

CANADA / JUDGMENT

Ma v. Wu

2025 BCCA 165

COURT

British Columbia Court of Appeal

DECIDED

8 May 2025

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2025 BCCA 165 Ma v. Wu

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Ma v. Wu,

2025 BCCA 165

Date: 20250508

Docket: CA48650

Between:

Zhi Yong Ma and Superooptionforex Consulting Inc.

Appellants

(Defendants)

And

Hong Fang Wu

Respondent

(Plaintiff)

Before:

The Honourable Justice Edelmann

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
October 5, 2022 (Wu v. Ma, 2022 BCSC 1737, Vancouver Docket S182040).

Oral Reasons for Judgment

The Appellant, appearing in person, and on behalf of Superooptionforex Consulting Inc.:

Z.Y. Ma

Counsel for the Respondent:

Y. Wong

Place and Date of Hearing:

Vancouver, British Columbia

May 8, 2025

Place and Date of Judgment:

Vancouver, British Columbia

May 8, 2025

Summary:

Application to dismiss the appeal as abandoned because the appellant has failed to comply with an order to pay security for costs. The security for costs order of a justice in chambers has been upheld by a division of this Court and leave to appeal to the Supreme Court of Canada has been dismissed. The appellant says he cannot pay and the security for costs order should be overturned.

Held: Application allowed. The appellant has no plan to pay security for costs and has provided no legal basis for overturning the order of another justice of this Court. Further delay in paying security would prejudice the respondent. Any limited merits to the appeal do not justify declining to dismiss the appeal. The appeal is dismissed as abandoned.

- [1] EDELMANN J.A.: I have before me three applications. The respondent, Ms. Wu, seeks an order dismissing this appeal as abandoned due to the failure of the appellant, Mr. Ma, to comply with an order to pay security for costs. Mr. Ma seeks orders removing this appeal from the inactive list and ordering that he does not need to pay fees in this appeal.
- [2] I will first address Ms. Wu's application to dismiss the appeal, as it addresses a number of considerations relevant to Mr. Ma's applications. Although, I note that I am considering the materials that have been filed by Mr. Ma in the consideration of Ms. Wu's application.

Background

- [3] Mr. Ma brings the underlying appeal from the order of Justice Winteringham (as she then was) ordering that Mr. Ma and his company, Superooptionforex Consulting Inc., are jointly and severally liable to Ms. Wu for \$1,239,718.22 for breach of fiduciary duty and negligence: *Wu v. Ma*, 2022 BCSC 1737. Mr. Ma filed his notice of appeal on November 2, 2022.

- [4] This appeal first went on the inactive list in November 2023. On April 24, 2024, Justice Fenlon granted Mr. Ma's application to remove the appeal from the inactive list.
- [5] On June 24, 2024, Justice Groberman ordered Mr. Ma to pay security for costs of the appeal in the amount of \$11,996.40, and \$125,340 in security for trial costs. Justice Groberman further ordered that Ms. Wu could apply to dismiss the appeal as abandoned if Mr. Ma did not post security by August 23, 2024.
- [6] Eight months later, Mr. Ma still has not posted security. On September 19, 2024, a division of this Court dismissed his application to vary the order of Groberman J.A.: *Ma v. Wu*, 2024 BCCA 332.
- [7] On October 22, 2024, this appeal went on the inactive list for a second time. Mr. Ma did not take any steps to reactivate the appeal until Ms. Wu applied to dismiss the appeal on January 23, 2025.
- [8] On April 3, 2025, the Supreme Court of Canada dismissed Mr. Ma's application for leave to appeal the September 19, 2024 judgment of this Court, with costs to Ms. Wu: *Zhi Yong Ma v. Hong Fang Wu*, 2025 CanLII 27908 (SCC). I understand that Mr. Ma has sought a reconsideration of that decision, which is pending in some manner before the Supreme Court.

Legal Framework

- [9] Section 36(c) of the Court of Appeal Act, S.B.C. 2021, c. 6 allows a single justice in chambers to dismiss an appeal as abandoned if an appellant has failed to comply with an order of a justice.
- [10] In *Ashraf v. Jazz Aviation LP*, 2023 BCCA 434 [Ashraf], aff'd 2024 BCCA 45, Justice Voith set out considerations to guide justices in deciding whether to dismiss an appeal as abandoned for failure to comply with an order to post security for costs:
- [13] Prior to the coming into force of the current Court of Appeal Act on July 18, 2022, a justice had the jurisdiction under s. 24 of the former Act to dismiss an appeal as abandoned where the appellant failed to comply with a security for costs order. The following considerations, which in my view continue to pertain, were developed under the former s. 24(2) to help determine when a single judge should exercise their discretion to dismiss an appeal in such circumstances: *Quinn v. Coutts*, 2018 BCCA 433 at para. 14; see also *Bhimani v. Beninteso*, 2020 BCCA 174 at paras. 28-29.
 - 1. What was the reason the appellant failed to comply with the order? Has the appellant offered a realistic assurance that security will be posted within an acceptable period of time?
 - 2. Will the delay in posting security cause prejudice to the respondent?
 - 3. Do the merits of the appeal justify declining to exercise the jurisdiction to dismiss?

4. Is the dismissal of the appeal in the interests of justice?

[11] A chambers judge will dismiss an appeal if an appellant who has failed to comply with a security for costs order cannot satisfy them that continuing the appeal is in the interests of justice: Ashraf at para. 14, citing Quinn v. Coutts, 2018 BCCA 433 at para. 13.

Analysis

[12] I will address each of the above factors in turn.

1) Reasons for Non-Compliance and Realistic Assurance that Security Will Be Posted in an Acceptable Period of Time

[13] Mr. Ma says that the reason that he has not complied with the order is that he does not have enough money. He says that he is in significant debt and has been living primarily off credit cards, which are now in default.

[14] Mr. Ma asks me to overturn the security for costs order or, alternatively, to direct that funds that Ms. Wu obtained pursuant to a garnishment order against him be redirected to pay security for costs. Essentially, Mr. Ma asks a single justice in chambers to reconsider the order of another justice of this Court that has already been considered and upheld by a full division of this Court, with leave to appeal to the Supreme Court of Canada having been dismissed. Mr. Ma has not provided any legal basis or grounds upon which I could do so, making assertions about his inability to pay that were already considered by Groberman J.A. It is clear from Mr. Ma's submissions that he has no plan to pay security for costs and no plan to pay costs should he be unsuccessful on this appeal.

[15] Even considering the possibility of an application to vary the order of Groberman J.A., I am not satisfied there has been a material change in circumstances. The only additional information about the divesting of funds after the sale of his home, which was an essential issue in Groberman J.A.'s decision, is that Mr. Ma has listed the names of the persons to whom he alleges that he repaid debts. No further information about the purported loans or conditions of repayment have been provided. Notably, there is no evidence on behalf of the persons who purportedly received the repayments, nor has there been an explanation other than Mr. Ma's submissions today of the coincidence of repaying all the personal loans shortly after the order of Winteringham J. in the underlying action.

2) Prejudice to the Respondent

[16] Mr. Ma owes Ms. Wu over \$1.2 million pursuant to Winteringham J.'s judgment. Of that, counsel for Ms. Wu represent that Ms. Wu has only collected approximately \$19,000, none of which Mr. Ma paid voluntarily.

[17] Without security, it will be difficult for Ms. Wu to collect her costs of this appeal, given Mr. Ma's assertions of impecuniosity. She will therefore be prejudiced if she continues to be put to the cost of defending an appeal that, given Mr. Ma's inability to pay security, may well never be heard.

[18] I am satisfied that Ms. Wu would be prejudiced if there was further delay in posting security.

3) Merits of the Appeal

[19] Two justices of this Court have commented on the merits of this appeal. While neither found that it was devoid of merit, both cautioned Mr. Ma that his appeal appeared weak.

[20] In the April 2024 hearing, Fenlon J.A. wrote that, while she could not say that the appeal was bound to fail:

[14] Mr. Ma should be aware that there are real weaknesses in his appeal and that he should take this under advisement in considering whether he wishes to continue with the appeal.

[21] Similarly, in June 2024, Groberman J.A. wrote:

[4] As I advised the parties at the outset, I am satisfied that the appeal is not completely devoid of merit. It is, however, focused almost exclusively on the judge's factual findings, and the appellant will face a steep uphill battle in convincing the Court that the judge made palpable and overriding errors in what appears, on the face of it, to be a well reasoned judgment.

[5] In saying this, I am not pre-judging the appeal, and the appellant may well find something in the judgment to convince a panel that aspects of it are vulnerable. That said, at this point, it is my assessment that the appeal appears to be quite a weak one.

[Emphasis added.]

[22] As Groberman J.A. noted, Mr. Ma seeks to attack Winteringham J.'s factual findings, including, among other things, her reliance on Ms. Wu's expert evidence and her assessment of Mr. Ma and Ms. Wu's credibility. He argues that these factual findings led her to make erroneous conclusions.

[23] The vast majority, if not all, of Mr. Ma's arguments focus on questions of fact, or of mixed fact and law. On appeal, this Court will only interfere with those findings if Mr. Ma can demonstrate that Winteringham J. made a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 10. While not insurmountable, this is a high bar and a trial judge's factual findings are entitled to considerable deference.

[24] In the circumstances of this case, I am not satisfied that any limited merits of this appeal justify declining to exercise my discretion to dismiss the appeal as abandoned.

4) Interests of Justice

[25] In my view, it is in the interests of justice to dismiss this appeal as abandoned.

[26] Mr. Ma has not complied with the order requiring him to pay security for costs. He has no plan to do so in the near future, if ever. It would not be in the interests of justice to put Ms. Wu to the time and expense of allowing this appeal to continue indefinitely, in particular in circumstances where she is unlikely to recover any costs from ongoing applications like the ones before me.

Conclusion

[27] I therefore dismiss the appeal as abandoned with costs to Ms. Wu. As a result, there is no need to consider Mr. Ma's applications.

"The Honourable Justice Edelmann"

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Prepared on 29 October 2026 · Esheria