

BETWEEN:

DE MIN LI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motions heard on May 2, 2025, at Vancouver, British Columbia

Before: The Honourable Justice Edward (Ted) Cook

Appearances:

Counsel for the Appellant: Michelle Moriartey

Cindy Chai

Counsel for the Respondent: Eric Brown

Jia (Jenny) Ling

ORDER

UPON hearing the parties' submissions; and

In accordance with the attached reasons;

THE COURT ORDERS THAT:

The Respondent's motions are granted, without costs;

The Respondent may examine for discovery Mr. Raymond (Ray) Chan;

The Respondent shall forthwith send this order and the attached reasons by registered mail to Mr. Chan at the condominium unit at Maclure Mews in Vancouver, British Columbia, which address was provided by the Appellant, and shall forthwith deliver this order and the attached reasons to the condominium unit;

The Appellant shall forthwith send this order and the attached reasons by WeChat to Mr. Chan;

Mr. Chan shall contact Respondent's counsel no later than the day that is 45 days after the date of this order to arrange for examination for discovery and shall make himself available within a reasonable time for examination for discovery;

The Respondent and Appellant shall submit a joint application for an amended litigation timetable order no later than the day that is 90 days after the date of this order; and

The directions for the examination for discovery of Mr. Chan are as follows:

- The scope of the discovery will be governed by section 95 of the *Tax Court of Canada Rules (General Procedure)*;
- The Appellant may be represented by counsel at the examination and Appellant's counsel may examine Mr. Chan after Respondent's counsel;
- Mr. Chan may be required to give undertakings to seek, and provide, additional information and documents;
- A copy of the transcript of the examination is to be provided to the Appellant at the Appellant's expense;
- The transcript of the examination may be used at trial to impeach the testimony of Mr. Chan, if required; and,

- Any costs associated with the examination for discovery of Mr. Chan shall be at the discretion of the trial judge.

Signed on this 21st day of July 2025.

“Ted Cook”

Cook J.

Citation: 2025 TCC 94
Date: 2025/07/21
Docket: 2020-2455(IT)G

BETWEEN:

DE MIN LI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Cook J.

Introduction

[1] This is a motion (“Discovery Motion”) by the Respondent seeking leave to examine for discovery Mr. Raymond (Ray) Chan under subsection 99(1) of the *Tax Court of Canada Rules (General Procedure)* (“Rules”). The Respondent also seeks directions for the conduct of the examination for discovery of Mr. Chan. Mr. Chan is not a party to the appeal; however, the Respondent and the Appellant are both of the view that he has information and documents relevant to the appeal.

[2] The Appellant, De Min Li, appeals the Minister of National Revenue’s reassessments of her 2015, 2016 and 2017 taxation years. One of the issues in the appeal is whether she earned and failed to report business income of \$707,053 on the disposition of beneficial interests in various real properties in Vancouver, British Columbia (“2016 Acquisitions”). Another issue is whether she earned and failed to report business income of \$1,867,413 on the disposition of a beneficial interest in a separate real property located at Oak Street, Vancouver, British Columbia (“Oak Property”).

[3] In the Appellant’s examination for discovery, she testified that Mr. Chan helped her with the management of projects for all her companies and that Mr. Chan

was a partner in respect of certain of the companies. She also testified that many of the details relating to the purchase and sale of the 2016 Acquisitions would have been dealt with by Mr. Chan. At the examination, several undertakings were made. The Appellant made inquiries of Mr. Chan and while some information and documents were provided, other information and documents remain outstanding.

[4] The Respondent was unable to serve its motion record on Mr. Chan despite the efforts described below. Consequently, the Respondent also makes a motion (“Service Motion”) for an order under section 37 of the Rules for substituted service on Mr. Chan of the motion record for the Discovery Motion. In the alternative, the Respondent seeks either directions pursuant to paragraph 36(1)(c) of the Rules for effecting service on Mr. Chan or directions dispensing with service under subsection 67(2) of the Rules.

[5] The Appellant consents to the Discovery Motion and does not take a position with respect to the Service Motion. Mr. Chan was not represented at the hearing.

Issues

[6] The first issue is whether to grant the Service Motion and, if so, on what basis. More specifically, can service of the motion record for the Discovery Motion be dispensed with under subsection 67(2) because the circumstances are such that it is impractical to serve Mr. Chan?

[7] If the Service Motion is granted such that the Discovery Motion can proceed without Mr. Chan, the second issue is whether to grant leave to examine for discovery Mr. Chan and with what directions.

Analysis

Service Motion

[8] Subsection 67(1) of the Rules requires that a notice of motion be served on any person or party who will be affected by the direction sought. Clearly, Mr. Chan would be affected as he is the subject of the Discovery Motion. The Respondent, however, has been unable to serve the notice of motion on Mr. Chan.

[9] Consequently, the Respondent makes the Service Motion. I prefer to decide the Service Motion based on subsection 67(2). Subsection 67(2) states that where “the circumstances render service of the notice of motion impractical or unnecessary, the Court may grant judgment without notice.”

[10] The Respondent has made all reasonable efforts to contact Mr. Chan and to serve the notice of motion. Considering the attempts made by the Respondent, it is evident to me that the circumstances render service of the notice of motion for the Discovery Motion impractical. As such, I am prepared to grant the Respondent’s motion and dispense with service on Mr. Chan of the notice of motion.

[11] In January 2025, the Appellant provided the Respondent with the last known contact details for Mr. Chan: the address for a condominium unit located at Maclure Mews in Vancouver, British Columbia (“Condominium”); a telephone number; and a WeChat ID #. The Respondent then made numerous efforts to contact Mr. Chan.

[12] The Respondent sent a letter, dated February 3, 2025, by registered mail to Mr. Chan at the Condominium asking him to contact Respondent’s counsel. On February 21, 24, 25, 27 and 28, 2025, and on March 2, 2025, a process server attended at the building where the Condominium is located to personally serve the letter. Multiple messages were left on the lobby door for Mr. Chan. The building intercom was also used to attempt to contact a “C and S Chan” listed in the building’s directory.

[13] In addition, calls were made to the telephone number provided by the Appellant and a text message was sent to that number. No responses were received from Mr. Chan.

[14] The process server attended at the Condominium building on April 22 (twice) and 23, 2025 and left messages for Mr. Chan on the lobby door in attempts to personally serve the motion record for the Discovery Motion. The process server used the building intercom to contact a “C and S Chan” listed in the building’s directory and was informed that there was no Raymond Chan at that unit and that the process server had not reached the Condominium. The process server called both the original telephone number and a second telephone number provided by the Appellant. A message was left in the automated voicemail box for the second telephone number. An attempt was made to contact Mr. Chan via WeChat, but

WeChat requires the recipient to accept the contact first. The contact was not accepted.

[15] On April 29, 2025, the process server delivered the motion record for the Service Motion to the mailroom of the Condominium building.

[16] All these efforts yielded no response from Mr. Chan. It is impractical to serve Mr. Chan because all known means of contacting him have been exhausted. Accordingly, pursuant to subsection 67(2), I dispense with service and will consider the Discovery Motion without Mr. Chan having notice.

[17] I wish to turn briefly to the Respondent's other submissions. The first was for the Court to make a direction for substituted service of the motion record *nunc pro tunc* under section 37. Such a direction for substituted service may be made only in respect of "a document required to be served personally". As pointed out in *Cole v The King*, 2024 TCC 64 at para 39, section 67 of the Rules does not require personal service. I cannot make a direction for substituted service because the applicable motion record did not need to be served personally. Given my reliance on subsection 67(2), it is not necessary to consider the other alternative of giving directions for service under paragraph 36(1)(c).

[18] The difficulty serving Mr. Chan arose, at least in part, because the Rules do not clearly articulate what constitutes service in the present circumstances. Section 35 of the Rules provides that:

- a document does not need to be served personally unless the Rules or a direction require personal service; and
- if a document does not need to be served personally, it may be served at the address for service of the party.

[19] Subsection 38(1) of the Rules then sets out various rules for addresses for service. None of those rules apply with respect to Mr. Chan, however; and as a result, he does not have an address for service. This led the Respondent to attempt personal service on Mr. Chan even though it is not required under section 67.

Discovery Motion

[20] I now turn to the Discovery Motion. It is a motion for an order granting the Respondent leave to examine for discovery Mr. Chan pursuant to subsection 99(1). Section 99 states, in part, that:

(1) The Court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the appeal, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.

(2) Leave under subsection (1) shall not be granted unless the Court is satisfied that,

(a) the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person sought to be examined,

(b) it would be unfair to require the moving party to proceed to hearing without having the opportunity of examining the person, and

(c) the examination will not,

(i) unduly delay the commencement of the hearing of the proceeding,

(ii) entail unreasonable expense for other parties, or

(iii) result in unfairness to the person the moving party seeks to examine.

[21] I am satisfied that the conditions in subsections 99(1) and (2) are met, and that it is appropriate to exercise my discretion to grant leave for the Respondent to examine Mr. Chan. The Respondent's motion is granted.

[22] Among the material issues in the appeal is the business income earned from the disposition of the 2016 Acquisitions and the Oak Property. More specifically, there are issues relating to the beneficial ownership of the 2016 Acquisitions and the Oak Property, and who should be attributed the gains from those properties. The Appellant was examined for discovery in August 2022. She testified that Mr. Chan was responsible for the management of certain companies, that he brought real estate development opportunities to her attention and that he arranged for the financing of real property. At her examination, certain undertakings were made.

[23] The Appellant made inquiries of Mr. Chan and obtained some, but not all, of the information requested. The Appellant believes that answers to certain questions would be known to Mr. Chan and that relevant documents would be in his possession. By letter dated February 28, 2025, the Appellant advised the Respondent that she had exhausted all efforts to seek out information from Mr. Chan. The letter also states that she had not heard from him since about June 2024 and that it is not expected that Mr. Chan would voluntarily provide any additional information to the Appellant.

[24] Both parties agree that Mr. Chan's discovery would be material in the resolution of the appeal. Appellant's counsel characterized Mr. Chan as the directing mind for the 2016 Acquisitions and all other investments that the Appellant made, and as having control over all documents. Clearly, there is reason to believe Mr. Chan has information relevant to material issues in the present appeal.

[25] This motion arises because there is information that the Respondent has been unable to obtain through the discovery of the Appellant. She has exhausted her knowledge and her ability to get additional information from Mr. Chan. As well, the Respondent attempted to contact Mr. Chan to no avail. Thus, paragraph 99(2)(a) of the Rules is satisfied.

[26] It would be unfair for the Respondent to have to proceed without Mr. Chan if it is possible to examine him. He has material information and appears to be the person holding relevant documents. That condition is also met.

[27] The real concern is whether the examination of Mr. Chan would unduly delay the commencement of the hearing of the appeal. I recognize that it might not be possible to locate Mr. Chan. My order specifies that, if this is the case, the parties will need to proceed without Mr. Chan's examination for discovery.

[28] There is no evidence on the record that the examination for discovery would entail undue expenses for other parties or that it would result in any unfairness to Mr. Chan. I am satisfied that those conditions are met as well.

[29] Given the materiality of the information Mr. Chan appears to have and the absence of factors suggesting that I should not exercise my discretion, the Respondent's motion is granted.

[30] The Respondent also requests directions for the conduct of the examination of Mr. Chan. I direct that the scope of the examination will be governed by section 95 of the Rules. Mr. Chan may be required to seek, and provide, additional information and documents. The transcript of the examination may be used at trial to impeach the testimony of Mr. Chan, if required. Any costs associated with the examination for discovery of Mr. Chan shall be at the discretion of the trial judge.

[31] Appellant's counsel requests the right to attend the examination for discovery and to examine Mr. Chan after Respondent's counsel has done so, and to receive a copy of the examination transcript. This is appropriate given the materiality of Mr. Chan to both parties in this appeal.

[32] Pursuant to subsection 67(4) of the Rules, my order and reasons for these motions must be served forthwith on Mr. Chan unless I otherwise direct. In the circumstances, I direct that my order and reasons be sent forthwith by registered mail to Mr. Chan at the Condominium. I also direct that they be delivered forthwith to the Condominium. As well, I direct the Appellant to send my order and reasons forthwith by WeChat to Mr. Chan. This will constitute sufficient service on Mr. Chan.

[33] Mr. Chan has 45 days from the date of my order to contact Respondent's counsel to arrange for examination for discovery. He will make himself available within a reasonable time for examination for discovery by the Respondent and Appellant.

[34] The parties have 90 days from the date of my order to submit to the Court a joint application for an amended litigation timetable order that either includes examination for discovery of Mr. Chan or proceeds without it.

Disposition

[35] The Respondent's Service Motion is granted under subsection 67(2). The Respondent's Discovery Motion for leave to examine for discovery Mr. Chan is also granted. No costs are awarded.

Motions granted, without costs.

Signed on this 21st day of July 2025.

“Ted Cook”

Cook J.

CITATION: 2025 TCC 94

COURT FILE NO.: 2020-2455(IT)G

STYLE OF CAUSE: DE MIN LI AND HIS MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: May 2, 2025

REASONS FOR ORDER BY: The Honourable Justice Edward (Ted) Cook

DATE OF ORDER: July 21, 2025

APPEARANCES:

Counsel for the Appellant: Michelle Moriartey
Cindy Chai

Counsel for the Respondent: Eric Brown
Jia (Jenny) Ling

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