

CANADA / JUDGMENT

Tao v. Yin

2025 BCSC 281

COURT

Supreme Court of British Columbia

DECIDED

21 February 2025

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2025 BCSC 281 Tao v. Yin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tao v. Yin,

2025 BCSC 281

Date: 20250221

Docket: S2010412

Registry: Vancouver

Between:

Junjie Tao, Executor of the Estate of

Tong Zhang aka Tony Zhang, Deceased

Plaintiff

And

Hang Yin, Yan Chun Yin, 1011066 B.C. Ltd.

1079770 B.C. Ltd., 1032734 B.C. Ltd., and 1085842 B.C. Ltd.

Defendants

Before: The Honourable Madam Justice Lyster

Reasons for Judgment on Penalty and Costs

Counsel for the Plaintiff

D.L.R. Yaverbaum

M.J. Hewitt

Counsel for the Defendants

V.F.L. Pappas

E. Hulshof

Place and Dates of Hearing:

Vancouver, B.C.

June 20 and July 24, 2024

Written Submissions of the Plaintiff and Defendants received January 23, 30
and 31, 2025

Place and Date of Judgment:

Vancouver, B.C.

February 21, 2025

- [1] In a decision indexed at Tao v. Yin, 2024 BCSC 2045 (the "Contempt Decision"), I made two findings of contempt against the defendants. As agreed by the parties, they provided written submissions with respect to what sanction should be imposed on the defendants and costs of the contempt application and related application for substitutional service. This decision should be read in conjunction with the Contempt Decision.
- [2] The contempt application arose out the defendants' alleged failure to comply with an order I made on September 1, 2023 (the "Order"). In the Order, I adjourned the trial which was then scheduled to commence on September 18, 2023, and imposed a number of conditions intended to minimize the prejudice to the plaintiff caused by the adjournment of the trial. Those conditions included the following:
- a. The Defendants shall forthwith provide a mortgage statement regarding the Buxton Property which states the current outstanding balance on the mortgage registered against the property, if such statement is in the Defendants' possession, and if not then the Defendants shall forthwith request and make best efforts to provide it to the Plaintiff as soon as possible;
 - b. The Defendants shall not dispose of, mortgage or otherwise borrow against or diminish the value of the Buxton Property until resolution of this action;
- [3] Following a contested application heard June 20 and July 24, 2024, I found that the defendants were in contempt of those two terms of the Order. Specifically, I found in the Contempt Decision that the defendants failed to make best efforts to provide the Buxton mortgage statement forthwith, in breach of paragraph 7(a). The statement was provided on June 12, 2024, without explanation for the defendants' failure to provide it earlier. Further, I

found that the defendants failed to provide the Surrey mortgage statement forthwith, in breach of paragraph 8(b). It was provided on December 7, 2023. I found the defendants' explanation for the delay in providing it insufficient.

- [4] In both cases, the defendants' contempt was purged prior to the contempt hearing through the documents being provided.
- [5] The plaintiff seeks a fine in the range of \$15,000 for the contempt found against the defendants. The plaintiff further seeks special costs of the contempt application and related substitutional service application, to be fixed in the amount of \$25,000.
- [6] By way of explanation with respect to the substitutional service application, the defendants, through their counsel, refused to accept personal service of the contempt application materials. Defendants' counsel advised plaintiff's counsel that they were not prepared to accept service of the application because they viewed it as without merit. This refusal required the plaintiff to apply for alternative service to permit service on the defendants in China. On March 5, 2024, Associate Judge Robertson granted the plaintiff's application for substitutional service, with costs of the application to be left to the presider of the contempt application.
- [7] The defendants submit that, because they purged their contempt, no fine should be ordered against them. They agree with the plaintiff's proposal that special costs be fixed against them in the amount of \$25,000.
- [8] The plaintiff relies on the decision of the Court of Appeal in *Gabriola Island Local Trust Committee v. Fonseca*, 2023 BCCA 302 for the principles applicable to sentencing for civil contempt. At para. 50 of *Gabriola*, the Court referred to its decision in *Langford (City) v. dos Reis*, 2016 BCCA 460 at para. 17 for the factors relevant to determining an appropriate penalty for civil contempt, as follows:
 - 1. The inherent jurisdiction of the court, as a superior court, allows for the imposition of a wide range of penalties for civil and criminal contempt;
 - 2. Deterrence, both general and specific, but especially general deterrence, as well as denunciation, are the most important factors to be considered in the imposition of penalties for civil, as well as criminal, contempt;
 - 3. The impact that the contemptuous act has had on the general public, particularly in relation to health and safety matters, is a relevant consideration in determining the level of penalty;
 - 4. It is the defiance of the court order, and not the illegality of any actions which led to the granting of the court order in the first place, which must be the focus of the contempt penalty;

5. Imprisonment is normally not an appropriate penalty for a civil contempt where there is no evidence of active public defiance (such as public declarations of contempt; obstructive picketing; and violence) and no repeated unrepentant acts of contempt;
 6. Where a fine is to be imposed, the level of the fine may appropriately be graduated to reflect the degree of seriousness of the failure to comply with the court order;
- []
9. In setting the overall level of penalty, the court may take account of the level of penalty imposed in similar cases in the past and may adjust the penalty upwards or downwards, depending on the court's assessment as to whether previous levels of penalty have had an effective general deterrent effect.
- [9] The plaintiff cites no authorities in support of its submission that a fine in the range of \$15,000 is appropriate in this case. Nor does it cite any authority in which a fine was imposed where, as here, the contemnor had purged the contempt.
- [10] The defendants have purged their contempt. In their written submission they state that they "readily accept that some sanction is required", but they submit that an award of special costs is such a sanction. They further submit that because they have purged their contempt no fine should be ordered.
- [11] I agree with the plaintiff that a sanction for contempt and special costs should not be conflated. The distinction between the two is reflected in the decision of the Court of Appeal in *Sound Contracting Ltd. v. Regional District of Comox-Strathcona*, 2005 BCCA 167 at para. 17, where the Court rejected the submission that, because the contempt had been purged, no special costs should be ordered. Special costs are usually ordered against contemnors in contempt cases, regardless of whether a fine is imposed.
- [12] The plaintiff's proposal that special costs be fixed at \$25,000 in this case was, as recognized by the defendants in their submission, a reasonable approach. The plaintiff's actual costs of the contempt application and substitutional service application would have been significantly in excess of the \$25,000 figure proposed. By agreeing to fix the costs, the parties have been saved the further expenses potentially associated with having special costs assessed.
- [13] The purging of the contempt by the defendants in this case is an important factor which substantially mitigates the contempt. However, it does not eliminate the fact that the defendants wilfully failed to comply with this court's orders for an extended period of time, in one case for a period of three months, and in the other for approximately ten months. The impression left with the court was that, having obtained the adjournment sought, compliance with the other terms of the Order was not a priority for the defendants. They denied engaging in contempt and vigorously defended the contempt application. No apology has been made on the basis of which the court could find the defendants to be remorseful.

- [14] In my view, the defendants' contempt requires that some sanction be imposed. The court must dissociate itself from the defendants' refusal to comply with the obligations imposed upon them in the Order. Such dissociation is important for the purposes of denunciation and general deterrence.
- [15] None of the cases provided by either party are factually similar in terms of considering the fine to be imposed. In all the circumstances of this case, I find that a fine of \$2,500, payable to the King in Right of the Province of British Columbia, is appropriate.
- [16] I further accept the plaintiff's proposal, accepted by the defendants, with respect to special costs. I, therefore, order that the defendants pay the plaintiff the sum of \$25,000 in special costs, forthwith and in any event of the cause.

"L.M. Lyster J."

LYSTER J.

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