

CANADA / JUDGMENT

British Columbia (Public Guardian and Trustee) v. Zhang

2011 BCSC 1750

COURT

Supreme Court of British Columbia

DECIDED

16 December 2011

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2011 BCSC 1750 British Columbia (Public Guardian and Trustee) v. Zhang IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: British Columbia (Public Guardian and Trustee) v. Zhang, 2011 BCSC 1750 Date: 20111216 Docket: E101565 Registry: Vancouver Between: Jim Yao Wu, by his Litigation Guardian the Public Guardian and Trustee of British Columbia Claimant And: Shu Ying Zhang, also known as Edith Li, also known as Yi Li Respondent Before: The Honourable Mr. Justice Savage Reasons for Judgment Counsel for the Claimant: L.M. Slater Acting on her own behalf: S.Y. Zhang Place and Date of Hearing: Vancouver, B.C. December 16, 2011 Place and Date of Judgment: Vancouver, B.C. December 16, 2011

- [1] This is an application for costs by the Claimant following trial. The Claimant says that, by any measure, it was successful at trial. The Claimant refers to Rule 16-1(7) of the Supreme Court Family Rules which provides that "Subject to subrule (9), costs of a proceeding must be awarded to the successful party unless the court otherwise orders".
- [2] The Claimant quite rightly referred me to the case of *Gold v. Gold* (1991), 82 B.C.L.R. (2d) 180. The Court of course retains a residual discretion not to award costs, and in *Gold* refers to such matters as hardship, earning capacity, the purpose of a particular award, the conduct of the parties, and the importance of not upsetting the balance of the award.
- [3] The Claimant was substantially successful, so I must therefore determine whether exercising my discretion judicially, I should otherwise order. In this case I would not exercise my discretion to otherwise order. In exercising that discretion I take into account the fact that at least one offer was made by the Claimant to settle the matter on terms substantially more favourable than what the Respondent received at trial. The Respondent denies receiving the first offer but not the second.

- [4] Secondly, although the Respondent suggests that the Claimant unnecessarily prolonged the trial, I cannot agree. If anything it was the conduct of the Respondent that prolonged the trial. For example, she brought on an adjournment application which was unsuccessful at the commencement of the trial. Much of her cross-examination was repetitive and argumentative. I appreciate that she is a lay litigant, but she is also intelligent, assertive, and educated.
- [5] Thirdly, while I appreciate that the Respondent was self-represented, she also levelled allegations against various witnesses that they were lying, matters which I found entirely unproven. I have also considered hardship, but in this case the Respondent did not fully disclose her accounts, despite court orders. Relative to the Claimant, she is much younger, and in my view fully capable of gainful employment. I found her conduct in relation to the matters at issue here unsettling and troublesome.
- [6] Subrule 16-1(14) also provides that the Court make fix the amount of costs including disbursements. The Claimant asks that I do that, and make a further award of double costs. The issue of double costs arise because of two settlement offers made, one June 8, 2011 and a second July 5, 2011. The second offer included two options, and the Claimant beat both options as evidenced by the decision of the Court. As I have said, the Respondent says she did not receive the first offer. In this case the Respondent was self-represented at trial and at the time these offers were made.
- [7] With respect to double costs the Claimant acknowledges that I have a residual discretion on the awarding of double costs. I appreciate, of course, the purposes of a double costs award as set out in *Hartshorne v. Hartshorne*, 2011 BCCA 29 at para. 25, and appreciate that the rules are in place to encourage early settlement by rewarding a party who makes a reasonable settlement offer, and penalizing the party who declines to accept such an offer. In declining to make an award for double costs, I take into account the fact that the Respondent was unrepresented at the time of these offers, and at trial, and the relative circumstances of the parties, including their ages, capacities and the effect of this award.
- [8] Concerning the amount of costs, the Claimant has presented a bill based on a scale of ordinary difficulty. The Tariff of fees in the amount of \$58,250 is appropriate. The disbursements claimed include as the most substantial item Accounting Fees of \$45,522.73. Those fees, while substantial, reflect nearly three hundred hours of professional work, standby time, and 2.5 days of testimony. In my opinion, the work done to generate the reports and trace the flow of funds is not out of keeping with the task which was to reconstruct the cash flows which occurred. The appraisal costs of \$840, hearing day fees of \$10,700, translation at trial of fees of \$5,827, oral discovery of \$750, and Discovery Transcripts of \$1,791.88 all seem reasonable. I fix the costs here at \$123,681.61. "The Honourable Mr. Justice Savage"

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Prepared on 28 October 2026 · Esheria