

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Han v. Cho***,  
2008 BCSC 1207

Date: 20080724  
Docket: L050150  
Registry: Vancouver

Between:

**Chul-Soo Han and Suk Hee Park and Jae Bok Yun**

Plaintiffs

And:

**Soonam Cho, also known as Jeong Eun Cho, also known as Jung Eun Cho,  
also known as Soon Yi Jung, also known as Cho Chong-Un, also known as  
Su-Nam Cho, also known as Bora Kang, Subi Park, also known as Subi Yu, Jioh Park  
also known as Jioh Yu, also known as Yang Hyun Park and Young Chan Shim**

Defendants

Before: The Honourable Madam Justice Griffin

**Oral Reasons for Ruling**

In Chambers  
July 24, 2008

Counsel for Plaintiffs:

F.G. Potts  
T. Goepel

Counsel for Soonam Cho:

G.A. Phillips

Counsel for Subi Park and Jioh Park:

W.D. Holder

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** This is an application by the plaintiffs for production of documents from the defendants. No documents are being sought from the defendant Mr. Shim, so when I refer to defendants plural I am not referring to him.

[2] The documents fall into four categories:

- (1) Korean banking records in the defendants' names (or aliases) from the period February 11, 2004 to present.
- (2) Documents in the possession and control or power of the defendant Soonam Cho relating to a request by Korean authorities to Canadian authorities for extradition.
- (3) Passports of the defendant Soonam Cho (or aliases) from February 11, 2004, to

present.

- (4) Documents relating to a property in China, which was purportedly owned by the defendant Soonam Cho and sold by her.

[3] The first question is whether the documents sought are relevant. In order to consider the relevance of the documents sought by the plaintiffs, it is important to consider the pleadings. In the statement of claim, the plaintiffs allege the defendant Soonam Cho defrauded them of monies in Korea. The first monies paid over, pursuant to the alleged fraud, were paid on February 12, 2004 and further payments were made through to mid-August 2004. The total amount of the alleged fraud is in the range of \$2.3 million Canadian approximately.

[4] The plaintiffs allege that the defendant Ms. Cho then conspired with her daughters, the defendants Subi Park and Jioh Park, to hide the proceeds of the fraud. The plaintiffs say that the defendants Subi Park and Jioh Park knowingly received proceeds of the fraud. The plaintiffs seek to trace those proceeds. The plaintiffs also seek to employ the equitable remedies of constructive trust over the assets of the defendants to trace the proceeds of the alleged fraud into the defendants' assets.

[5] The plaintiffs have filed evidence which establishes a *prima facie* case of fraud.

[6] The first category of documents, the Korean bank records, is suggested to be a relevant category because the documents start from what is essentially the commencement of the fraud and proceed to the present, and may help with tracing the proceeds of the fraud. The defendants argue that this scope of production is too broad. They agree with the start date, but suggest that the end date should be the date of the purchase of a condominium in Vancouver in the name of the defendant Jioh Park. The problem with the defendants' argument is that it does not take into account the fact that the defendants dispute the Vancouver condominium was purchased with the proceeds of the plaintiffs' monies and, indeed, the defendants assert other sources of money were used. As well, the purchase price of the Vancouver condominium was approximately \$1 million less than the total monies paid by the plaintiffs pursuant to the alleged fraud.

[7] As far as the pleadings stand now, what happened to the proceeds of the alleged fraud is still very much a live issue. As such, the plaintiffs are entitled to explore the defendants' financial affairs. I agree with the plaintiffs' submission that the banking documents to the present time are relevant and I note there is a continuing obligation on the part of these defendants to produce information regarding their financial affairs, as this is relevant to the plaintiffs' tracing claim.

[8] The second category of documents is the category related to extradition, which were purportedly produced by the Crown to Mrs. Cho. This court ruled in an earlier document production motion on April 24, 2008 that the extradition proceedings involve the same subject matter as this civil proceeding. In that ruling, the court held that the documents in the court file in the criminal extradition proceedings should be produced to the plaintiffs, as they may be relevant. There is no prohibition in producing the documents from the criminal proceedings in the civil proceedings.

[9] Counsel for the plaintiff has learned that there are other documents that were produced by the Crown to the defendant Soonam Cho as part of the extradition proceedings, which may not be in the criminal proceedings' court file. These other documents are, in my view, clearly relevant and there was no argument on behalf of the defendant Cho that they were not relevant.

[10] The third category of documents, the passports of Soonam Cho, is also a relevant category of documents in my view. The travel of Ms. Cho after the start of the alleged fraud is relevant to and may assist the plaintiffs' claim to trace the proceeds of the alleged fraud.

[11] The last category of documents relates to property that Soonam Cho may have owned in China. In an earlier court application in this proceeding, Ms. Cho instructed her counsel to argue that the condominium purchased in Vancouver in Jioh Park's name, after the purported fraud, was not purchased with the plaintiffs' money, but instead was purchased with proceeds from the sale of property Ms. Cho owned in China. The plaintiffs dispute the truthfulness of Ms. Cho's assertions and wish to test them, first through discovery of documents.

[12] Counsel for Ms. Cho argues that documents relating to the Chinese property transaction are not relevant as that property transaction, if it exists, predates the alleged fraud in this case. However, the Vancouver condominium

is the one exigible asset the plaintiff has been able to identify, at least the largest one and, in my view, it is clearly relevant that the plaintiffs be allowed to challenge the defendant Cho's evidence as to the source of funds for the purchase of that property. The two documents produced by the defendant Cho concerning the Chinese property in effect concede the relevance of that transaction. The defendant Cho cannot pick and choose which documents she produces in regard to that transaction. Therefore, I also conclude that the documents the plaintiffs seek in this regard are relevant.

[13] I have concluded that all of the documents sought by the plaintiff on this application are relevant.

[14] There are some issues raised by counsel for the defendants as to whether or not the documents sought by the plaintiff are in their clients' possession, control or power. For example, it is submitted the defendants do not have the documents in their possession and that it may be difficult to get the documents from others.

[15] Ms. Cho is presently incarcerated in relation to the extradition proceedings. The defendants Subi Park and Jioh Park live in Vancouver and do not live in Korea. Therefore, obtaining the Korean bank documents may be difficult. Counsel for the defendants Subi and Jioh Park says he does not know whether or not they have the power to obtain these documents, although he is prepared to write to the Korean banks and request them.

[16] The problem with the submissions of counsel for the defendants on this motion is that they are unsupported by affidavit evidence of their clients. In a fraud case especially, it is not sufficient for the court to be advised by counsel as to what their clients have told them. If the defendants want the court to draw evidentiary conclusions, they must provide evidence under oath.

[17] Rule 26(1) provides that, on demand, a party is to deliver a list of documents that are or have been in their possession or control relating to every matter in question in the action. Rule 26(1.1) provides that the court may order that party to deliver to another party a list of documents that are within that party's power.

[18] The authorities make clear that the meaning of "control" under Rule 26 includes all documents which, although not in the party's possession, the party has a right to obtain from the person who has them: see **Lacker v. Lacker** (1982), 42 B.C.L.R. 188 (S.C.).

[19] The meaning of power within Rule 26(1.1) is broader than control and can include the power to obtain documents from a party which is out of the jurisdiction: see **Sunnar v. U-Haul Co. (Canada)**, [1998] B.C.J. No. 1850 (S.C.) at para 21.

[20] On the present state of the evidence, it is reasonable to draw the inference that the requested documents are within the possession, control or power of the defendants. I therefore make the following order:

- (1) that the defendants produce the documents that are set out in the plaintiffs' notice of motion under the four categories referenced in these reasons within 21 days of this order. In this regard, I make the order in the form set out in paragraphs 1, 2, 3, 4, 5 and 7 of the plaintiffs' notice of motion;
- (2) that if the documents identified are not in the defendants' possession, that within seven days of this order they
  - (a) take all reasonable steps necessary to obtain the documents, including but not limited to providing written authorizations to their counsel to enable their counsel to obtain the records from any third parties, and
  - (b) provide lists of documents to the plaintiffs listing the documents in these four categories that had been in their possession or control;
- (3) that if the defendants fail to produce the documents as ordered, that the defendants provide affidavit evidence describing in detail the efforts they made to obtain the documents and the reasons why they have not been produced, within 21 days of the making of this order.

[21] Costs will be in the cause.

Madam Justice Susan A. Griffin