Plaintiffs only received ¥2,889,171.18 RMB from the Chinese enforcement Courts.
 30. The Plaintiffs’ efforts in enforcement the Chinese Civil Judgement and the Chinese Arbitration Award in China include but not limited to intensive and thorough investigations of the Defendants’ properties in each of the provinces in China, appointing third parties to help the enforcement process, and start actions pursuing the subrogation rights in Chinese courts against the companies who the Plaintiff thought were debtors of the Defendant Long Ni.
 31. The Plaintiffs had to pause their enforcement process in China when the COVID-19 started in the end of 2019 in China, when most if not all, cities and institutions were shut down until in or around March 2023 when the Chinese government announced that the COVID-19 epidemic had basically ended but not completely over, and started reopening the institutions and businesses.
 32. Starting from March 2023, the Plaintiffs resumed their investigations about the Defendant Long Ni’s hidden properties in China, and the Plaintiffs’ potential subrogation claims against the suspected debtors of the Defendant Long Ni.
 33. In late October 2023, the Plaintiffs concluded that they had exhausted all their resources to enforce the Chinese Civil Judgement and the Chinese Arbitration Award in China.

34. Up to date, except the amounts that the Plaintiffs received from the Chinese enforcement courts, which were mentioned in Paragraphs 21 and 25, the Plaintiffs have not received any additional amount from the Defendants. The Chinese Civil Judgement and the Chinese Arbitration Award thus are still outstanding.

Part 2: RELIEF SOUGHT

1. The Plaintiffs seek an order for enforcement of the Chinese Civil Judgements against the Defendant Long Ni, as below:
 - a. the Defendant Long Ni to repay the principle of the loans to the Plaintiffs, in the amount of ¥27.8M RMB;
 - b. the Defendant Long Ni to pay the corresponding interests, calculated at 6% annually, commencing July 26,2017, until the loans are repaid in full, within 10 days of the effective date of this judgement;
 - c. the Defendant Long Ni to pay the court filling fee and the preservation fee, in the amount of ¥203,657RMB, and ¥5,000 RMB; and
 - d. The amount of ¥131,275.26 RMB that the Plaintiffs received from the Chinese enforcement Court should be deducted from the order.
2. The Plaintiffs seek an order for enforcement of the Chinese Arbitration Award against the Defendant Ni, as below:
 - a. the Defendant Long Ni to repay the principle of the loans to the Plaintiffs, in the amount of ¥172,785,000 RMB,
 - b. the Defendant Long Ni to pay the interests up to August 30,2015 in the amount of ¥198,288,629 RMB;
 - c. the Defendant Long Ni to pay the interests loss for the period from August 31, 2015 to the date of full repayment, calculated at 20% annually on the base amount of ¥172,785,000 RMB;
 - d. the Defendant Long Ni to pay the arbitration fee, in the amount of ¥1,158,891.

- e. The amount of ¥2,889,171.18 RMB that the Plaintiffs received from the Chinese enforcement Court should be deducted from the order.
3. The Plaintiffs claim against the Defendants Long Ni, Li Juan Chen a.k.a. Lijuan Chen, Ke Qing Ni for:
- a. judgement to debt in the amount of \$113,472,727 CAD;
 - b. judgement for conversion, unjust enrichment, or both, in the amount of \$113,472,727 CAD;
 - c. a tracing order;
 - d. a Certificate of Pending Litigation against each of the 5 Properties of the Defendants;
 - e. an order compelling the defendants to account for and disgorge all of the funds they have converted;
 - f. a declaration that the debt owed by the Defendants is a debt or liability arising out of fraud or misappropriation by the defendants that is not released in any bankruptcy proceedings that any of them may commence;
 - g. a declaration that the Defendant Long Ni has or had an equitable and beneficial ownership interest in the 5 Properties;
 - h. a declaration that the Defendant Ni's disposition, or transfer his property to, or in favour of, the Defendants Li Juan Chen, and Ke Qing Ni, was a fraudulent conveyance within the meaning of the *Fraudulent Conveyance Act*, RSBC 1996, c.163, and is of no force or effect insofar as it affects the rights of the Plaintiffs;
 - i. a declaration that the Defendant Long Ni's disposition, or transfer his property to, or in favour of, the Defendant Li Juan Chen, and Ke Qing Ni, is traceable into the 5 Properties, and that pursuant to the *Fraudulent Conveyance Act*, RSBC 1996, c.163, the Plaintiffs are entitled to pursue their just and lawful remedies as

judgement creditors against the Defendant Long Ni as if he was the legal and beneficial owner of the 5 Properties.

- j. interest pursuant to the *Court Order Interest Act*;
 - k. costs on a level and basis to be determined by this Honourable Court; and
 - l. all other relief the Plaintiffs may seek and this Honourable Court may grant.
4. The Plaintiffs seek prejudgement relief for any funds held in the accounts of the Defendants.

Part 3: LEGAL BASIS

Enforcement of the Chinese Civil Judgement and the Chinese Arbitration Award based on Common Law:

The unrealized Judgements against the Defendant Ni for payment of money which became final and came into effect, should be recognized and enforced by our Court at Common Law.

Debts

1. As of today, 26 June, 2018, the Defendants owe a total of \$113,472,727.00 CAD to the Plaintiffs.

Conversion

1. The Defendants are liable for conversion because
 - a. the Defendants committed wrongful acts by inducing the Plaintiffs to transfer the Proceeds;
 - b. the Defendants' wrongful acts involved the Plaintiffs' properties, namely, the Proceeds;
 - c. the Defendants handled and disposed of the Plaintiffs property, namely the Proceeds, by using it to acquire, preserve, maintain, or improve the 5 Properties

and other properties or interests for the defendants themselves for purposes that were not in the Plaintiff's interest but benefitted the Defendants;

- d. the Defendants' actions in causing the Plaintiffs to transfer the Proceeds were done intentionally, because the Defendants intended to induce the Plaintiffs to transfer the Proceeds to their benefits; and
- e. the Defendants has never intended in paying back the Proceeds. The Defendant Long Ni murdered the Deceased when the Deceased tried to claim back the Proceeds from the Defendant Long Ni.

Unjust Enrichment

1. The Defendant Long Ni, his wife, the Defendant Li Juan Chen a.k.a. Lijuan Chen, his daughter Ke Qing Ni, have been unjustly enriched by their fraudulent and criminal conduct. There is no judicial reason for their enrichment.
2. The Defendants' conducts have enriched all of them as they have received the Proceeds transferred by the Plaintiffs and used the Proceeds for their personal benefits, which has resulted in a corresponding deprivation of the Plaintiffs arising from the loss of the Proceeds.
3. The Plaintiffs pleads unjust enrichment against the Defendants Li Juan Chen a.k.a. Lijuan Chen and Ke Qing Ni, who have been unjustly enriched either as innocent agents or accomplices.

Fraudulent Representation and Extortion

1. The Plaintiffs pleads and relies on the common law of fraudulent representation to establish that the basis for the transfer of funds is void. The false statements from the Defendant were deliberate and material and caused the Plaintiffs to act on their detriments. The Defendants have no colour of right.
2. The Plaintiffs pleads and relies on s. 346 of the Criminal Code. The Defendants' conduct was menacing and without colour of right, and caused the Plaintiffs to transfer the Proceeds.

3. The Proceeds were transferred from the Plaintiffs to the Defendants as a result of Fraudulent Representation and Extortion, particulars of which are as follows:
 - a. the Defendants induced the Plaintiffs with high interests rates without justification or exercise;
 - b. the Defendants fraudulently represented that the Proceeds were used as the investments in the mining industry in China but transferred the Proceeds in purchasing properties in BC, Canada;
 - c. the Defendant Long Ni murdered the Deceased to avoid repayment for the Proceeds.

Loss or Damages

1. The Plaintiffs have suffered loss and damages due to the wrongful acts of the Defendants.

Wills, Estates and Succession Act

1. The Plaintiffs plead s.150, s.151, and other applicable provisions of the *Wills, Estates and Succession Act*, RSBC 2009, c.13 and any amendments.

Fraudulent Conveyance Act and Fraudulent Preference Act

1. The Plaintiffs plead the provisions of the *Fraudulent Conveyance Act*, RSBC 1996, c.163 and *Fraudulent Preference Act*, RSBC 1996, c.164, and any amendments.

Foreign Money Claims Act:

The Plaintiffs plead the provisions of the *Foreign Money Claims Act*, RSBC 1996, c.155, and any amendments.

Plaintiff's(s') address for service:

JING LING WANG LAW CORPORATION
208-4250 Kingsway
Burnaby BC V5H 4T7
908-938 Howe Street
Vancouver, B.C. V6Z1N9

Place of trial: Vancouver

The address of the registry is:

Vancouver Registry

800 Smithe Street

Vancouver BC V6Z 2E1

Date: Oct. 7, 2024

Angel W.

Signature of lawyer for Plaintiffs
Angel Jingling Wang

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.