

CANADA / JUDGMENT

Mou v. Han

2025 BCCA 347

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 347 Mou v. Han COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Mou v. Han, 2025 BCCA 347 Date: 20250929 Docket: CA49783 Between: Ping Mou Appellant (Plaintiff) And Hui Han and Crystal Han Respondents (Defendants) Before: The Honourable Justice Gomery (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated March 7, 2024 (Mou v. Han, Vancouver Docket S216814). Oral Reasons for Judgment Counsel for the Appellant: L. Yuan Counsel for the Respondents: J. Zeljkovich B. Olson Place and Date of Hearing: Vancouver, British Columbia September 29, 2025 Place and Date of Judgment: Vancouver, British Columbia September 29, 2025 Summary: The appellant applies to remove her appeal from the inactive list, pursuant to Court of Appeal Rule 50(3). Held: Application dismissed. In the context of the entire litigation, the delay is inordinate and is essentially unexplained. Success on appeal is very unlikely. Although there is not evidence of specific prejudice to the respondents aside from that which arises from the prolongation of the proceeding, the other three considerations weigh heavily against allowing the appeal to proceed. It would not be in the interests of justice to reactivate the appeal. GOMERY J.A.:

Introduction

- [1] In 2021, Ping Mou commenced an action in the court below. In 2023, after the action was set for trial, she purported to discontinue it by filing two notices of discontinuance without the defendants' consent or leave of the court. Absent consent, leave to discontinue was required pursuant to Supreme Court Civil Rule 9-8(2). On the defendants' application, Justice Loo set aside the notices of discontinuance for the limited purpose of the application, and ordered that the second notice of discontinuance would stand as a defence to any proceeding for the same or substantially the same matters set out in Ms. Mou's notice of civil claim. He also ordered Ms. Mou to pay special costs.

- [2] Ms. Mou did not appear on the application before Loo J. and has appealed his order. The sole issue on appeal is her contention that she was not properly served. Justice Loo considered the question of service and held that it was effected by delivering motion materials to her address for service in the action. Ms. Mou maintains that this reasoning is legally untenable because the action had already been discontinued and the respondents could no longer resort to the rules permitting service by delivery to an address for service.
- [3] The order under appeal was made on March 7, 2024. The appeal proceeded as contemplated by the Court of Appeal Rules through to the filing of the appellant's factum in June 2024, and the respondent's factum in July 2024, but Ms. Mou then took no steps to set it for hearing. The registrar placed it on the inactive list on April 4, 2025.
- [4] Ms. Mou applies to remove the appeal from the inactive list. If it is not removed, it will be dismissed as abandoned pursuant to Court of Appeal Rule 51(1) after 180 days on the list, on October 2, 2025. The respondents oppose the application.

Background

- [5] The action concerns Ms. Mou's claim to three residential properties in Vancouver and Richmond. It is one of many legal and administrative proceedings involving the same and related subjects and parties. Broadly speaking, all this litigation results from a falling out between Ms. Mou and her adult son, William Ma, on the one hand, and the respondents. The respondent, Hui Han, is Mr. Ma's former spouse. Some of the proceedings are ongoing in the Supreme Court where they are under case management by Justice G.C. Weatherill.
- [6] In one of the related proceedings, also heard by Loo J., he fairly described the case at hand as part of a "remarkable web of proceedings before the [Residential Tenancy Branch] and this Court" regarding one of the properties: *Han v. Ma*, 2024 BCSC 281 at para. 13. There have also been proceedings brought by Mr. Ma in the Provincial Court, and both the Provincial Court and the Supreme Court have declared him a vexatious litigant: *Ma v. Dai*, 2024 BCSC 2079 at paras. 21-22 and 54. Mr. Ma has appealed the vexatious litigant order in the Supreme Court.

Legal framework

- [7] Ms. Mou's application is authorized by s. 23(2) of the Court of Appeal Act and R. 50(3) of the Court of Appeal Rules. Rule 50(3) describes it as an application for leave to proceed with the appeal with the consequence that, if leave is granted, the appeal is removed from the inactive list.
- [8] The order sought is discretionary. The overarching concern, in the exercise of the Court's discretion, is that proceeding with the appeal be in the interests of justice: *Kar Recovery, Ltd. v. K.D.A.*, 2004 BCCA 503 at para. 23; *Centrone v. Jones*, 2024 BCCA 177 at paras. 14-16. The cases identify four factors to be considered in particular:

- 1) The extent of the delay and whether it is inordinate;
- 2) The explanation for the delay;
- 3) The extent of prejudice resulting from the delay; and
- 4) The likelihood of success on appeal.

Analysis

- 1) The extent of the delay and whether it is inordinate
- [9] Ms. Mou submits that there has not been inordinate delay. She notes the steps taken to move the appeal forward between March and July 2024. By the end of this period, she was not represented by counsel in the appeal and, while she did nothing from July 2024 until she was notified in April 2025 that the appeal had been placed on the inactive list, she then immediately filed a notice of application, returnable in August, and retained counsel for the application in August, resulting in a delay of the hearing until today's date. She maintains that the delay since July 2024 is understandable and not inordinate in light of her status as a self-represented litigant between the spring of 2024 and August 2025.
- [10] In my view, considered in the larger context of the litigation I have described, the delay to this point has been inordinate. It is clear that Ms. Mou is working closely with her son, Mr. Ma. Mr. Ma has sworn an affidavit on her behalf for this application. They have both been represented at various points in the litigation, including in the initial stages of the present appeal.
- [11] Though the evidence of the exact status of Ms. Mou's legal representation in this period is opaque, I infer that Ms. Mou had access to legal advice in the period from July 2024 to August 2025. When the appeal was commenced, she was represented by Taylor Stone. On May 28, 2024, Mr. Stone forwarded the appeal record and transcript to respondent's counsel under cover of an email noting that he would be changing firms at the end of the following week. His new firm was Alexander Holburn. Mr. Stone filed and served the appellant's factum in late June while he was a lawyer at Alexander Holburn. He advised that he was unsure whether Ms. Mou intended to continue to retain him and his firm for the rest of the appeal.
- [12] In August 2024, Mr. Ma emailed respondent's counsel to advise that because Ms. Mou's "prior lawyer" had moved to a new law firm with a conflict, Ms. Mou now wished to retain Clayton Rubenstein as her lawyer. This statement in an email is the only evidence that Mr. Stone found himself in a position of conflict, apparently after he filed the factum.
- [13] In an affidavit affirmed in another appeal proceeding on February 18, 2025, Mr. Ma states that, as of January 2025, Mr. Rubinstein could no longer represent "certain parties in connection with my case" due to a conflict of interest. Curiously, Mr. Rubinstein took this affidavit.

[14] As noted, Ms. Mou took no steps to retain some counsel other than Mr. Rubinstein until after she received notice that this appeal had been placed on the inactive list in April 2025, and did not actually retain her present counsel until August. Ms. Mou's counsel suggests that it was difficult for her to obtain litigation counsel who speak Mandarin. Respondents' counsel responds that she was able to retain counsel without delay, several times, at earlier stages in the litigation.

[15] I infer that Ms. Mou and Mr. Ma were taking advice from Mr. Stone in the period through June 2024, and from Mr. Rubinstein from August 2024 through at least January 2025. They were experienced in retaining counsel. I am not persuaded that Ms. Mou's linguistic challenges would have prevented her from retaining counsel to replace Mr. Rubinstein, had she sought to, prior to August 2025.

[16] Stepping back, the action was commenced in 2021, and Ms. Mou sought to discontinue it in 2023. It was not until Loo J.'s order of March 2024, that Ms. Mou appears to have thought better of her intention not to proceed with the action. Then, having initiated an appeal and carried it forward to the point of filing a factum, she let matters lapse until she filed this application in April 2025, and after that was in no particular hurry to have the application heard. It is in this particular context that I view the delay since the respondent's factum was filed in July 2024 as inordinate.

2) The explanation for the delay

[17] As noted, Ms. Mou has not explained the delay in an affidavit of her own. Her counsel offers the following explanation based on inferences from facts put in evidence by others: she "appeared to be self-represented in the summer of 2024"; she is 83 years old and her first language is Mandarin; consequently she is "not well-versed in the British Columbia legal system"; and she took steps to reactivate the appeal and retained Mandarin-speaking counsel after April 2025.

[18] The explanation offered on Ms. Mou's behalf is not satisfactory. The wording of the submission that she "appeared" to be self-represented is telling. As already noted, Ms. Mou had access to legal advice and considerable experience, together with Mr. Ma, in litigation in British Columbia.

[19] I view the delay in this case as essentially unexplained.

3) The extent of prejudice resulting from the delay

[20] There is no prejudice to the respondents from the delay apart from the uncertainty attendant upon the prolongation of a legal proceeding. The respondents fairly observe that they have a legitimate interest in not being dogged for years with multiple claims over the same properties. While this is so, it does not weigh particularly heavily in the circumstances of this case.

4) The likelihood of success on appeal

- [21] The appeal is most unlikely to succeed. Supreme Court Civil Rule 4-2 permits service of interlocutory applications in a proceeding at a party's address for service. Ms. Mou's argument is that service could no longer be effected at her former address for service once the action was discontinued. Whatever the merits of that argument in the abstract, the action had not been validly discontinued consistently with the requirements of Supreme Court Civil Rule 9-8(2). Ms. Mou maintains that discontinuance brought the proceeding to an end, but that could only be so if the discontinuance was validly effected. Accordingly, in my view, the argument that it was not open to the defendants to address the situation created by the filing of improper notices of discontinuance through a notice of application served on Ms. Mou at her address for service is untenable. Is it in the interests of justice that Ms. Mou proceed with the appeal?
- [22] I conclude that it is not in the interests of justice that Ms. Mou proceed with the appeal because there has been unexplained, inordinate delay and the appeal is most unlikely to succeed. These considerations point strongly against allowing the appeal to proceed, even in the absence of evidence of specific prejudice to the respondents apart from the prejudice that flows naturally and inevitably from the prolongation of the proceeding.

Disposition

- [23] The application to remove the proceeding from the inactive list is dismissed. "The Honourable Justice Gomery"

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