

CANADA / JUDGMENT

Wang v. Jiang

2020 BCSC 1585

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Supreme Court of British Columbia

DECIDED

27 October 2020

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2020 BCSC 1585 Wang v. Jiang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Jiang,

2020 BCSC 1585

Date: 20201027

Docket: S165630

Registry: Vancouver

Between:

Jian Guo Wang

Plaintiffs

And

Jun Cheng Jiang a.k.a. John Jiang and Xiao Ling Jiang

Defendants

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Plaintiff:

D.L. Cayley

Counsel for the Defendant Xiao Ling Jiang:

E.G. Wong

The Defendant Jun Cheng Jiang a.k.a. John Jiang:

No one appearing

Place and Date of Hearing:

Vancouver, B.C.

September 9, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 27, 2020

Introduction

- [1] The parties listed in the style of cause, and others, appeared in proceedings before Mr. Justice McEwan for some 31 days in 2018. The hearing involved two civil claims and a family claim. Justice McEwan released one set of reasons for judgment in the three cases, indexed at 2020 BCSC 145.
- [2] In the proceedings before him, McEwan J. found that the defendant, Jun Cheng Jiang a.k.a. John Jiang ("John") had committed contempt of court and perjury prior to the trial. In his reasons for judgment at para. 428, McEwan J. accepted the submission of John's wife Sharon, "that John is clearly lying regarding every significant issue in this case, in a concerted effort to defraud Sharon of her claims to property division, and child support and spousal support."
- [3] Mr. Justice McEwan was also critical of the evidence of the defendant, Xiao Ling Jiang ("Ms. Jiang"). He rejected much of her evidence and at para. 759 he found:
- 759 It is clear from a reading of these reasons that the trial was significantly lengthened and made much more complicated because of the approach taken by John and his mother. The whole approach of the Respondents made the entire trial difficult, costly and time consuming, all of which could have been avoided.
- [4] One of the civil claims concerned ownership and occupation of a property located at 7371 Sunnymede Crescent, Richmond B.C. ("Sunnymede"). Mr. Justice McEwan found that the plaintiff, Jian Guo Wang ("Ms. Wang"), never agreed that the defendants, John and his mother Ms. Jiang, could occupy a home at Sunnymede and that the defendants were never entitled to exclude Mr. Wang from that home. Mr. Justice McEwan therefore found that the defendants were obliged to account to Mr. Wang for their use and occupation of Sunnymede. He ordered that Sunnymede be sold and that Mr. Wang have sole conduct of the sale. The proceeds of the sale were ordered to be divided between Mr. Wang and John in proportion to their contribution: 87.16% for Mr. Wang and 12.84% for John. John's share was to be held in trust until the payment of the other obligations under the order of McEwan J.

- [5] Mr. Justice McEwan accepted that Sunnymede had a rental value of \$4,000 per month. Mr. Justice McEwan ordered the defendants to pay occupation rent up to February, 2020 and assessed the occupation rental value of Sunnymede over the period that it had been occupied by the defendants at \$196,000. He gave Mr. Wang judgment against the defendants in the amount of \$170,833.40, representing Mr. Wang's 87.16% entitlement to those rents that ought to have been collected.

Background

- [6] In April, 2020, John sold the washer and dryer from Sunnymede for \$800.
- [7] On June 30, 2020, counsel for John and Ms. Jiang advised counsel for Mr. Wang that he had "been advised that John and Ms. Jiang were no longer living in Sunnymede by the end of February, 2020".
- [8] On June 21, 2020, Ms. Jiang's home insurance policy on Sunnymede expired. Ms. Jiang said that she did not want to renew it, so instead she asked her husband, Tian Qi Jiang ("Mr. Jiang") to regularly check in on the house. During the month of July, Mr. Jiang visited Sunnymede on a daily basis to ensure there was no theft. He often left John's dog, Coco, at the property to deter intruders.
- [9] During the evening of July 13, 2020, Xuehan Zhou, a staff member of Mr. Wang's relator Danny Deng, attended Sunnymede. In her affidavit, Ms. Zhou affirmed that she had observed a white van (the "W&W Van") parked in the driveway with a decal reading "W&W Foods Ltd." Ms. Zhou recorded a video in which a dog could be heard barking from inside Sunnymede. She also affirmed that she noticed that a window had been left open, and that a recycling bin left outside contained an empty four-litre jug of milk.
- [10] On July 15, 2020, counsel for Mr. Wang wrote to counsel for the defendants asserting that my clarification order required them to advise whether they "occupied" Sunnymede, not whether they "resided" there, and asked whether the defendants had "occupied" Sunnymede following February, 2020.
- [11] At 10:00 a.m. on July 15, 2020, counsel for Mr. Wang sent an email to John, Ms. Jiang, and their counsel regarding their advice that Sunnymede had been vacated and wrote, among other things:

It has now been more than a month since the Court ordered your clients to advise whether they still occupy Sunnymede, and almost two weeks since my email below regarding the deficiency in their initial response set out in your June 30 email below (i.e. that they "were no longer living in Sunnymede by the end of February, 2020") to which your clients are apparently of the view no response is necessary.

...

Because I have my doubts about the truthfulness of their response, I write as a courtesy to advise that my client has scheduled a locksmith to attend Sunnymede tomorrow (July 16) at 10 am. Unless your clients wish to change their previous advice that they have vacated Sunnymede, my client intends to force entry at that time and he will change the locks so as to secure the property. [underlining in original]

[12] Mr. Wang retained Michael Parish, a private investigator, to conduct surveillance at Sunnymede. Mr. Parish deposed that he took a video recording on July 15, 2020, which shows the following:

- (a) At 10:00 a.m. the W&W Van as parked in the driveway of Sunnymede;
- (b) At 11:11 a.m. a man alleged to be John came in and out of the residence at Sunnymede, loading household items into the W&W Van;
- (c) John accepted some mail directly from a mail carrier; and
- (d) Just before 6:00 p.m., a moving truck arrived along with two movers who removed various items from Sunnymede, including a microwave; a large item, wrapped in plastic and cardboard, approximately the size of a refrigerator; a matching dining table, bench, and coffee table and a number of chairs; a large mattress; a number of bins, bags, boxes and baskets; and framed pictures, sculptures, clay pots, lamps, and children's toys.

[13] In her affidavit, Ms. Jiang swore, in part, that she moved out of Sunnymede on February 29, 2020, and has not spent a night there since that date. She swore that when she moved out of Sunnymede, she left only her cleaning supplies and the items she was planning to sell like sofas, a TV, dining table and bed frame. As she did manage to sell these items, I infer that her buyers had to attend Sunnymede to collect their purchases, and be given access by her or someone acting on her behalf.

[14] Ms. Jiang denied leaving any day-to-day items in the house such as food, clothes, and toiletries. She conceded that during the month of March, she visited Sunnymede several times to clean the walls, vacuum the carpet and clean the floors.

[15] Ms. Jiang attached a screenshot taken on August 7, 2020 of John's Facebook listing for the washer and dryer as an exhibit to her affidavit and confirmed that John advised her that he sold the set for \$800. Despite being served at his address for service with her affidavit, John did not dispute this assertion.

[16] Mr. Jiang swore that beginning July 1, 2020 he visited Sunnymede daily to check on the house, collect mail and do any lawn maintenance that was necessary. He swore that he would also feed and walk John's dog, Coco, who was often left at the house so that her barking would deter intruders. He further swore that Ms. Jiang asked him to spend the night of July 15, 2020 at Sunnymede to ensure that nothing happened before Mr. Wang's arrival the next day, which he did.

- [17] Ms. Jiang swore that by July 15, 2020, her only items remaining at Sunnymede were two tables, an ironing board, the microwave, the refrigerator, a mattress, a tire rim, a table lamp, a metal stand, some toys, a mop and plastic step stool, two figurines, three chairs, a wok pan, a crock pot, and a few bags and boxes containing smaller items.
- [18] In response to Ms. Jiang's affidavit, Mr. Wang swore that a photograph of the kitchen at Sunnymede taken on July 16, 2020 accurately represented what it looked like when he entered Sunnymede that morning. The photograph showed that the kitchen contained numerous jars, cans and bottles of food items, various kitchen utensils, an empty four-litre jug of milk, and a compost bin with fresh food inside, among other household kitchen items.
- [19] Mr. Wang alleges that sometime between 8:00 a.m. and 9:50 a.m., on July 16, Ms. Jiang returned to Sunnymede, took some photographs, and exited the home. On that morning, Mr. Wang waited outside to enter Sunnymede with a locksmith, but Ms. Jiang did not offer to hand over the keys to the home. Instead, she locked the front door, took the keys with her, and left. As a result, Mr. Wang and his locksmith were required to force entry into Sunnymede and change the locks.
- [20] Mr. Wang swore that upon forcing entry to Sunnymede he discovered that the washer, dryer, refrigerator, and microwave were missing. He also discovered a large hole in the ceiling of the dining room and two large holes in the roof, along with debris on the dining room floor. Additionally, he discovered damage to the boiler.

Existing Orders

- [21] Mr. Justice McEwan's order after trial provides, in part, as follows:
5. The plaintiff or any duly authorized agent on his behalf are entitled to force entry to Sunnymede and the interior thereof and take steps to secure Sunnymede in the event it is abandoned or vacated;
 9. The plaintiff is awarded occupational rent from August, 2014 up to and including February, 2020 in the sum of \$230,102.40 against John and Ms. Jiang; and,
 10. The plaintiff is entitled to seek leave to appear in Court for any additional relief necessary.
- [22] On June 11, 2020, I clarified certain aspects of the reasons for judgment of McEwan J. as follows:
2. For the purpose of clarifying paragraph 672 of the Reasons, the plaintiff is awarded occupational rent from August, 2014 up to and including February, 2020 in the sum of \$230,102.40 against the defendants, Jun Cheng Jiang aka John Jiang ("John") and Xiao Ling Jiang ("Ms. Jiang").
 3. The plaintiff has liberty to apply to extend the award of occupational rent for the period after February, 2020 until John and Ms. Jiang vacate the subject property; and

4. John and Ms. Jiang will advise the plaintiff, through counsel, whether they have occupied the premises since February, 2020.

Orders Sought

- [23] Counsel for Mr. Wang and Ms. Jiang both advised me that they served their material on this application on John at his address for service via email. John did not appear before me on the application.
- [24] Mr. Wang seeks the following orders:
- (a) An order extending the award of occupational rent for the period after February, 2020 until July 15, 2020 and granting further judgment in the sum of \$15,688.80 (calculated at \$4,000 per month x 87.16% ownership x 4.5 months);
 - (b) An order that John and Ms. Jiang pay for the cost of damage to Sunnymede within 72 hours of being provided with receipts for the cost of same and, failing payment, that such costs be paid from their share of the proceeds of sale of Sunnymede;
 - (c) An order that John and Ms. Jiang forthwith return the microwave and refrigerator taken from Sunnymede in the same condition they were in prior to their removal;
 - (d) An order that John and Ms. Jiang disclose all documents and information, including all advertisements, correspondence, and receipts or bills of sale, relating to the removal and sale of the washer and dryer taken from Sunnymede;
 - (e) An order that John and Ms. Jiang forthwith pay to Mr. Wang his 87.16% of the sale of the washer and dryer and, failing payment, that such costs be paid from their share of the proceeds of sale of Sunnymede; and
 - (f) Special costs, or alternatively costs on a basis and scale to be determined by the Court when assessing costs of this proceeding.
- [25] During his submissions, counsel for Mr. Wang withdrew the parts of his application concerning the microwave, refrigerator, and damaged boiler.

Discussion

Occupation Rent

- [26] Mr. Wang submits that the defendants continued to occupy Sunnymede until July 16, 2020. He seeks an extension of the award of occupation rent from March 1, 2020 to July 15, 2020.
- [27] Ms. Jiang submits that she did not occupy Sunnymede after February, 2020. She concedes that she and her family left some items in the home, but removed them swiftly as soon as Mr. Wang demanded possession. She also concedes that her husband visited the house periodically in July. She submits, however, that these factors alone do not amount to occupation.

[28] Mr. Wang contends that it is unnecessary for an occupier to reside in a property in order to have "occupied" it, nor is a party claiming occupation rent required to prove that they were deprived of some use of the property. Rather, the question is merely whether the occupier has "occupied" the property.

[29] Black's Law Dictionary, 6th ed., defines "occupy" as follows:

To take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.

[30] Mr. Wang relies on *Crate Marine Sales Limited (Re)*, 2016 ONCA 433 [Crate Marine Sales], to determine occupation. In that case, Mr. Justice Blair, writing for the Court, explained at para. 22:

there is a long-standing principle that where a person occupies the property of another, that occupation gives rise to a rebuttable presumption, based on an implied contract, that the occupier will pay rent to the owner for the use of the property. Receivers, liquidators and trustees in bankruptcy and others with similar obligations who occupy the premises of the debtors are bound by that principle: [cites omitted].

[31] At para. 25, Blair J.A. elaborated:

The threshold test for occupation rent is "occupation". It is not deprivation of use or possession. However, deprivation of the right of use, or possession, to the exclusion of the landlord will no doubt -- in most cases at least -- be tantamount to occupation for these purposes.

[32] Finally, at para. 30, Blair J.A. set out some general factors to be considered when determining "occupancy":

The respondents are right when they submit that determining "occupation" is a factual exercise and that the motion judge correctly referred to, and to some extent dealt with, the general factors found in the jurisprudence to be relevant to that exercise: (i) changing the locks; (ii) keeping assets of the estate on the premises; (iii) bringing prospective buyers to the premises; (iv) employing persons to perform maintenance work on the premises; and (v) employing persons to take inventory of the premises: *Sasso v. D. & A. MacLeod Co.* (1991), 3 O.R. (3d) 472, [1991] O.J. No. 676 (Ont. Gen. Div.), at paras. 32-37; *Sawridge Manor Ltd. v. Western Canada Beverage Corp.* (1995), 61 B.C.A.C. 32, 1995 CarswellBC 169 (B.C. C.A.), at paras. 16-20. With the possible exception of (iii), all of these factors, and more, were present here. But the motion judge downplayed them, and his treatment of their impact appears to have been subsumed in his overall view that 212 Ontario had not suffered any economic or strategic disadvantage as a result of what had happened.

[33] Citing *McFarlen v. McFarlen*, 2017 BCSC 1737 at paras. 13-14, Ms. Jiang contends that in British Columbia, the question of occupation rent in the family context requires a consideration of what is reasonable in the totality of the circumstances of the case. The overriding consideration is the need to achieve justice and equity in all of the

circumstances.

- [34] I accept that in the family law context, what is reasonable in the totality of the circumstances will guide the court. The matter before me, however, does not involve matrimonial property.
- [35] I agree with counsel for Ms. Jiang that the question is whether the circumstances constitute "occupation" in light of Mr. Wang's ability to obtain actual possession of the home when he chose to do so.
- [36] Crate Marine Sales arose in very different circumstances involving a commercial tenant. As such, I have not applied the Crate Marine Sales test for occupation strictly to the issue of residential occupation in this case. However, I do find some of the factors listed by Blair J.A. instructive.
- [37] Using the Crate Marine Sales factors as guidance, I find that the defendants did occupy Sunnymede from February, 2020 to July 15, 2020.
- [38] Although the locks were not changed, John and Ms. Jiang held the keys to Sunnymede, and did not surrender them even after July 16, 2020. The fact that neither the order after trial nor my clarification order required Ms. Jiang to deliver the keys is, in my view, of no consequence to the determination of occupation. The defendants used the keys to Sunnymede as late as July 15, 2020, for the purposes of cleaning, maintenance, and selling the contents of the home.
- [39] Ms. Jiang, by her own admission, kept some of her possessions at the home after February, 2020. Mr. Parish also observed and recorded various contents of the home being removed on July 15, 2020.
- [40] Ms. Jiang admits that in March and April, 2020, she returned periodically to sell a few last remaining items and to clean the house. On April 7, 2020, when she finished cleaning, she took photographs, showing the home in good condition, including the dining room.
- [41] It is apparent that prospective purchasers of Ms. Jiang's belongings visited the premises at the instance of Ms. Jiang.
- [42] It is also apparent and that Ms. Jiang's husband performed maintenance work on the premises and from time to time left John's dog at the home long after February, 2020.
- [43] Ms. Jiang asserted that the gas and hydro bills for Sunnymede show a marked decrease in energy use after February, 2020 to support her assertion that they moved out of the home at the end of February. While this fact may demonstrate that they were not in the home for extensive periods of time after February, 2020, it does not support a finding that they were not occupying the home.

- [44] Against these factors is the self-help remedy that was potentially available to Mr. Wang. As set out above, McEwan J.'s order after trial provided that Mr. Wang was entitled to force entry to Sunnymede and the interior thereof and take steps to secure Sunnymede in the event it was abandoned or vacated. Mr. Wang ultimately exercised this ability when he forced entry and changed the locks on July 16, 2020.
- [45] Ms. Jiang's assertion that Mr. Wang was able to achieve complete possession of the property on July 16, 2020, when he had the locks changed, ignores the requirement in my clarification order that the defendants advise Mr. Wang, through counsel, whether they have occupied the premises since February, 2020.
- [46] In my view, the defendants put Mr. Wang in a position where he could not use Sunnymede because they did not definitively advise him that they were gone from the home. As late as July 15, 2020, the defendants had still not advised Mr. Wang or his counsel whether they had occupied the premises since February, 2020. This was a precondition to the term of the order of McEwan J. that Mr. Wang was entitled to force entry to Sunnymede and the interior thereof and take steps to secure Sunnymede in the event it was abandoned or vacated.
- [47] I find that this was yet another concerted effort by both of the defendants to frustrate Mr. Wang in the use of the fruits of his litigation determined by McEwan J. As it is clear that the defendants still occupied Sunnymede until July 15, 2020. I award Mr. Wang the sum of \$15,688.80 for occupation rent for the period from March 1, 2020 to July 15, 2020 against the defendants jointly and severally.

The Hole in the Dining Room Ceiling

- [48] Mr. Wang asserts that the large hole in the ceiling of the dining room, and two large holes in the roof of Sunnymede, were caused by John and Ms. Jiang, or those authorized by them to enter Sunnymede. He also asserts that the defendants left the debris from the holes all over the dining room floor.
- [49] Mr. Wang has sole conduct of sale of Sunnymede. He asserts that the property could not be marketed in its present state, and repairs were needed to repair the holes in the roof and ceiling of the dining room.
- [50] Ms. Jiang and her husband deny causing the damage to the ceiling and roof. Ms. Jiang's husband swore that early in the morning on July 16, 2020 he was awakened by the sound of raccoons which "must have entered by creating a hole in the ceiling", and that one of the raccoons attacked John's dog, Coco. Ms. Jiang also swore that on the morning of July 16, 2020 her husband called and told her that racoons had dug a hole in the ceiling.
- [51] Ms. Jiang swore that the first time she saw the hole in the dining room ceiling was the morning of July 16, 2020. She believed it was created by raccoons entering the house.

- [52] I reject Ms. Jiang's assertion that the hole in the dining room ceiling was caused by racoons. It is incredible to suggest that racoons suddenly made a hole in the ceiling of the dining room in the few days leading up to July 16, 2020, or that the hole seen in the photographs of the dining room in evidence before me was made by animals.
- [53] Mr. Wang swore that he paid \$1200 to repair the holes in the roof and ceiling of the dining room and \$600 for cleaners to clean primarily the dining room at Sunnymede. I award him those sums against the defendants jointly and severally. I decline to order that the award be paid within 72 hours of being provided with receipts for the cost of same, or that such costs be paid from the defendants' share of the proceeds of sale of Sunnymede.

The Oven Door

- [54] According to Mr. Wang's notice of application, the door to the oven could not be opened, "which was almost certainly caused by the hasty removal of the refrigerator on July 15, 2020".
- [55] I accept Ms. Jiang's submission that there is no evidence that this is "almost certainly" the case. The only opinion on this point comes from the report of a house inspector, Hongwei Liu, to which objection was taken. I will uphold that objection on the basis that it was not provided with the initial affidavits filed in support of Mr. Wang's application and because Mr. Liu's qualifications do not, in my view, permit the admission of this opinion. In any event, Mr. Liu was qualified and uncertain as to the cause of the damage.
- [56] Moreover, there is no evidence before me as to the cost of repairs to the oven door. I therefore dismiss Mr. Wang's claim for repairs to the oven door.

The Kitchen Walls

- [57] Mr. Wang asserted that the appliances (washer, dryer, refrigerator, and microwave) had been removed in a way that caused damage to the walls and surrounding area. However, there is simply no evidence to support this assertion. I dismiss Mr. Wang's claim for repairs to the kitchen walls.

The Washer and Dryer

- [58] I find that the washer and dryer were indeed taken and sold by John for \$800. Ms. Jiang swore in her affidavit that John sold the set for \$800. That is the only evidence I have as to their value. As these were fixtures at Sunnymede, they belonged to the owners.
- [59] I decline to order that John and Ms. Jiang disclose all documents and information, including all advertisements, correspondence, and receipts or bills of sale, relating to the removal and sale of the washer and dryer taken from Sunnymede. That is unnecessary. As Mr. Wang is the owner of 87.16% of the home, I award him that percentage of the value of the washer and dryer, or the sum of \$697.28 for these items against the defendants jointly and severally.

Costs

[60] Mr. Wang seeks special costs for his application on the basis that the defendants' conduct was reprehensible. He submits that he is deserving of an award of special costs for the reasons discussed by Mr. Justice Lambert in *Garcia v. Crestbrook Forest Industries Ltd.* No. 2 (1994), 9 B.C.L.R. (3d) 242 (C.A.) at para. 17:

... it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.

[61] For her part, Ms. Jiang contends that in the event that she enjoyed success on this application, she wished to make submissions as to costs, but in the event that she was not, that the costs of this application should be dealt with in the context of overall costs in the three actions heard by McEwan J.

[62] Despite my findings with respect to the oven door and kitchen walls, I do not consider that Ms. Jiang enjoyed any real success before me. She was aware that Mr. Wang was seeking special costs before me, and should have been prepared to make submissions. I find Ms. Jiang's proposition that the costs of this application should be subsumed into the general costs of the actions heard by McEwan J. is yet another example of a concerted effort by Ms. Jiang to frustrate Mr. Wang and delay his efforts.

[63] I find that the conduct of Ms. Jiang on this application is reprehensible. I award Mr. Wang special costs for his application and for its preparation, pursuant to Rule 14-1(3) at 75% of his actual legal costs which can be taxed before the Registrar, if the parties cannot agree upon the actual legal costs that Mr. Wang has incurred with respect to the application.

Conclusion

[64] In summary, I award Mr. Wang the sum of \$18,186.08 against the defendants jointly and severally, consisting of:

- (a) \$15,688.80 for occupation rent from March 1, 2020 to July 15, 2020;
- (b) \$1,200.00 for repairs to the roof and ceiling of the dining room;
- (c) \$600.00 for cleaners; and
- (d) \$697.28 for Mr. Wang's percentage of the sale of the washer and dryer.

[65] I dismiss Mr. Wang's claim for compensation for:

- (a) Damage allegedly caused to the oven door; and
- (b) Damage allegedly caused to the kitchen walls.

[66] I order the defendants to pay Mr. Wang special costs at 75% of his actual legal costs, which can be taxed before the Registrar, if the parties cannot agree upon the actual legal costs that Mr. Wang has incurred with respect to the application.

"The Honourable Chief Justice Hinkson"

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