

CANADA / JUDGMENT

Shen v. Chan

2021 BCSC 2514

COURT

Supreme Court of British Columbia

DECIDED

24 December 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 2514 Shen v. Chan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Shen v. Chan, 2021 BCSC 2514 Date: 20211224 Docket: S117400 Registry: Vancouver Between: Shang Chen Shen Plaintiff And Edit Chan and Youti Wan Defendants And John A. Gunson also known as John Gunson Euro Canadian Construction Corp. Third Party Before: The Honourable Mr. Justice Funt Reasons for Judgment Counsel for the Plaintiff, appearing in person (November 12, 2021) and via video conference (November 26, 2021): C.L. Bauman Counsel for Teresa Yun-Chu Tsai, Executor and Trustee of the Will of Youti Wan, appearing in person (November 12, 2021) and via video conference (November 26, 2021): R.D. Irving No other appearances Place and Dates of Hearing: Vancouver, B.C. November 12 and 26, 2021 Place and Date of Judgment: Vancouver, B.C. December 24, 2021

1. introduction

- [1] On March 23, 2021, I dismissed the plaintiff's claim as against Ms. Youti Wan: Shen v. Chan, 2021 BCSC 519 ("March 23, 2021 Reasons").
- [2] The plaintiff's claim as against Ms. Edith Chan had previously been dismissed: Shen v. Chan, 2016 BCSC 1370, upheld Shen v. Chan, 2018 BCCA 4.
- [3] As may be seen from my March 23, 2021 Reasons, Ms. Wan died on April 6, 2014. She left a Will dated September 27, 2007. On March 13, 2017, Teresa Yun-Chu Tsai, Executor and Trustee of the Will of Ms. Wan ("Ms. Tsai"), was granted Letters Probate.
- [4] Before August 16, 2018, Ms. Shen was aware that the "executor issues", as Justice Gropper described, had been resolved: Shen v. Chan, 2018 BCSC 1568 at para. 12.
- [5] On October 30, 2018, Justice Saunders, at a case planning conference, ordered, among other orders, that "the plaintiff will take all necessary steps to amend the pleadings to substitute the defendant Youti Wan by January 31, 2019".
- [6] A consent order to the foregoing effect was prepared by Ms. Shen's then counsel, signed by Ms. Tsai's then counsel, and then submitted for filing. The registry rejected the form of the order.

- [7] As noted in my March 23, 2021 Reasons, Ms. Shen started to represent herself on January 28, 2019. She took no further action to comply with the order made by Justice Saunders.
- [8] The order reflecting my March 23, 2021 Reasons has yet to be entered.
- [9] On April 22, 2021, Ms. Shen filed a notice of application for leave to appeal with our Court of Appeal.
- [10] On April 28, 2021, Ms. Shen filed a notice of appeal of the March 23, 2021 dismissal of her claim.
- [11] I understand that Ms. Shen's main ground of appeal is that Ms. Tsai was not a proper party to bring the motion to dismiss Ms. Shen's claim for want of prosecution.
- [12] On August 30, 2021, Ms. Shen filed the current application before me. She seeks the following orders:
1. An order that this honorable court reconsider and cancel the granting of the application of the motion, brought by J.C. MacDonald [then counsel for Ms. Tsai], heard on February 3-5, 2021 with that motion granted on March 23, 2021 and substitute an order denying the remedy sought;
 2. An order in the nature of an injunction prohibiting anyone from filing documents or seeking the relief of the Courts in the name of Youti Wan (deceased) in the within litigation; and
 3. An order that the costs of the application be payable in any event of the cause as against the Estate of Youti Wan Tsai.
- [13] For the reasons that follow, I will dismiss Ms. Shen's application.
2. analysis
- [14] Ms. Tsai accepts that without an entered order reflecting my March 23, 2021 Reasons, the doctrine of *functus officio* has not yet been engaged: *Toor v. Dhillon*, 2020 BCCA 309 at para. 12.
- [15] From the relief sought by Ms. Shen, it is apparent that she seeks a complete reversal of the March 23, 2021 dismissal of her claim for want of prosecution.
- [16] As noted, Ms. Shen filed her notice of appeal of the March 23, 2021 dismissal of her claim before bringing her current application.
- [17] It is essential to the efficient administration of justice that there is not a multiplicity of proceedings addressing the same issue.
- [18] Each of the submissions Ms. Shen has made before me on the current application may be made before our Court of Appeal.

- [19] The current application is not one of, say, correcting a transposed figure or correcting a calculation, which, in turn, would serve to provide a correct record aligned with reasons for judgment.
- [20] Ms. Shen's current application is not based on new evidence. If, *arguendo*, Ms. Shen's application were based on new evidence, in my view, the appropriate court to hear the matter would in most cases be our Court of Appeal. Again, Ms. Shen's current application was filed after she filed her notice of appeal.
- [21] The exercise of my discretion to not reconsider my March 23, 2021 Reasons is consistent with authority. In *Mayer v. Mayer Estate*, 2020 BCCA 282, our Court of Appeal stated:
- [20] Justice Garson's summary of the applicable principles in *Moradkhan [v. Mofidi]*, 2013 BCCA 132] nevertheless remains helpful (I have jettisoned the adjective "unfettered" from the second bullet point):
- [31] I would summarize the main principles applicable to such an application in the following way: · it is generally speaking in the interests of justice to consider that a trial is complete when each side has closed their case and the judge has delivered his or her judgment; · a judge's discretion to reopen a trial should be exercised with restraint; · a party may not use the rule to re-argue, re-cast, or re-state his or her case, rather the rule is available to remedy what might otherwise be a substantial injustice; · it is not intended that a party should be able to lead substantial new evidence, nor does the rule generally permit the leading of new expert evidence; · the reasons that the evidence was not led or submissions not made in the first place may be relevant to the exercise of the judge's discretion, particularly where the failure to do so in the first place was a considered or pragmatic decision; and · the discretion should only be exercised if the reception of the new evidence would probably change the result of the trial. I would add to this list that a judge may reasonably exercise such discretion where a relatively discreet error in math or some mechanical consideration of the evidence is clearly in error. Finally, the overarching consideration is whether it is in the interests of justice that the court reopen the case. (See also *Brown v. Douglas*, 2011 BCCA 521, 314 B.C.A.C. 143.)
- [22] There is not an injustice. Ms. Shen may "re-argue, re-cast, or re-state" her arguments before our Court of Appeal.
- [23] The fact that Ms. Shen represented herself on Ms. Tsai's application to dismiss her claim for want of prosecution does not change matters. The rule is the same. A litigant, whether represented by counsel or self-represented, should not be granted the opportunity to "re-argue, re-cast, or re-state" arguments before the Court that heard the matter in first instance.
- [24] As stated again in *Mayer*, "it is generally speaking in the interests of justice to consider that a trial is completed when each side has closed their case and the judge has delivered his or her judgment".

[25] I will dismiss Ms. Shen's application.

3. Ms. Tsai's application

[26] Ms. Tsai applied for the following orders:

1. An order nunc pro tunc, substituting "Teresa Yun-Chu Tsai, as the representative of the estate of Youti Wan" in place of the defendant, Youti Wan" in the within proceedings as of March 13, 2017, or in the alternative, as of December 19, 2019; and
2. Costs as against any parties who oppose this application.

[27] I will also dismiss Ms. Tsai's application. If I should have ordered the style of cause to be amended as part of my March 23, 2021 Reasons, it should also be determined by our Court of Appeal. Our Court of Appeal will have a complete record and, accordingly, will be in the position to make the correct determination.

[28] In my view, it would be unseemly for this Court to now provide some "over the transom" reasons.

4. conclusion

[29] The application brought by Ms. Shen is dismissed.

[30] The application brought by Ms. Tsai is dismissed.

5. Costs

[31] If the parties wish to address costs, I ask that they arrange through Supreme Court Scheduling a 9 a.m., 55-minute hearing before me. Costs with respect to my March 23, 2021 Reasons may also be addressed at such time. "Funt J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/25/2021BCSC2514.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/shen-v-chan-2021-bcsc-2514>

Prepared on 29 October 2026 · Esheria