

CANADA / JUDGMENT

Wang v. Jiang

2020 BCSC 1759

COURT

Supreme Court of British Columbia

DECIDED

19 November 2020

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2020 BCSC 1759 Wang v. Jiang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Jiang,

2020 BCSC 1759

Date: 20201119

Docket: S165630

Registry: Vancouver

Between:

Jian Guo Wang

Plaintiff

And

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

Defendants

- and -

Docket: S166703

Registry: Vancouver

Between:

Jian Guo Wang

Plaintiff

And

Yi Meng Wang and Jun Cheng Jiang a.k.a. John Jiang

Defendants

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment on Costs

Counsel for the Plaintiff:

D.L. Cayley

Counsel for the Defendant Xiao Ling Jiang:

E.G. Wong

Plaintiff's Written Submissions:

August 12, 2020

Defendant's Written Submissions:

September 4, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 19, 2020

Introduction

[1] In 2018, Mr. Justice McEwan heard the following three actions together at trial:

- (a) Wang v. Jiang et al., [VA E152456] (the "Family Action") - commenced by Mr. Wang's daughter, Sharon, against her then-husband John, John's mother Ms. Jiang, other members of the Jiang family, and various corporations operated by the Jiang family;
- (b) Wang v. Jiang and Jiang, [VA S165630] (the "Sunnymede Action") - a civil proceeding brought by Mr. Wang against John and Ms. Jiang concerning 7371 Sunnymede Crescent, Richmond B.C.; and
- (c) Wang v. Wang and Jiang, [VA S166703] - a civil proceeding brought by Mr. Wang against Sharon and John concerning 2772 West 20th Avenue, Vancouver B.C. and loans made by Mr. Wang to John.

[2] The disposition of the three cases is found in a single set of reasons for judgment indexed at 2020 BCSC 145. I will refer to the second and third actions collectively as the Civil Actions.

- [3] Unhappily, the parties continue their disagreements, which have led to several appearances before me. The parties now make various submissions with respect to costs in the three actions.
- [4] These reasons will address the matter of costs in the Civil Actions. I will address the matter of costs in the Family Action in separate reasons for judgment.

Background

- [5] In the proceedings before him, McEwan J. found that Jun Cheng Jiang aka John Jiang ("John") 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 then-wife Yi Meng Wang ("Sharon"), and found "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."
- [6] Mr. Justice McEwan was also critical of the evidence of Xiao Ling Jiang ("Ms. Jiang"). He rejected much of her evidence. At paras. 699-700 and 759 he found:
- [699] In the circumstances of this case, John made concerted efforts, also involving his mother and sister, to mislead the court. He lied continuously. After contempt proceedings he was jailed. During the trial, he was specifically ordered several times to stop lying and to tell the truth. This made no difference to him. Unless an admission was specifically extracted from him by counsel he persisted in attempting to mislead the court. Sharon argues, and I agree, that this has left the state of the evidence in poor shape with much left to be inferred.
- [700] Sharon contends, in my view correctly, that John and his mother, and Grace, to a lesser extent, must bear the responsibility for this. There is no cogent defence to the claims that have been made. It is urged upon the court that the Cunha example should be followed and that the court ought to assess the missing cash at half again what has been established. It is impossible to base any reliable amounts on the reports of Shane Troyer or Doug Ryder, whose efforts were frustrated by the amount of non disclosure. I am left to do "rough justice" in accordance with the facts that have developed. The Jiangs were no help in coming to a fair determination. They obstructed it at every turn.
- [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.
- [7] In my own reasons for judgment in the Sunnymede Action, indexed at 2020 BCSC 1585, I found at para. 47:

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.

Mr. Wang's Position

[8] The plaintiff, Jian Guo Wang ("Mr. Wang"), contends that he was entirely successful before McEwan J. and is thus entitled to his costs. He asserts that he is entitled to special costs against both John and Ms. Jiang in the Civil Actions in which he was the plaintiff.

Ms. Jiang's Position

[9] Ms. Jiang filed joint submissions with respect to costs in these actions, with her daughter Jun Shan Jiang aka Grace Jiang ("Grace"). Grace is a defendant in the Family Action that was brought by Sharon.

[10] It is Ms. Jiang's position that:

3. at its heart, the litigation is about the breakdown of Sharon's marriage to John. Sharon commenced the Family Proceeding in 2015 and Mr. Wang only commenced the Civil Actions around a year later, after the parties to the Family Proceeding had become entrenched.
4. Ms. Jiang and Grace say they played a minor role by -- perhaps misguidedly -- supporting their son and brother in what was essentially a dispute between John and the Wang family over the breakdown of the marriage. No significant orders were made against them (particularly Grace) in the Family Proceeding.
5. They say it would be wholly disproportionate for the Court to hold them jointly and severally liable for around \$1.5 million in costs, particularly where Grace was a party only to the Family Proceeding and only became a party less than six months before trial.
6. Rather, Ms. Jiang and Grace say it would be proportionate for the Court to order several liability for costs; apportion all or the vast majority of costs to John; and, if the Court does award costs against Ms. Jiang and Grace, to award costs at Scale B against them for only those proceedings to which they were parties and only for the time they were parties.
7. In any event, Ms. Jiang and Grace also respectfully ask that any costs awarded by the Court be assessed by the Registrar, rather than ordered in lump sum as Sharon seeks.

[11] I will address the matter of costs in the Family Action, in which Grace is a defendant, in separate reasons for judgment.

John's Position

[12] John did not file any submissions with respect to costs.

Discussion

- [13] As these reasons only concern two of the three actions heard by McEwan J., I must allocate which parts of the trial were occupied by these two Civil Actions. It would be unfair to award Mr. Wang the costs for all three actions. While there was considerable overlap between the three actions, for the purposes of costs, I will attribute costs for 60% of the three proceedings to these two Civil Actions, and deal with the balance of the costs in the Family Action.
- [14] I thus turn to the appropriate types of costs to be allowed.
- [15] Special costs may be awarded under Rule 14-1(1)(b) of the Supreme Court Civil Rules B.C. Reg. 168/2009 [Rules]. They are discretionary, punitive in nature, and are usually awarded to express the court's disapproval of a party's misconduct.
- [16] In *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 119 D.L.R. (4th) 740 (B.C.C.A.) at para. 17, Mr. Justice Lambert summarized the leading cases on the issue of special costs and found that "the single standard for the awarding of special costs is that the conduct in question properly be categorized as "reprehensible".
- [17] Mr. Justice Walker discussed the principles underlying an award of special costs in *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 8:
- [8] Special costs are awarded where a litigant engaged in reprehensible conduct. The purpose of an award of special costs is to chastise a litigant. Special costs are punitive in nature and encompass an element of deterrence. A wide meaning is given to the word "reprehensible". The term represents a general and all encompassing expression of the applicable standard for an award of special costs. "Reprehensible" conduct includes conduct that is scandalous, outrageous, or constitutes misbehaviour, as well as milder forms of misconduct that in a court's view deserves reproof or rebuke. In determining whether the conduct of a party is reprehensible, courts may consider whether the conduct complained of is a type from which it should seek to dissociate itself: [cites omitted].
- [18] In *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 [Westsea], Madam Justice Gropper identified the following principles that underlie an award of special costs awards at para. 73:
- a) The court must exercise restraint in awarding special costs;
 - b) The party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;
 - c) Simply because the legal concept of "reprehensibility" captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;

- d) Reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
 - e) Special costs can be ordered against parties and non-parties alike; and
 - f) The successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a "bonus" or further compensation for that success.
- [19] While special costs must not be awarded simply because a court accepts the evidence of one party over another, such costs can be awarded where a party has deliberately concocted evidence in an attempt to mislead the court. Such conduct was described as "a grave matter" by Madam Justice Southin in *Brown v. Lowe*, 2002 BCCA 7.
- [20] In *S.S.G. Trucking Ltd. v. Standard Building Maintenance Ltd.*, 2000 BCSC 812, Mr. Justice Burnyeat awarded special costs on the basis that the conduct of the personal defendant in giving untruthful testimony and concocting evidence in an attempt to mislead the court was reprehensible.
- [21] In *Bruce v. Vaughan*, 2014 BCSC 2249, Mr. Justice Saunders found the respondent to have been dishonest, untrustworthy and to have contrived evidence to mislead the court. The respondent's conduct was found to have been reprehensible and an award of special costs was considered appropriate to denounce the respondent's conduct and to warn litigants that such behavior has consequences.
- [22] In *Miolla v. Miolla*, 2018 BCSC 2295, Mr. Justice G.C. Weatherill recognized that where a party is self-represented and may not fully appreciate the implications of their conduct, restraint in awarding special costs may be appropriate.
- [23] Here, John and Ms. Jiang were self-represented for most of the proceedings, but that alone does not excuse them from the application of either the Civil or Family Law Rules of Court: see *Kadioglu v. Real Estate Council of British Columbia*, 2018 BCSC 149 at para. 11.
- [24] Nor is their self-represented status any justification for their misconduct leading up to and during the proceedings before McEwan J.
- [25] While special costs are usually awarded for the entire proceeding, it is open to a judge to make a partial award if they are of the view that it would be disproportionate to award special costs for the entire proceeding: *Muncaster v. Nunnenmacher* (1996), 76 B.C.A.C. 211.
- [26] In *Northmont Resort Properties Ltd. v. Goldberg*, 2018 BCSC 151, Mr. Justice Branch refused to award joint and several liability for costs across multiple actions as it may result in an "unfairly disproportionate burden" on certain defendants with higher asset bases. I find that such a consideration is unwarranted in this case.

- [27] Applying these authorities, in particular the criteria discussed by Gropper J. in *Westsea*, I am satisfied that given the dishonesty of John and Ms. Jiang in the two Civil Actions, Mr. Wang is entitled to special costs from John of 100% in these two Civil Actions.
- [28] I find that the special costs of 60% of the actual costs incurred by Mr. Wang should be determined by a reference to the Registrar to assess them.
- [29] I do not agree with the limited role that Ms. Jiang describes for herself. She was integrally involved in the litigation as described by McEwan J. Given her significant, but lesser role in these proceedings, I will award 50% of the 60% costs that I attribute to these two Civil Actions.
- [30] I make no award of costs against Sharon in either of the Civil Actions.

The Honourable Chief Justice Hinkson

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