

CANADA / JUDGMENT

Chen v. Weir

2025 BCSC 2556

COURT

Supreme Court of British Columbia

DECIDED

9 July 2025

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2025 BCSC 2556 Chen v. Weir IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chen v. Weir, 2025 BCSC 2556 Date: 20250709 Docket: M-212483 Registry: Vancouver Between: I Ting Chen Plaintiff And Surjit Singh Dhugga and Warren Bradley Weir Defendants Before: Associate Judge Robertson Oral Reasons for Judgment In Chambers The Plaintiff, appearing in person: I.T. Chen Counsel for the Defendants: A. Pinto Counsel for the Application Respondent: T. O'Mahony Place and Date of Hearing: Vancouver, B.C. July 9, 2025 Place and Date of Judgment: Vancouver, B.C. July 9, 2025

- [1] THE COURT: When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered given that some matters were abbreviated in the interests of time. I have made such edits without affecting the substance or final disposition.
- [2] The application before the court today is being brought by the defendants to pay a portion of the settlement proceeds into trust or into court pending resolution of a solicitor's lien matter as filed by the plaintiff's former solicitor.
- [3] By way of very brief background, the claim itself arises in the context of a motor vehicle accident claim. Approximately three months or so prior to the trial date, according to the plaintiff, the retainer with her counsel was terminated. The plaintiff alleges that the termination was unlawful and inequitable given that she was on the eve of trial.
- [4] The plaintiff's position is that as a result of that retainer being terminated, and the resultant assertion of a lien over the solicitor's file, she was prevented from (a) being able to retain a new counsel, and (b) enjoying an equal bargaining position that she would have otherwise had in the resulting negotiations with ICBC to settle the claim.
- [5] Regardless, after the termination of the retainer with the firm, a settlement was reached. The previous counsel asserted a solicitor's lien over the settlement proceeds, pursuant to the terms the retainer agreement. An appointment for a review under the Legal Profession Act, R.S.B.C. 1996, c. s. 55 has been filed with respect to the amounts that the lawyer may be entitled to, although there may be a procedural issue with that appointment as it may have been filed prior to the 30-day requirement set out in s. 70(3) of the Legal Profession Act. In

any event, that issue will be dealt with in the ordinary course, namely the issue as to how much is owed and whether the lien is properly enforceable as against the settlement funds, neither of those issues being before the court today.

- [6] Insofar as this application is concerned, what is clear is that the defendants have no entitlement to this money, having settled the matter with the plaintiff. There are, however, two competing claims to the funds, that being the claim of the plaintiff and the claim of her former counsel.
- [7] Under R. 10-3(1), where there is no interest being advanced by the party seeking to pay funds into court in those funds, but competing interests such as this, the funds may be paid into court.
- [8] As to whether the funds ought to be safeguarded giving the competing interests, which is the effect of such an order, the court noted as follows in *Osooli-Talesh v. Emami*, 2003 BCSC 1924 as to preservation orders:
- [43] Rule 46 provides that the court may make an order for the preservation of any property that is the subject matter of a proceeding. The court has the discretion whether to make an order under Rule 46. The considerations for the court are as follows (see *Kashani v. Dhalla*, [2002] B.C.J. No. 2201, 2002 BCSC 1353, *Chiu v. Jao*, [1998] B.C.J. No. 2360 (S.C.), *Kongrecki v. Rafael*, 1993 CanLII 1931 (BC CA), [1993] B.C.J. No. 1631 (C.A.)):
- (a) Is there a claim on the evidence and not just on the pleadings to a proprietary interest in property?
 - (b) Is there some evidence to render reasonable the belief of the plaintiff that the property is threatened with disposition or transfer outside the jurisdiction?
 - (c) Is there a substantial question to be decided as to the plaintiff's entitlement to the property?
 - (d) Does the balance of convenience favour the granting of the order?
- [9] Based on the assertion of the lien, I am satisfied that the balance of convenience supports the granting of the order to safeguard the amounts, at least to the extent of the lien claim. The law firm asserting the lien does not take any issue with the proposition that the entirety of the settlement funds need not be paid into court to safeguard its claim.
- [10] The amount of the lien has been adjusted in this respect and is in the amount of \$139,671.84.
- [11] I make the order as sought in paras. 1 and 2, with that one change, i.e. that the amount to be paid into court shall be \$139,671.84.
- [12] I will also add a term that the funds are to remain in court pending further court order or agreement of the plaintiff and law firm, Mussio Goodman. I will also dispense with approval as to form of the order. [SUBMISSION ON COSTS]

[13] THE COURT: Each party will bear their own costs for this application. "Associate Judge Robertson"

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Prepared on 26 October 2026 · Esheria