

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Hanna Ko,
Applicant

-and-

Hai Chun Li and Zhou Hang Li, in their capacity as the Estate
Trustees for the Estate of Xiang Guo Li and Mingjie Cheng,
Respondents

BEFORE: FL Myers J

COUNSEL: *Jisuh Lee*, for the Applicant

Zhou Hang “Joseph” Li, appearing in person

Hai Chun Li, appearing in person

Mingjie Cheng, appearing in person

HEARD: May 1, 2025

ENDORSEMENT

[1] The Endorsement deals with two distinct issues. On May 1, 2025 counsel for the applicant Hanna Ko presented a motion for relief against the opposing parties. I deal with the resolution of the motion on its merits under heading “II” below. First, however, I need to deal with a serious issue that arose at the hearing.

I. The Applicant’s Factum – Possibly Artificial Intelligence Hallucinations?

[2] Counsel for the applicant, Jisuh Lee of ML Lawyers, delivered a factum for the motion. The factum is dated April 25, 2025. Ms. Lee signed the factum electronically under the phrase “All of which is respectfully submitted.”

- [3] The pages of the factum are not numbered. There are no paragraph numbers either.
- [4] One issue on the motion involved a request by Ms. Lee's client to set aside a divorce order under Rule 25 (19) the *Family Law Rules*, O Reg 114/99. In a paragraph in the middle of page A173 on Case Center (page 6 of 9 of the factum PDF) Ms. Lee submits the following:
- These circumstances meet the threshold of duress, mistake, and procedural irregularity justifying the exercise of the Court's discretion under Rule 25(19). See *Alam v. Shah*, 2023 ONSC 1772 <https://www.canlii.org/en/on/onsc/doc/2023/2023onsc1772/2023onsc1772.html>
DaCosta v. DaCosta, 2010 ONSC 2178 - <https://www.canlii.org/en/on/onsc/doc/2010/2010onsc2178/2010onsc2178.html>
- [5] The hyperlink under *Alum v Shah* directs the reader to the CanLII.org website to the case of *Gatoto v. 5GC Inc.*, 2023 ONSC 1772 (CanLII). That case deals with a commercial real estate problem. It has nothing to do with the submission about Rule 25 (19) that is the subject of the narrative submission.
- [6] The hyperlink under the *DaCosta* case submitted by Ms. Lee takes one to the common internet error message:
- 404 Error - Page not found
 Dear user,
 CanLII cannot find the page you requested.
- [7] During her oral submissions, Ms. Lee referred me to these cases to support her client's arguments. When the hyperlinks did not take me to the cases cited, I searched the CanLII website to try to find the cases. I could not find them.
- [8] I asked Ms. Lee if her factum was prepared by artificial intelligence - like ChatGPT. She told me that her office does not usually do so but that she would have to check with her clerk. Ms. Lee was unable to provide me with citations to the cases cited in her factum or to provide me with copies of the cases from the printed papers she was using to make her submissions.

- [9] I advised the parties that this was a significant issue that I would deal with later.
- [10] After the hearing, I reviewed the factum again. Another issue on the motion was a request by Ms. Lee's client to remove an estate trustee. In a paragraph in the middle of page A172 on Case Center (page 5 of 9 of the factum PDF) Ms. Lee submits the following:

In *Johnson v. Lanka*, 2010 ONSC 4124

<https://www.canlii.org/en/on/onsc/doc/2010/2010onsc4124/2010onsc4124.html>

the court removed a trustee for failing to account and for conduct that eroded the beneficiaries' confidence. Similarly, in *Meschino Estate v. Meschino*, 1998 CanLII 14734 (ON SC) <https://www.canlii.org/en/on/onsc/doc/1998/1998canlii14734/1998canlii14734.html> the court removed a trustee for non-disclosure and unilateral dealings with estate assets.

- [11] The first case cited, *Johnson*, is a case in which the court was asked to remove estate trustees. Ms. Lee submits that, "the court removed a trustee for failing to account and for conduct that eroded the beneficiaries' confidence." In fact, the opposite is true. The court did not remove the estate trustees. At paras 38 and 39, Pattillo J. held:

[38] In my view, there is an absence of clear evidence of necessity requiring the respondents' removal. None of the acts complained of endanger the welfare of the beneficiaries or the future administration of the Estate.

[39] For the above reasons, therefore, the applications are dismissed.

- [12] The judge went on to penalize the moving party with substantial indemnity costs for making unfounded claims of wrongdoing against the estate trustees.
- [13] The hyperlink for the other case cited in this paragraph of the factum, *Meschino Estate*, directs the reader to the CanLII.org website to the case of *Antonacci v. Great Atlantic & Pacific Co. of Canada*, 1998 CanLII 14734 (ON SC). *Antonacci* is a trial decision in a wrongful dismissal case.

It had nothing to do with the removal of a trustee “for non-disclosure and unilateral dealings with estate assets” as submitted by Ms. Lee in the factum. I was unable to find a *Meschino Estate* case on the CanLII.org website.

- [14] This occurrence seems similar to cases in which people have had factums drafted by generative artificial intelligence applications (like ChatGPT). Some of these applications have been found to sometimes create fake legal citations that have been dubbed “hallucinations.” It appears that Ms. Lee’s factum may have been created by AI and that before filing the factum and relying on it in court, she might not have checked to make sure the cases were real or supported the propositions of law which she submitted to the court in writing and then again orally.
- [15] All lawyers have duties to the court, to their clients, and to the administration of justice.
- [16] It is the lawyer’s duty to faithfully represent the law to the court.
- [17] It is the lawyer’s duty not to fabricate case precedents and not to mis-cite cases for propositions that they do not support.
- [18] It is the lawyer’s duty to use technology, conduct legal research, and prepare court documents competently.
- [19] It is the lawyer’s duty to supervise staff and review material prepared for her signature.
- [20] It is the lawyer’s duty to ensure human review of materials prepared by non-human technology such as generative artificial intelligence.
- [21] It should go without saying that it is the lawyer’s duty to read cases before submitting them to a court as precedential authorities. At its barest minimum, it is the lawyer’s duty not to submit case authorities that do not exist or that stand for the opposite of the lawyer’s submission.
- [22] It is the litigation lawyer’s most fundamental duty not to mislead the court.

- [23] In *Zhang v Chen*, 2024 BCSC 285 (CanLII) Masuhara J. dealt with a similar issue. Masuhara J. held:

Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

- [24] In that case, the lawyer caught her mistake before the hearing, apologized to all, and withdrew her factum. Here, counsel actively relied on two of the suspicious cases as part of her submissions in open court. In the few days that have past since the oral hearing, I have not received any communication from Ms. Lee explaining, correcting her factum, or otherwise acknowledging an issue.
- [25] I do not know the full facts yet. There are cases that are not available on the CanLII.org website. But I have also determined that the three unknown cases discussed above are also not found on any of Westlaw, Quicklaw, or Google. Perhaps wrong hyperlinks were given for cases. Perhaps AI was not used to create the factum and these are not examples of hallucinations. Perhaps counsel misunderstood *Johnson*.
- [26] The court must quickly and firmly make clear that, regardless of technology, lawyers cannot rely on non-existent authorities or cases that say the opposite of what is submitted.
- [27] With the sudden advent of AI, this has quickly become a very important issue.
- [28] In the US, several cases have been reported in which courts have grappled with issues arising from lawyer's brief containing AI hallucinations. For a very recent case discussing the problem thoroughly, see: *Benjamin v Costco Wholesale Corp.*, No. 2:24-cv-7399, 2025 US Dist. LEXIS 78895 (E.D.N.Y Apr. 24, 2025)
- [29] In *R. v. Cohn*, 1984 CanLII 43 (ON CA), Goodman JA defined a contempt in the face of the court:

A contempt in the face of the court may be broadly described as any word spoken or act done in, or in the precincts of, the court which obstructs or interferes with the due administration of justice or is calculated so to do.

- [30] Ms. Lee may have committed grave breaches of her duties that may amount to contempt in the face of the court.
- [31] I order Ms. Lee to show cause why she should not be cited for contempt. Despite the traditional wording of this notice, Ms. Lee is protected by the presumption of innocence and other procedural rights as discussed by the Court of Appeal in *Cohn*. She will have a fair opportunity to submit evidence to explain what happened if she wishes to do so.
- [32] The issue does not involve any personal insult to the court nor any conduct by me. Accordingly, I will deal with this proceeding. I require Ms. Lee or her counsel to attend a scheduling case conference to discuss the process for the hearing.
- [33] **The scheduling conference will be held by Zoom on May 16, 2024 at 9:00 a.m.**

II. The Motion on its Merits

- [34] There are two estates applications and one family law application before me.
- [35] The deceased, Xiang Guo Li, died unexpectedly in June, 2024. His will names his children Hai Chun Li and Zhuo Hang (“Joseph”) Li as his estate trustees and leaves them his estate equally.
- [36] The will leaves nothing to the applicant Ms. Ko who claims she was married to Mr. Li when he died or to Ms Cheng who also says that she was married to Mr. Li when he died.
- [37] Ms. Ko and Ms. Cheng both live in the matrimonial home.
- [38] In this application, Ms. Ko seeks to invalidate her divorce from the deceased dated June 23, 2020 for fraud or duress. She wishes to proceed with an equalization claim and a support claim against the estate of her late spouse. She seeks to remove her former spouse’s daughter Hai Chun Li as a co-estate trustee of his estate. She asks me to require Hai Chun Li to make proper disclosure of the assets and the status of the estate. And she also asks me to require Ms. Cheng and her son to leave the matrimonial home.

- [39] If I do not invalidate the divorce, then Ms. Ko seeks relief for dependents' support against the estate of her late spouse.
- [40] Ms. Ko says she knew nothing about a 2020 divorce. She continued to live with her husband and their son until 2023.
- [41] The evidence of Ms. Ko and the son Zhou Hang "Joseph" Li are that Ms. Ko was Joseph's mother since his father brought him here from Korea in 2014 so all three could live together as a family. Ms. Ko cared for him, took him to school, and cooked for him.
- [42] Ms. Ko says that in the summer of 2023, the deceased threatened to kill her while brandishing a knife. He was charged and prevented from returning home by bail conditions.
- [43] Joseph Li says that while already barred from the home, his father called one day and told him to admit Ms. Cheng to the family's home. When Joseph asked who Ms. Cheng was, the deceased replied, "Your new mother."
- [44] Ms. Cheng says she married Mr. Li in China on January 22, 2021. When the deceased brought her here in 2023, he had her and her son move into the same home as Ms. Ko and their son. As Mr. Li had already been excluded from the home by that time, it does not appear that Ms. Cheng ever cohabited with Mr. Li at this property.
- [45] Ms. Cheng says she married the deceased after his divorce from Ms. Ko. He viewed Ms. Ko as a nuisance. She says that Ms. Ko's property claim is brought too late as four years have passed since the 2020 divorce.
- [46] A few months after moving in, Ms. Cheng filed a Matrimonial Home designation on title to the home she shared with Ms. Ko. She is also shown as the "spouse" in the deceased's death certificate. Like Ms. Ko, Ms. Cheng he has purported to elect to enforce a right to equalization and she wants disclosure from the estate trustees. With her former lawyer, she brought an application against the estate to enforce her claim to equalization.
- [47] In 2024, before Mr. Li died, Ms. Ko brought her own family law proceeding seeking a divorce and property relief against him. The proceeding is in Newmarket. But, since the death of Mr. Li, the family law case has stalled pending the outcome here.

The Divorce is Invalid

- [48] Ms. Ko says that in 2020 her husband took her to a paralegal and told her to sign documents under threat of death and being sent back to Korea. The documents were a joint Notice of Application for Divorce dated February 19, 2020 and a sworn Affidavit for Divorce bearing the same date.
- [49] Based on these standard documents, Kiteley J. granted an undefended divorce on June 23, 2020.
- [50] I am very hesitant normally to even consider setting aside a divorce order. It is an *in rem* order with very significant effects. Moreover, as here, setting it aside could retroactively invalidate third party rights i.e. Ms. Cheng's marriage may become invalid here if not in China.
- [51] But there are too many issues to ignore. First, the notice of application and affidavit on divorce refer to a separation date in 2017. According to Ms. Ko and Mr. Li's son Joseph, that never happened.
- [52] Plus, the application and the affidavit do not refer at all to Joseph. He was 15 years old at the time and was a child of the marriage. See s. 2(2)(b) of the *Divorce Act*, RSC 1985, c 3 (2nd Supp).
- [53] Section 11 (1) of the *Divorce Act* says, in part:

11 (1) In a divorce proceeding, it is the duty of the court

(a) to satisfy itself that there has been no collusion in relation to the application for a divorce and to dismiss the application if it finds that there was collusion in presenting it;

(b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;

- [54] It is unfathomable to think that an experienced and knowledgeable family law judge like Kiteley J. would have even considered signing a divorce without ensuring that Joseph's needs were properly assured as required. But his existence was not disclosed in the divorce papers.
- [55] I considered whether there ought to be a trial or some better opportunity for Ms. Cheng to provide evidence to support the lawfulness of the divorce or to counter Ms. Ko's evidence about the events of February, 2020. But Ms. Cheng only married Mr. Li in 2021 and she did not come to Canada until 2023. She does not have any evidence at all that could contradict the evidence of Ms. Ko and Joseph Li about events that happened three years before she even came here. When I asked her if she had any evidence that Ms. Ko knew of the divorce, she referred to an email from Ms. Ko's counsel Ms. Lee from last November. That does nothing to contradict her evidence about the events in 2020.
- [56] I am aware of the requirement for corroboration in s. 13 of the *Evidence Act*, RSO 1990, c E.23. Joseph Li corroborates Ms. Ko's evidence that the deceased was violent and used threats of violence to exercise coercive control over them. He swears:
8. My father was emotionally unstable and often displayed violent behavior. He frequently lost his temper, threw and broke household items, and created an environment of fear for me and [Ms. Ko].
 9. He regularly threatened to harm me or send me back to Korea if I did not comply with his demands, including his insistence that I pursue a career as a doctor.
 10. On one occasion, while driving, he angrily threatened to kill me when I expressed interest in becoming an engineer rather than a doctor.
- [57] In addition, despite the alleged divorce in 2020, Joseph Li continued to live with Ms. Ko and his father as discussed above.
- [58] I also find it unfathomable that Ms. Ko would agree to a divorce without dealing at all with corollary relief for herself and for Joseph. She was entirely dependent on Mr. Li in 2020.

- [59] Ms. Ko denies that she signed the Notice of Application for Divorce and the Affidavit for Divorce. The affidavit says it was sworn before a lawyer. In an unsworn email, the lawyer took some umbrage at being accused of swearing an affidavit without seeing the witness. But he also said that he had no recollection of the event, no file, was not retained by anyone, and the most he did was to swear an affidavit.
- [60] I do not think anything turns on whether Ms. Ko signed the documents or not. They are defective on their face by failing to refer to the child and they cannot support the continuation of the divorce order made.
- [61] In the absence of evidence to the contrary, I have no basis to disbelieve Ms. Ko that she signed documents that were not translated for her, and she did so under credible threats of violence. She had no opportunity to obtain legal advice. Both *non est factum* and duress vitiate those documents. Rule 25 (19) of the *Family Law Rules* allows changes to an order in case of fraud. This is such a case. The documents submitted to the court were not truthful, were not freely signed, and did not comply with the law. Mr. Li's effort to obtain a divorce was fraudulent.
- [62] Moreover, even if the Mr. Li and Ms. Ko were together colluding in obtaining a fake divorce for some other reason, the outcome is the same. Under s. 11 (1)(a) of the *Divorce Act*, collusion leads to a refusal of a divorce order.
- [63] Given the absence of any witnesses to the contrary and the invalidity of the divorce material on its face, I cannot see an outcome other than the setting aside of the divorce order dated June 23, 2020 in Court File No. FS-20-18410 and I so order.
- [64] It follows as well that Ms. Cheng's designation of the matrimonial home must be removed from the title register and I so order.

The Proceedings Moving Forward

- [65] As Ms. Ko has elected to take equalization, her relief lies in the family law proceeding. Currently, Ms. Cheng is apparently representing Mr. Li's interest in that proceeding. Subject to what I say below about the need for an independent estate trustee, it is apparent that it is the estate trustee(s) for the deceased who should be trying to resolve the equalization claim and defending the position of the deceased in that proceeding.

- [66] That leaves Ms. Cheng with a claim for dependent's support against the estate. Her existing application will need to be amended to switch from equalization to dependents' support.
- [67] The estate trustees are two of the children of the deceased as mentioned above. Joseph Li is 19 years old and is very close and committed to his stepmother Ms. Ko. He has no business experience or acumen. He has taken no steps to engage with his half-sister Hai Chin Li as co-estate trustees. He says his requests of her have been rebuffed. But he has been unable to take any steps to retain counsel and do something about it. He also has no funds to do so.
- [68] Hai Chin Li is the other estate trustee and residuary beneficiary with Joseph Li. Her mother was an earlier spouse of the deceased. Hai Chin Li has no relationship with either of her father's subsequent spouses nor any real relationship with her half-brother Joseph Li.
- [69] Where estate trustees are brought into legal proceedings about their roles as estate trustees, they are not entitled to represent themselves in court. Rule 15.01 (1) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, requires them to be represented by lawyers. See: *Bogue v. Bogue*, 2023 ONSC 1642 (CanLII) at para. 16.
- [70] Only lawyers are allowed to represent someone else in this court. When estate trustees are sued on behalf of the estate, they are acting for the estate and not just for themselves. **Therefore, Hai Chin Li and Joseph Li are advised that if they propose to represent their father's estate in any of these legal proceedings, the estate must have a lawyer.**
- [71] The deceased helped Hai Chin Li buy a very expensive house. Hai Chin Li recently sold the house with little involvement of Joseph Li or the two competing spouses. Joseph Li concedes that he signed the real estate documents. But he professes no knowledge of the sale terms or of the estate accounts.
- [72] The deceased held a 1% interest in the home ostensibly to help Hai Chin Li with mortgage financing. Ms. Li says she paid Joseph \$289 which represented his one-half of their father's 1% interest in the net equity of the house. That would make the net equity on the house \$57,800 on a \$3+ million property. That seems odd to say the least.

- [73] The father also has a business in China and a commercial property in China. Neither Hai Chin Li nor Joseph Li professes to know anything about the Chinese properties. Neither has done anything to try to take control of the properties or to be recognized in China as the representatives of their father's estate (if that is possible).
- [74] Ms. Ko claims that the deceased may have done more than co-sign the mortgage for Hai Chin Li. She speculates that he may have provided significant funds to his daughter to help her buy the house. She presents no evidence of this as yet. Perhaps a review of Mr. Li's bank statements near the relevant time would be probative of whether there is an issue.
- [75] Hai Chin Li, for her part, is contented having finished the sale of her house. She may wish to renounce her role as an estate trustee.
- [76] I cannot see how this estate can move forward to look for value without an independent and professional trustee. Hai Chin Li has not shared any information about the purchase or sale of her house with her co-estate trustee or the father's spouses. If Mr. Li gave money to Hai Chin Li the estate or the spouses may have claims to get it back.
- [77] Certainly, Hai Chin Li won't sue herself. Similarly, Joseph Li has no wherewithal to either lead an investigation into his sister's house or to go to China to try to take over a business and commercial property.
- [78] I understand that if the deceased's interest in Hai Chin Li's house is limited to 1% and given the relatively small amount of equity in the matrimonial home, there may be no practical way to empower or fund an independent estate trustee or an ETDL to look for more.
- [79] The matrimonial home needs to be sold. Neither spouse has an ongoing a right to live there for free. Ms. Ko would like an order for exclusive possession. But I do not see that as at all feasible with Joseph already being 19 and finished school, and with Ms. Cheng and her son living there too for the best part of two years – all dependent on the deceased.
- [80] No one has been paying the mortgage since the deceased died. Apparently, the mortgagee bank is taking power of sale proceedings. If the estate trustees do not sell the house, the bank will. Joseph Li probably has little incentive to evict himself and his stepmother to facilitate a sale. A market sale by the owners might yield better recovery

than a power of sale by the mortgagee with all its attendant fees and costs.

- [81] Hai Chin Li says she has no access to estate cash to pay the mortgage on the home occupied by the others and she has no real interest in the property in any event. How did Mr. Li pay the mortgage? What equity did he have to let him help Hai Chin Li buy her home? What was his source of income? What are his assets and liabilities? Someone knows.
- [82] I consolidate the two estates applications: this one and Ms. Cheng's application under Court File No. CV-24-00727787-00ES. Both will proceed in this court file number and will proceed together. Ms. Cheng is granted leave to amend her application to seek dependants' support.
- [83] I do not consolidate Ms. Ko's family law case in Newmarket. Ostensibly the estate trustee(s) of the deceased are adverse in interest to Ms. Ko's equalization claim. While I expect it will settle with reasonable heads prevailing, in my view the equalization issue is different from Ms. Cheng's dependant's support issue. Each should be handled accordingly. Ms. Ko's claim is based on the statutory equalization formula calculated based on the changes in the parties' net asset values from 2014 to 2024. Ms. Cheng's claim is for dependents' support against an estate. The two claims do not need to intersect. As I note above, I do not see how Ms. Cheng can represent the deceased in Ms. Ko's family law claim. That is for the estate trustee(s) and their lawyer.
- [84] In my view the estate trustees and the spouses have a common interest and need to speak to an estates counsel with experience trying to enforce Canadian estates orders in China. If they cannot access the deceased's business value in China, it will be hard for them to do much else here whether by equalization or dependents' support. They need to find a way to divvy up the equity in the matrimonial home and to consider if they have a claim against Hai Chin Li for money provided to her by the deceased (if any). Ms. Li will not participate in that proceeding as an estate trustee even if she decides to stay on.
- [85] I do not remove Ms. Li as estate trustee as sought by Ms. Ko today. First, Ms. Ko has elected to proceed under the *Family Law Act* rather than under the will. In any event, I am not satisfied that there has been wrongdoing by Ms. Li or that the beneficiaries' positions are endangered

by her remaining an estate trustee for the time being provided that she and Joseph Li move forward appropriately.

- [86] I order Hai Chin Li before May 31, 2025, to provide all parties with a list of all assets and liabilities of the deceased as of the date of death. In addition, she is to provide full disclosure of the sources of funds for the purchase of her home on Hope Street including, specifically, whether any funds were provided to her by her late father. If the father advanced funds to Hai Chin Li or her spouse in relation to the home, she is to disclose the terms of such advances. She is to provide back-up documents for all assets, liabilities, paternal funding, and the purchase and sale of the home.
- [87] The estate trustees are to preserve all assets of the estate. None are to be sold or encumbered except to pay needed expenses of administration of the estate (like the mortgage and utilities on the matrimonial home) and then only if both agree. If there is any disagreement about asset sales or encumbrances to raise liquidity to meet expenses, the parties or their counsel should arrange an urgent case conference to enlist the assistance of a judge.
- [88] The estate trustees must also consider whether either or both wish to be replaced by a professional and obtain advice from a lawyer about how one does that.
- [89] In the consolidated estates matter, the parties are required to obtain counsel for the estate, try to agree on a basis to sell the matrimonial home, consider how find and collect the assets of the estate of Mr. Li here and in China, and to seek directions to move forward with any issues on which they cannot agree.
- [90] In the family law matter, Ms. Ko is to proceed with her equalization claim and the estate is to respond, with counsel, as may be directed by the Newmarket court.
- [91] The parties remain free to try to settle Ms. Cheng's claim for support and Ms. Ko's claim for equalization. Even if settlements can be made on an interim basis subject to locating and collecting assets of the deceased in a common front, the parties will be far ahead.

[92] Costs reserved pending the outcome of the show cause proceeding for Ms. Lee.

FL Myers J

Released: May 6, 2025