

CAUTION:

The case of *Global Chinese Press v. Zhang* has not yet proceeded to trial.

Robert Fleming Lawyers presents the following decision for the purposes only of illustrating the arguments advanced and the legal principles at issue.

No judicial finding has been made against any of the persons named in the following decision.

The reader should not assume that any of the persons named the following decision are guilty of any misconduct of any kind.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Global Chinese Press Inc. v. Zhang*,
2015 BCSC 768

Date: 20150428
Docket: S148822
Registry: Vancouver

Between:

Global Chinese Press Inc.

Plaintiff

And

**Jane Zhang a.k.a. Yan Zhang, Joanna Zhang a.k.a. Fan Zhang,
Ying Zhang a.k.a. Justin Zhang, Frank Huang a.k.a. Yunrong Huang,
Chin-Hsiung Liu a.k.a. Chil-Hsiung Liu a.k.a. Daniel Liu,
Guoqing Liu a.k.a. George Liu, Jackie Zhang,
GCP Media Group Inc., New Leaf Media Inc. and
3Pawsoft Enterprises Inc.**

Defendants

Before: The Honourable Mr. Justice Macintosh

Oral Reasons for Judgment

In Chambers

| | |
|--|-----------------------------------|
| Counsel for the Plaintiff: | D.C.F. Cowper |
| Counsel for the Defendants, Joanna Zhang, Frank Huang, Chin-Hsiung Liu, Jackie Zhang, GCP Media Group Inc., and New Leaf Media Inc.: | R.G. Pederson |
| Counsel for the Defendants, Jane Zhang and 3Pawsoft Enterprises Inc.: | G.F.T. Gregory |
| Counsel for the Receiver Boale, Wood & Company: | C.M. Cash |
| Place and Date of Hearing: | Vancouver, B.C. April 23, 2015 |
| Place and Date of Judgment: | Vancouver, B.C. April 28, 2015 |

[1] **THE COURT:** These reasons address two applications which overlap. One is brought by

the receiver who applies either to be indemnified for its fees or to be discharged as the receiver for the defendant companies, Media Group and New Leaf. The other is the plaintiff's application, initially argued on February 12, 13, and 16, 2015, and further argued following my reasons on April 17, seeking an order that it take over directly the operation of Media Group and New Leaf, or alternatively, that the present receiver become either a monitor or a licensor of the Media Group and New Leaf assets for operation by the plaintiff as a going concern.

[2] Both applications were argued on April 23, as a result of my reasons on April 17. In those reasons, I directed that an application be set down as soon as practical for submissions addressing the control and operation of Media Group and New Leaf between now and trial. I added that I was open to considering any proposal other than the personal defendants serving as the operators or overseers of the two companies during the pre-trial period.

[3] It is common ground that there is not enough money for the receivership to be able to continue in accordance with the terms of the order appointing the receiver, which I pronounced on November 21, 2014.

[4] The receiver, in the course of oral submissions on April 23, recommended either that it license the assets of the two companies to the plaintiff for operation by the plaintiff or that Mr. Jim Mann take over as receiver. Mr. Mann, among others, was recommended for that role by Mr. Pederson's clients as well.

[5] The plaintiff argued first, under Supreme Court Rule 10-1(4), that it be given direct control over the two companies, and alternatively, under the same subrule, that the receiver serve as a monitor of the plaintiff operating the two companies. The plaintiff's third choice was the continuation of the receivership with the receiver licensing the assets of the two companies to the plaintiff to operate them. As seen above, that is also one of the ways forward to trial which the receiver recommended.

[6] Supreme Court Rule 10-1(1) and (4) provide as follows:

(1) The court may make an order for the detention, custody or preservation of any property that is the subject matter of a proceeding or as to which a question may arise and, for the purpose of enabling an order under this rule to be carried out, the court may authorize a person to enter on any land or building.

...

(4) If a party claims the recovery of specific property other than land, the court may order that the property claimed be given up to the party, pending the outcome of the proceeding, either unconditionally or on terms and conditions, if any, relating to giving security, time, mode of trial or otherwise.

[7] For obtaining relief pursuant to Rule 10-1, the plaintiff observed that from my reasons on

April 17, it has already established a strong *prima facie* case to beneficial ownership of the assets. It argued the balance of convenience based in part on the common premise that the *status quo* of the present receivership is unaffordable, together with my ruling on April 17 that the personal defendants will not be the ones to run the defendant companies between now and trial.

[8] Having regard to the wording of Rule 10-1, the plaintiff submitted that property is to be broadly defined, as seen by the fact that in Subrule (4), only land appears to be excluded from the scope of the definition of property which the subrule addresses. The plaintiff cited *Terrapin Ltd. v. Tecton Structures* (1967), 59 W.W.R. 374 (B.C.S.C.), as further demonstrating that property in this context should be defined broadly. Thus, the plaintiff said, the property contemplated in Rule 10-1 can include the two defendant companies as going concerns.

[9] Finally, in its argument to employ Rule 10-1, the plaintiff relied upon an informative report on the *Replevin Act* by the Law Reform Commission of British Columbia, published in 1978, in which the authors encourage courts to proceed boldly by giving what has become Rule 10-1 an expansive application based on the plain meaning of the words it contains.

[10] Rule 10-1 has its grounding in the law of replevin, which addresses the distraint of goods, usually for rent arrears, and sometimes pre-trial. No case authority counsel could offer provides support for expanding the scope of Rule 10-1 to effectively making a party in a lawsuit the receiver of the opposite parties' assets pre-trial, particularly where those assets consist of going concerns. My decision today will not go that far either. There should be at least an element of independent oversight preserved until trial. It will need to be a reduced oversight in recognition of the hard reality that there is too little money available to support more all-encompassing supervision.

[11] In the result, I am employing the approach which was recommended by the receiver and requested by the plaintiff in its alternative submission. The current receiver will license the assets of the two companies to the plaintiff for it to operate them pending trial. Precedent for that approach is found in the decision of Masuhara J. in *3Pawsoft Enterprise Inc. v. Global Chinese Press Inc.*, 2014 BCSC 1030, particularly at paras. 23, 24, and 45. The petitioner in that proceeding is a defendant in the case before me now. The respondent in that proceeding is the plaintiff in the case before me now. Jane Zhang, the primary defendant in this case, was, I believe, the principal behind 3Pawsoft Enterprise Inc. when that company asked Masuhara J. to order that the receiver in that proceeding license the assets of GCP to 3Pawsoft Enterprises, so that the latter company could run GCP.

[12] In his able submissions on April 23, Mr. Pederson submitted that one of several people serve as the new receiver until trial. Two concerns I have with that approach are, first, that the personal defendants would remain operating the companies under the new receiver, and second, that the

costs of a new receiver would probably be more substantial than the properties or parties can afford.

[13] In summary, I order that the current receiver will license the assets of Media Group and New Leaf to the plaintiff for the plaintiff to operate those companies between now and trial. I will review a draft licence agreement. It will include the reporting mechanisms contained in subparagraphs (a), (b) and (c) of paragraph 1 in Schedule A to the plaintiff's application response filed April 23, 2015.

Regarding

subparagraph (c), the receiver will be added as a recipient of the reports. The licence will also contain a mechanism for implementing the receiver's oversight responsibilities as a licensor.

“MACINTOSH J.”