IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Han v. Cho,***
2008 BCSC 1208

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**: The defendant Soonam Cho applies for an order requiring the plaintiffs to, firstly, produce a supplementary list of documents relating to proceedings in Korea commenced by the plaintiffs concerning the same subject matter as this proceeding and, secondly, to produce a certified translation of those documents. The plaintiffs have conceded the first request, so I order the supplemental list of documents to be produced.

[2] The plaintiffs oppose the application that would require the plaintiffs to produce certified translations of the documents they produce, pursuant to a Rule 26 demand.

[3] Counsel for the defendant Soonam Cho concedes this is a novel point in British Columbia and that there is no specific provision in the rules that deals with the question of who bears the cost of translating documents

produced under a Rule 26 demand. The defendant relies on the general rule, that proceedings in this court must be conducted in English and the specific rule, Rule 4(2), which requires any document prepared for use in a civil proceeding by a party to be in English.

[4] Rule 4(2) reads as follows:

> Unless the nature of the document renders it impracticable, every document prepared for use in the court shall be in the English language, legibly printed, typewritten, written or reproduced on 8 1/2 inch X 11 inch durable white paper or durable off- white recycled paper.

[5] In the case of ***Dhillon v. Archer*** (1996), 25 B.C.L.R. (3d) 232 (S.C.), this Court held that Rule 4(2) required that a party responding to a request for interrogatories must provide the responsive affidavit in English. This decision, in my view, can be explained because an answer to interrogatories is by affidavit, which has to be in a form in accordance with the Rules and, as such, is for "use in court".

[6] Counsel for the plaintiffs relies on ***Kellogg Company v. Imperial Oil Ltd.*** (1996), 29 O.R. (3d) 70, 136 D.L.R. (4th) 686 (Gen. Div.), a decision of the Ontario Court, General Division, for the proposition that a party producing documents does not have to translate them into English.

[7] In the ***Kellogg Company*** case, Justice Kiteley held at para. 51:

> There is no obligation on the party producing the documents to translate into English; that will be the responsibility of the party who leads the evidence at trial.

[8] The plaintiffs also draw analogy to the principles relating to the funding of interpreters in this Court. In my view, this is a helpful analogy. This Court held in ***Wylie v. Wylie*** (1987), 37 D.L.R. (4th) 376 (B.C.S.C.) in relation to the obligation to fund an interpreter, that it is the party requiring the services of the interpreter who must pay the interpreter's fee.

[9] In my view, Rule 4(2) is meant to apply to submissions and documents, which are court forms or filed in court. In my view, it would be a mistake to extend the meaning of Rule 4(2) to cover the form of documents produced under Rule 26. If that was the meaning imposed on Rule 4(2), it would, for example, require a party to type out handwritten notes and produce the typewritten version in response to a Rule 26 demand for discovery of documents, instead of producing the handwritten note in its original form. While in many cases it would seem practical and helpful for an opposite party to type out handwritten notes, or translate documents in a foreign language to assist the other party, I conclude that Rule 4(2) does not require a party to do so when responding to a Rule 26 demand for production of documents.

[10] I also do not agree that if a party has an unofficial translation of a document prepared in-house as part of its legal team efforts, the in-house translation must be produced pursuant to a Rule 26 demand. In this regard, I decline to follow ***Arie v. Schreiber***, [2008] O.J. No. 2176 (Ont. S.C.J. Master) and note that the master deciding that case did not cite any authority for the proposition that a lawyer's work product loses privilege simply because it involves translating a document which is produced to the other side. The defendant provided me with no authority to suggest that a solicitor’s brief mid-litigation is producible if it involves translation of a document that is produced.

[11] The defendant also argued that the order sought in this case would be consistent with the purpose of the Rules of Court as enunciated in Rule 1(5). I disagree. In my view, what the defendant seeks may actually increase the costs of litigation and not advance the interests of a determination of the issues on the merits. Many more documents are produced through the discovery process than are ever introduced into evidence at trial. It will only be necessary to have certified translations of those documents put into evidence at trial. Yet, the defendant is asking that the court require a party to obtain certified translations of each document produced pursuant to a Rule 26 demand. If I were to grant the applicant's request, I would be imposing a new and additional cost of litigation on all parties to litigation, which have a large number of documents in a foreign language. These certified translations may not contribute to a determination of the issues in the case on the merits and, based on the costs reported by the plaintiffs, could be quite expensive.

[12] Further, if I ruled as requested by the defendant applicant that a party in litigation has an obligation to provide certified translations of documents produced pursuant to a Rule 26 demand, this could also give rise to

disputes as to whether or not a party's translator has correctly translated the document and, hence, whether or not that party has complied with this court-imposed obligation. This side issue could also increase the cost of litigation unnecessarily.

[13] I am influenced in this case by the fact that all parties are able to read the Korean language. Any documents produced in the Korean language by one party can be read and understood by the other. Each party can then instruct their counsel on the contents of the documents.

[14] I am not persuaded on the facts of this case or on the meaning of the Rules, that the interests of justice require that I order one side to translate documents for the other side. If one party wishes a document to be translated, then it can incur that cost and claim it as a reasonable disbursement at the conclusion of the case. Obviously, if any party is seeking to introduce a document into evidence at trial, then they will bear the cost of providing a certified translation of that document.

[15] The defendants' application is dismissed.

[16] Costs will be in the cause.

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Madam Justice Susan A. Griffin