

CANADA / JUDGMENT

Tsai v. Li

2020 BCSC 60

COURT

Supreme Court of British Columbia

DECIDED

17 January 2020

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

2020 BCSC 60 Tsai v. Li

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tsai v. Li,

2020 BCSC 60

Date: 20200117

Docket: S158797

Registry: Vancouver

Between:

Wen Hsien Tsai

Plaintiff

And

Zhixiang Li, Sincere Real Estate Services Ltd.,

Yi Zhang aka Leo Zhang, 1035566 B.C. Ltd.,

Arsalan Mahboub and Bahaiedin Naemi

Defendants

Before: The Honourable Mr. Justice Myers

Ruling on Application for Special Costs

Counsel for the Plaintiff:

George Douvelos

Sunita Syal

Counsel for Zhixiang Li:

Stephen A. Mellows

Counsel for Sincere Real Estate and

Leo Zhang:

Kelly A. Murray

Romany K. Benham-Parker

Written Submissions:

January 3, 2020

Place and Date of Judgment:

Vancouver, B.C.

January 17, 2020

- [1] In August 2019, I dismissed Mr. Tsai's action (2019 BCSC 1317). Mr. Li asks for special costs. (Mr. Zhang and his company have settled their costs claims with Mr. Tsai.) Submissions were made in writing only. This is my decision on the application.
- [2] The background to this case was set out in the introduction of my trial decision:
- [1] This lawsuit concerns Mr. Tsai's refusal to complete on a contract of purchase and sale for his home in West Vancouver.
- [2] The action arises in this way. In May 2015, Tsai agreed to sell his home at 1028 Eyremount Drive to the defendant, Mr. Li, for \$5.1 million. Simultaneous with signing the contract of purchase of sale, Tsai and Li signed limited dual agency agreements with the defendants Mr. Zhang and his company, Sincere Real Estate. In July 2015, Li assigned the contract of purchase and sale to 1035566 B.C. Ltd., which, in August 2015, assigned the contract to another party.
- [3] Tsai refused to complete the contract because he felt he had been "stiffed" by Li and Zhang. He brings this action seeking rescission and damages.
- [4] Tsai originally alleged that Li and Zhang conspired to induce him to sell his home at a below market price so they could assign the property at a profit. That allegation was amended to plead a conspiracy to obtain the home at a reduced price. Presumably this reflects the fact--which is central to the outcome of this case--that the home was sold by Tsai to Li at market value.
- [5] Tsai also claims that Zhang breached his fiduciary duty and was negligent.

- [6] Li counterclaims for the profit he lost by not being able to assign the contract. His claim is based on the tort of unlawful means rather than breach of contract because the contractual right of action was assigned.
- [7] The claims against the numbered company and its directors, Mr. Mahboub and Mr. Naemi, have been disposed of by a consent dismissal order.
- [3] For the reasons that follow it is my view that this case merits an award of special costs. All of the findings of fact necessary for my decision were set out in my trial judgment and they lead inexorably to a special costs award; indeed, concluding the opposite would be quite surprising. These reasons will therefore be brief and they need to be read in conjunction with my trial judgment.
- [4] In *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 Justice Walker extracted from the authorities some of the factors which merit a special costs award:
- [11] Special costs may be ordered in the following circumstances:
- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
 - (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
 - (c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;
 - (d) where a party made the resolution of an issue far more difficult than it should have been;
 - (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
 - (f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;
 - (g) where a party brings a proceeding for an improper motive;
 - (h) where a party maintains unfounded allegations of fraud or dishonesty; and
 - (i) where a party pursues claims frivolously or without foundation.
- See: *Garcia* at 748; *International Hi-Tech* at paras. 7-13; *Webber v. Singh*, 2005 BCSC 224 at para. 28; *McLean v. Gonzalez-Calvo*, 2007 BCSC 648 at paras. 26, 29; *Buchan v. Moss Management Inc.*, 2008 BCSC 1286 at paras. 11-12; and *Edwards v. Bell*, 2004 BCSC 399 at paras. 12, 43-45.
- [5] Of the above factors (a), (b), (c), (f), (h) and (i) are applicable here.
- [6] There is an overlap in many of these factors but a common theme in them and the case law is the proposition that a plaintiff should not bring a claim alleging fraud or conspiracy on mere speculation. A claim should be abandoned when it is clear it was manifestly deficient

and has little if any chance of success. Conduct to the contrary will often be sanctioned by an award of special costs: see *Animal Welfare International Inc. v. W3 International Media Inc.*, 2016 BCCA 372 at paras. 49-50; *Pocuca v. Guti*, 2007 BCSC 490 at paras. 19-21; *McLean v. Gonzalez-Calvo*, 2007 BCSC 648 at paras. 21-25; and, *Kouwenhoven Estate v. Kouwenhoven*, 2001 BCSC 1402 at paras. 2-4.

- [7] It is clear from my trial reasons that the only evidence Mr. Tsai had with respect to his claims were the facts that Mr. Li did not move into the house after closing and that he had assigned the contract. This led Mr. Tsai to believe that he had been "stiffed". From beginning to end, there was no evidence of the wrongs alleged by Mr. Tsai. If that was not apparent to Mr. Tsai at the commencement of the litigation, it ought to have become so as the case progressed through the discovery stage when nothing of moment was unearthed.
- [8] In 2016, in support of their summary trial application, the defendants provided Mr. Tsai with an appraisal report indicating that the sale price was at fair market value. The report was not challenged at the summary trial or the trial in front of me. This essentially cut the legs out from the claim, which was already devoid of evidence. It is no doubt this which led to an amendment (made shortly before the full trial) changing the conspiracy claim from one to convince Mr. Tsai to sell at an under-market price to selling at a "reduced price". At the trial, Mr. Tsai said he had been told that the sale price was a "heavenly price"; something he had not alluded to in his discovery evidence. I rejected his evidence on that and in any event concluded that it could not advance his claim given the home was sold at fair market value: see trial decision paras. 101 and following.
- [9] Mr. Tsai successfully resisted the application to have his claim dismissed at the summary trial, largely on the basis that conflicts in the evidence had to be tested at a full trial. However, in Justice Kent's reasons, he put him on notice that he might be liable for significant costs, given the convincing arguments of the defendants: see 2018 BCSC 582 at para. 14.
- [10] At the end of the trial, during argument, Mr. Tsai expanded the fraudulent conspiracy allegations originally alleged against Mr. Li and Mr. Zhang only, by claiming others, including independent realtors and builders, were also involved.
- [11] Mr. Tsai was not truthful in his testimony at trial. Amongst other things, he falsely presented himself as being a naïf at real estate. He concealed phone records until he thought they might serve his advantage during the trial. As I noted in the trial reasons, this was a shocking lack of disclosure. When those were produced they showed that he had a telephone call with his daughter who lived in London, Ontario on the day the documents were signed; yet, he had previously testified that he had been prevented from calling his daughter or others to seek advice. When the call was put to him, he made the completely unbelievable assertion that he and his daughter did not discuss the transactions.

[12] Mr. Tsai says special costs should not be awarded against him because he had a reasonable subjective belief that he was being defrauded. That is not the case; he may have believed that he had been "stiffed" - to use his word - but that does not mean that the belief was reasonable. Moreover, an inchoate belief of being "stiffed" does not amount to a belief in the elements necessary to prove the alleged causes of action. He therefore did not have the subjective or the objective belief that might mitigate against an award of special costs.

[13] Mr. Tsai relies on my having dismissed Mr. Li's counterclaim for the loss of profit on the assignment, which was based on the tort of unlawful means. Referring to *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, I said:

[141] At para. 95 Cromwell J. dealt with the requirement of intent. He held that the intent may be of two kinds:

- (a) an intention to cause economic harm to the claimant as an end in itself;
- (b) an intention to cause economic harm to the claimant because it is a necessary means of achieving an end that serves some ulterior motive;

He noted that these two represented the "aiming at" or "targeting" the plaintiff.

[142] Tsai did not intend to cause economic harm to Li as an end itself, nor did he have an ulterior purpose that resulted in harm to Li. He simply, albeit without a good legal rationale, did not want to complete the transaction because he thought he had been "stiffed" by Zhang and Li. That is not a targeting of the plaintiff. As Cromwell J. emphasized in para. 95:

It is not sufficient that the harm to the plaintiff be an incidental consequence of the defendant's conduct, even where the defendant realizes that it is extremely likely that harm to the plaintiff may result. Such incidental economic harm is an accepted part of market competition.

[14] The conclusion that Mr. Tsai did not act with intent to harm Mr. Li for the purposes of the unlawful means tort is completely separate from reasonable grounds to believe he had been defrauded. While Mr. Tsai brought the action because he unreasonably believed he had been cheated, that does not mean that he targeted Mr. Li for an ulterior motive for the purposes of the unlawful means tort.

[15] Mr. Tsai relies on the invidious nature of "shadow flipping" (the assignment of contracts of purchase and sale) and in his costs arguments refers to several articles on the topic. I will note that in Mr. Tsai's trial opening, I was told that the case was about shadow-flipping and inadmissible newspaper articles on the topic were included in his book of documents. He points out that contracts of purchase of sale are now required to contain a clause saying they are not to be assigned without the consent of the vendor. He argues:

The question is whether it was "reprehensible" for Mr. Tsai to pursue his claim. This, it is submitted, must be evaluated in light of the fact that, during the time period relevant to these proceedings, the Legislature outlawed the very conduct that gave rise to Mr. Tsai's belief that he

had been "stiffed". Pursuing a claim when the Legislature itself agrees that the conduct complained of should not be lawful should not expose a person to a finding that their claim was "obviously unfounded". Mr. Tsai's feelings of being "stiffed" have been vindicated: not through this action, but through the Hansard and through the public domain of the issue of shadow flipping at hand.

- [16] That misses the point. The trial instigated by Mr. Tsai was not a public inquiry on the practice of shadow flipping. It was a forum in which Tsai was expected to prove an actionable wrong. Because of the public interest in shadow flipping, the allegation made against the defendants generated adverse press coverage of them which, if anything, supports a claim in special costs.
- [17] All that being said, I do not know that more is required above what I concluded in the trial judgment:
- [18] Without using the word "fraud", Tsai has alleged what can only be construed as a fraudulent conspiracy worthy of Keyser Söze in *The Usual Suspects*. There is no basis in fact or in law for his conspiracy claim. Nor has he made out any other cause of action against the defendants.
- [19] Special costs against Mr. Tsai are therefore warranted. I do not find it necessary to address the other points raised by the defendants in support of special costs, which I largely agree with.
- [20] Finally, Mr. Tsai asks for apportionment of costs or that each party bear their own costs because I dismissed Mr. Li's counterclaim. The counterclaim took virtually no additional trial time. Apportionment of costs which would have been dealt with at a Registrar's hearing would be de minimis. Each party bearing their own costs for - at most - a collective few hours of trial and discovery time would be absurd. Mr. Li suggests that this be dealt with by way of ordering that he recover 90% of his special costs. That is reasonable and I so order.
- [21] In conclusion, Mr. Li is to recover 90% of his special costs.

"E.M. MYERS 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/20/00/2020BCSC0060.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/tsai-v-li-2020-bcsc-60>

Prepared on 26 October 2026 · Esheria