

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal Bank of Canada v. Liu*,
2025 BCSC 89

Date: 20250121
Docket: H190234
Registry: Vancouver

Between:

Royal Bank of Canada

Petitioner

And:

**Sui Sheng Liu, Suk Woon Ma, His Majesty the King in Right
of the Province of British Columbia, The Owners, Strata Plan BCS4213**

Respondents

Before: The Honourable Madam Justice Warren

Reasons for Judgment

Counsel for the Applicant Hua Zhang:

J. West
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Counsel for the Respondent Sui Sheng Liu:

F. Qamar

Counsel for the Respondent His Majesty the
King in Right of the Province of British
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No other appearances

Place and Dates of Hearing:

Vancouver, B.C.
March 28, July 9-10,
October 17, 2024

Place and Date of Judgment:

Vancouver, B.C.
January 21, 2025

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Introduction

[1] This is a foreclosure proceeding involving a residential condominium property located on Richards Street in Vancouver (the “Property”). Sui Sheng Liu is the former registered owner of the Property. Currently at issue is whether Mr. Liu sold a half interest in the property to a third party in 2013, and if so, what impact that has on Mr. Liu’s beneficial interest in the sale proceeds of the Property. The answers to these questions have implications for whether judgments obtained against Mr. Liu by Canada and British Columbia can be fully satisfied from those sale proceeds.

Background

[2] Royal Bank of Canada (“RBC”) commenced these proceedings on March 18, 2019, after Mr. Liu defaulted on the mortgage held by RBC and registered against the Property. An order nisi was granted on June 27, 2019, which set a six-month redemption period expiring on December 27, 2019. That date came and went without redemption.

[3] The Property was sold for \$751,000 on May 6, 2021, pursuant to an order (the “Sale Order”) obtained by RBC. The sale proceeds were disbursed in accordance with the Sale Order; specifically, tax and other like arrears were paid, amounts owing for strata charges were paid, real estate commissions were paid, and RBC was paid the amount required to satisfy the outstanding balance of its mortgage plus interest and costs.

[4] After payment of the tax arrears, strata charges, and real estate commission, \$694,765.15 remained of the sale proceeds (the “Net Proceeds”). After payment of RBC’s claim, \$394,912.53 remained (the “Remaining Proceeds”). The Remaining Proceeds were paid into court to the credit of this proceeding, pending further Court Order regarding the outstanding issues addressed in these reasons.

[5] Hua Zhang, who is not a party to this proceeding, became aware of it when her son, Shuhan Wang, who was living in the Property, was served with RBC’s application for the Sale Order. Ms. Zhang filed a response to that application

asserting a beneficial interest in the Property. She has now applied for a declaration that she was the beneficial owner of an undivided one-half interest in the Property and that Mr. Liu held the undivided one-half interest as bare trustee for her. She seeks related relief including an order that one half of the Net Proceeds (\$347,382.58), together with accrued interest, be paid to her counsel in satisfaction of her interest in the Property.

[6] Ms. Zhang alleges that she purchased a half interest in the Property from Mr. Liu in late 2012 or early 2013, for \$180,000 plus tax. This represented roughly half the then value of the Property, Mr. Liu having purchased it about a year earlier for \$373,900. The RBC mortgage was in existence at the time Ms. Zhang says she purchased a half interest in the Property – it was registered against title to the Property in late 2011.

[7] The Crown in Right of British Columbia (“British Columbia”) and the Crown in Right of Canada (“Canada”) are both creditors of Mr. Liu, having obtained judgments against him for unremitted taxes, unremitted payroll source deductions, interest, and penalties. British Columbia registered judgments against Mr. Liu’s interest in the Property in 2018, 2019, and 2020, and Canada did the same in 2019.

[8] When Ms. Zhang’s application first came on for hearing on March 28, 2024, it was opposed by Mr. Liu, who took the position that Ms. Zhang loaned him \$187,000 in or about 2013, but that she did not acquire any interest in the Property. He acknowledged that, in March 2013, he signed a declaration of trust which provided that Ms. Zhang was the beneficial owner of an undivided one-half interest in the Property and that he held that interest as bare trustee for her. However, his initial position was that the declaration of trust merely served as collateral for the loan and, once the loan was repaid, it would cease to have any effect and he would remain the sole beneficial owner of the Property. His initial position was that Ms. Zhang’s claim to the funds held in court was limited to \$187,000; that is, the amount of the loan.

[9] Ms. Zhang’s application was also opposed by Canada. The position advanced on Canada’s behalf was that, even if Ms. Zhang purchased a half interest

in the Property in 2013, the RBC mortgage must be satisfied from the entirety of the Net Proceeds, and not just from Mr. Liu's share, leaving Ms. Zhang with a 50 percent interest in the Remaining Proceeds (i.e. what remained after the RBC indebtedness was repaid). British Columbia did not file a response to Ms. Zhang's application, but its interests align with those of Canada.

[10] Thus, when the application first came on for hearing on March 28, 2024, two issues had been raised, the first factual and second legal:

1. Did Ms. Zhang purchase a one-half beneficial interest in the Property from Mr. Liu in or about 2013 for \$180,000 plus tax, or did she lend Mr. Liu \$187,000 secured by collateral in the form of the declaration of trust?
2. If Ms. Zhang did acquire a one-half beneficial interest in the Property in or about 2013, is her current interest limited to half the Remaining Proceeds, or does she have a half interest in the Net Proceeds? If it is the former, Mr. Liu's share will be enough to satisfy the claims of Canada and British Columbia. If it is the latter, Mr. Liu's share will not be enough to satisfy the claims of Canada and British Columbia.

[11] Ms. Zhang's application was initially scheduled for a one-day hearing on affidavit evidence. During the course of that day, I decided that cross-examination of Ms. Zhang, Mr. Wang, and Mr. Liu was required to fairly decide the first issue. I directed, among other things, that the parties schedule a two-day continuation with the first day to be used for the cross-examinations and the second for submissions, and that \$187,260 be paid out to Ms. Zhang immediately because there was no dispute that she was entitled to at least that amount.

[12] The continuation hearing took place on July 9 and 10, 2024. During their cross-examinations, Ms. Zhang and Mr. Wang maintained the positions reflected in their affidavits. Their evidence was not undermined in any material way. In contrast, Mr. Liu acknowledged that material portions of his affidavit evidence were incorrect. He admitted that he received the entire benefit of the RBC mortgage and Ms. Zhang

received none, and that as between him and Ms. Zhang he bore exclusive responsibility for the RBC mortgage. He ultimately admitted that Ms. Zhang purchased an undivided one-half beneficial interest in the Property in or about 2013, and that their arrangement was not a loan.

[13] In the result, the first issue is resolved in Ms. Zhang's favour. I find that Ms. Zhang purchased a one-half beneficial interest in the Property from Mr. Liu, in or about 2013, for \$180,000 plus tax of \$7,260. This leaves only the second issue to be determined.

[14] Following completion of the continuation, I reserved my decision. Before I had issued a decision, counsel for Ms. Zhang applied for leave to file supplementary legal submissions addressing the doctrine of equitable exoneration and s. 34 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. On October 17, 2024, I granted that leave and further submissions were then made on behalf of Ms. Zhang and on behalf of Canada.

Positions of the Parties

[15] The parties' positions evolved somewhat over the several days of the hearing, and some of the positions advanced were premised on a finding that Ms. Zhang did not acquire an ownership interest in the Property. The summary of their positions below reflects only the submissions that applied in the event that I concluded that Ms. Zhang did acquire an interest in the Property, as that is what I have now found.

[16] There is no dispute that the RBC mortgage, despite being registered against the Property in which Ms. Zhang has a half interest, arose out of Mr. Liu's personal indebtedness alone. As mentioned, Mr. Liu conceded that he had the exclusive benefit of the RBC indebtedness and Ms. Zhang received no benefit from it. There is no dispute that as between Mr. Liu and Ms. Zhang, Mr. Liu was to bear exclusive responsibility for the RBC mortgage. There is also no dispute that Canada and British Columbia have judgments against Mr. Liu for unremitted taxes, unremitted payroll source deductions, and interest, which were registered after Ms. Zhang acquired her interest in the Property.

Ms. Zhang

[17] Ms. Zhang's position is that as a 50 percent beneficial owner of the Property who received no benefit from the RBC mortgage, she is entitled to half the Net Proceeds (\$347,382.58), and that the RBC indebtedness must be viewed as having been satisfied from Mr. Liu's half of the Net Proceeds, leaving \$47,529.95 from his share available to Canada and British Columbia.

[18] Ms. Zhang acknowledges that her interest in the Property was exposed to RBC's claim and that, if Mr. Liu's share of the Net Proceeds had been insufficient to satisfy the RBC indebtedness, her share of the Net Proceeds would have been available to RBC to the extent necessary to make up the shortfall. However, she says the RBC mortgage did not operate to convey an ownership interest in the Property to RBC, but rather operated merely as a charge against the title such that, in 2013, she acquired a half interest in the Property subject only to Mr. Liu's obligation to RBC. Thus, she says, she has a 50 percent interest in the Net Proceeds subject only to RBC's priority and, with RBC suffering no shortfall, she is entitled to half the Net Proceeds, or \$347,382.58.

[19] Ms. Zhang also submits that the principle of equitable exoneration and s. 34 of the *Law and Equity Act* provide alternative approaches to the same end. She says she is properly characterized as a surety in relation to the RBC indebtedness and, as such, is entitled to the benefit of the principle of equitable exoneration and s. 34 of the *Law and Equity Act*. The former entitles her to have RBC's indebtedness discharged out of Mr. Liu's beneficial interest in the Property. The latter entitles her to stand in the place of RBC to the extent that funds realized from her beneficial interest in the Property were used to pay RBC's indebtedness, and she is then entitled to the benefit of the priority position RBC held.

Canada

[20] Canada acknowledges that its judgments and those of British Columbia charge only Mr. Liu's beneficial interest in the Property: see *Court Order*

Enforcement Act, R.S.B.C. 1996, c. 78, s. 86 and *Chichak v. Chichak*, 2021 BCCA 286 at para. 24.

[21] However, Canada submits that when the Property was sold, Ms. Zhang's interest in it was limited to 50 percent of the proceeds remaining after satisfaction of the RBC indebtedness (that is, 50 percent of the Remaining Proceeds of \$394,912.53, or \$197,456.27), with Mr. Liu entitled to the other 50 percent of the Remaining Proceeds such that his share (\$197,456.27) is available to satisfy the judgments of Canada and British Columbia.

[22] Canada submits that, as a matter of law, the RBC mortgage charged the Property as a whole, noting that the *order nisi* granted on June 27, 2019, declared that the mortgage charged "the lands", meaning the Property as a whole. As I understand it, Canada submits that in 2013, Mr. Liu could not transfer a half interest in the Property free of the RBC mortgage with the result that the most Ms. Zhang acquired was a 50 percent interest in Mr. Liu's equity in the Property.

[23] Canada submits that the doctrine of equitable exoneration does not apply because Ms. Zhang benefited from the RBC mortgage. Specifically, Canada argues that Ms. Zhang would not have been able to purchase her interest in the Property were it not for the prior registered mortgage because Mr. Liu had used the mortgage proceeds to initially purchase the Property, and she benefited from her son living in the Property.

Analysis

[24] I wish to start by emphasizing that Ms. Zhang does not take the position that her unregistered interest in the Property takes priority over the RBC mortgage. She concedes that the RBC mortgage charged the Property as a whole. I also emphasize that the judgments of Canada and British Columbia charge only Mr. Liu's beneficial interest in the Property (and now the sale proceeds). The question is: what is Mr. Liu's beneficial interest in the Remaining Proceeds?

[25] In my view, that question is most conveniently answered by application of the principle of equitable exoneration.

[26] Under the principle of equitable exoneration, where there is a charge on jointly owned property to secure a debt of only one of the joint owners, the other joint owner, being in the position of a surety, is entitled to have the secured indebtedness discharged, so far as possible, out of the interest of the other joint owner, provided that, in all the circumstances, it can be inferred that this was the intention of the joint owners, and provided the joint owner claiming the benefit of the doctrine did not benefit from the granting of the charge: *Re Bankruptcy of Davies Wong*, 2005 BCCA 574; *Bankruptcy of Kostiuk (Re)*, 2002 BCCA 410.

[27] In this case, there is no dispute that the RBC mortgage secured the debt of Mr. Liu alone. Again, Mr. Liu conceded that he received the entire benefit of the RBC indebtedness and Ms. Zhang received none, and that as between him and Ms. Zhang, responsibility for the RBC mortgage was his alone. In the circumstances, I readily infer that Mr. Liu and Ms. Zhang intended that the RBC indebtedness be discharged, so far as possible, out of Mr. Liu's interest in the Property.

[28] I do not agree with Canada's argument that Ms. Zhang benefitted from the RBC mortgage. This is not a case, like *Davies Wong*, where the equity of the owner claiming the benefit of the doctrine increased as a result of the secured indebtedness. The RBC mortgage pre-existed Ms. Zhang's acquisition of an interest in the Property. It did not increase her equity. Any benefit to her that arose from her son living in the Property was the result of her ownership interest; it was not the result of RBC's indebtedness.

[29] For these reasons, in equity, Ms. Zhang was entitled to have the RBC mortgage discharged out of Mr. Liu's share of the Net Proceeds. It follows that Mr. Liu's beneficial interest in the Remaining Proceeds is limited to that portion that reflects the difference between the Net Proceeds and the amount that was required to satisfy RBC's claim.

Conclusion

[30] I declare that Ms. Zhang was a beneficial owner of an undivided one-half interest in the Property and, on the sale of the Property, her interest transferred to half of the Net Proceeds, or \$347,382.58. That amount, together with any accrued interest, shall be paid out of the funds held in court to the credit of this proceeding to Ms. Zhang’s counsel, in trust for her.

[31] If it is necessary to speak to costs, the parties may secure a hearing date by contacting Supreme Court Scheduling within 30 days of the release of these reasons. If neither party does that, then Ms. Zhang shall have her costs at Scale B.

“Warren J.”