

CANADA / JUDGMENT

Wang v. Jiang

2020 BCSC 1761

COURT

Supreme Court of British Columbia

DECIDED

19 November 2020

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2020 BCSC 1761 Wang v. Jiang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Jiang,

2020 BCSC 1761

Date: 20201119

Docket: E152456

Registry: Vancouver

Between:

Yi Meng Wang a.k.a. Sharon Wang

Claimant

And:

Jun Cheng Jiang a.k.a. John Jiang, Xiao Ling Jiang, Wingsum International Trading Inc.,
Wingsum Food Inc., W&W Food Ltd., Winsum Produce Corp., Tian Qi Jiang and Jun Shan Jiang
a.k.a. Grace Jiang

Respondents

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment on Costs

Counsel for the Claimant:

L.N. MacLean Q.C.

Counsel for the Respondents Xiao Ling Jiang and Jun Shan Jiang a.k.a. Grace Jiang:

E.G. Wong

Counsel for the Respondent Tian Qi Jiang:

G. Edwards

Claimant's Written Submissions:

August 12, 2020

Respondents Written Submissions:

September 4, 2020

Claimant's Reply to Respondents Written Submissions:

September 11, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 19, 2020

Introduction

- [1] This action is one of the three actions heard together by Mr. Justice McEwan in 2018, which were resolved in reasons for judgment indexed at 2020 BCSC 145.
- [2] The plaintiff, Yi Meng Wang aka Sharon Wang ("Sharon") seeks her costs of this action.

Background

- [3] The background to this application is set out in my reasons for judgment regarding costs in the companion Civil Actions at paras. 5 - 7. Those reasons for judgment are indexed at 2020 BCSC 1759.
- [4] Insofar as the defendant Jun Shan Jiang aka Grace Jiang ("Grace") is concerned, McEwan J. found:
 - [300] Grace testified that she found some of the customers for WSP by herself, including the Bourbon Street Grill. The Bourbon Street Grill owner, who testified, said the opposite: he ordered from John for a couple of years until John disappeared on him. He had to contact Ms. Jiang, and started to order from WSP. Thus, Grace's testimony, that she found the customers herself, is not reliable.
 - [303] Considering all of this evidence, I accept Sharon's position that John, Grace and Ms. Jiang started WSP together, using Grace and Ms. Jiang's name, to use WSP to conduct cash sales, and divert profits from WIT to defeat Sharon's claim.

[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.

Sharon's Position

- [5] Sharon contends that she should be awarded special costs against the personal respondents for all of her fees and disbursements since November 26, 2016. She contends that the respondents' conduct throughout the litigation is deserving of rebuke and warrants an award of special costs.
- [6] McEwan J. found Jun Cheng Jiang aka John Jiang ("John") in contempt of court and awarded special costs against him for breach of a court order, fraudulent disclosure and perjury. However, he found, at para. 763, that the "lies at the contempt hearing were not as serious as those the Respondents persisted in telling at trial, despite repeated warnings".
- [7] Sharon initially sought a declaration of fraudulent conveyance against Tian Qi Jiang ("Mr. Jiang"), given the circumstances surrounding the purchase and use of certain warehouses. Prior to trial, Mr. Jiang produced documents respecting the source of funds for the purchase. Sharon did not proceed with her claim of fraudulent conveyance against this respondent. However, she was successful in her claim against Mr. Jiang in regards to the overpayment of salary and rent in the amount of \$81,829.24.
- [8] Sharon seeks ordinary costs against the respondent Mr. Jiang given what she describes as her substantial success in regards to the claims against him.

John's Position

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

The Positions of Grace and Ms. Jiang

- [10] Grace and Xia Ling Jiang ("Ms. Jiang") contend 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.

The Position of Mr. Jiang

- [11] Mr. Jiang opposes the claimant's application for costs against him. He says that he had a minor and limited role in this action, being added as a defendant less than eight months before trial and only appearing at the trial for approximately three days. He says that it would be wholly disproportionate for the Court to hold him jointly and severally liable for costs.
- [12] Mr. Jiang contends that in the event that this Court awards costs against him, such an award ought to be made on a several basis, at Scale B, against him, apportioned only for the time he was a party to the action and for the approximately three-day period he was involved at the trial.

Discussion

- [13] Special costs may be awarded under Rule 16-1(1)(b) of the Supreme Court Family Rules B.C. Reg. 169/2009 [Family Rules] and also under s. 213 of the Family Law Act, S.B.C. 2011, c. 25. They are discretionary, punitive in nature, and are usually awarded to express the court's disapproval of a party's misconduct.
- [14] I will not repeat the references to the authorities that are set out at paras. 16 - 26 of my reasons for judgment indexed at 2020 BCSC 1759. They apply equally to Sharon's claim for costs and the responses of the respondents in this action.
- [15] There are some additional authorities that apply to family law matters in particular.
- [16] In *Rozen v. Rozen*, 2002 BCCA 537, Madam Justice Huddart concluded at para. 45:

[45] The parties' submissions in their factums with regard to costs of the application in chambers and of this appeal have become irrelevant with the admission of the fresh evidence. A respondent who deliberately misleads a court is guilty of conduct deserving of the rebuke of special costs. Had Mr. Rozen made proper disclosure on 16 May 2001 to the trial court, it is highly unlikely this appeal would have been necessary. Thus, Ms. Rozen is entitled to her costs of the application in the Supreme Court and of this appeal, both assessed as special costs.

[17] In *Kim v. Hong*, 2013 BCSC 2248 [Kim], Madam Justice Griffin, as she then was, quoted extensively from the judgment of Mr. Justice Williams in *Schwabe v. Dr. Lisinski*, 2005 BCSC 1284, where he summarized a number of cases in an effort to discern the kinds of conduct that had been characterized as reprehensible and thus warranting an award of special costs. Madam Justice Griffin also categorized the conduct that had been found to justify an award of special costs in a number of family cases. From her reasons, it is apparent that the kinds of conduct that warrant an award of special costs include the following:

- acting with an improper motive, such as to intimidate, exhaust or financially drain the other party in the hopes that they will give up or soften their position in the litigation;
- dissipating and/or not disclosing assets;
- abusing the court's process by, among other things, failing to disclose documents, delaying in disclosing documents, failing to respond to reasonable requests, causing unnecessary interlocutory applications, and breaching the Rules in a manner that prejudices the other party;
- misleading the court, through outright fabrications or through evasive and/or equivocal responses; and
- disobeying a court order.

[18] Mr. Justice McEwan found that the respondents John, Ms. Jiang and Grace were complicit in the conspiracy and acted in a concerted effort to defraud the claimant, the government, and this Court. Forensic auditors, Shane Troyer and Doug Ryder of Grant Thornton, were called to give evidence at the trial. Although the auditors' evidence proved that those respondents had created new companies in an effort to divert income, they were only able to locate approximately \$2.7 million of missing, unreported cash, given that the respondents caused crucial evidence to be destroyed.

[19] It was Mr. Troyer's evidence that while he understood that three of the respondent companies operated on an "integrated basis" and there was a strong intercompany relationship of WIT, W&W and WSP, they could not be valued separately as they shared profit and margins.

[20] He confirmed John was selling meat to WSP and W&W at less than it could sell to its customers and the profit then showed up in new companies instead of WIT; he could find no good business purpose for this.

- [21] Mr. Troyer expressed the view that Grace and Ms. Jiang were taking far higher compensation than John, who was CEO, and concluded that it "did not pass the smell test" and would make sense as a way to divert income.
- [22] Mr. Troyer also concluded that the company financial statements fraudulently excluded substantial undeclared cash. He found no documentation and was only able to locate \$2,709,563, but had no way to confirm if this was all of the missing cash.
- (a) John
- [23] I am satisfied that given the dishonesty of John in all three proceedings, Sharon is entitled to special costs against him in this action.
- (b) Ms. Jiang
- [24] I find that the principles discussed by Branch J. in *Northmont Resort Properties Ltd. v. Goldberg*, 2018 BCSC 151 have no application in this case.
- [25] I reject the submission of Ms. Jiang and Grace that, in the circumstances of this case, the application for special costs against them may be premature because the order after trial has not yet been entered and it is unclear whether Sharon was successful in her claims against them.
- [26] The lack of the entry of the trial order is no reason to hold off on a consideration of costs, and the proposition that Sharon was unsuccessful in her claims against them is facile.
- [27] In her reply submissions, Sharon contended that Ms. Jiang and Grace are attempting to minimize their role in this litigation to avoid liability for a special costs award. She further contends that it is unlikely that she will recover costs from John as he has returned to China, a non-reciprocating jurisdiction. I find that the prospect of Sharon's ability to recover an award of costs from John is not an appropriate basis upon which to determine entitlement to costs.
- [28] Although Ms. Jiang and Grace filed a joint submission, I find that it is necessary to deal with the claims against them for costs separately.
- [29] Ms. Summer Wang testified that when she was erasing the driver's sheets during the Anton Piller order, Ms. Jiang tried to block Mr. Plotters view. The bundle of drivers' sheets contained evidence that John was collecting unreported cash. The only reasonable explanation as to why Ms. Jiang's assisted Summer Wang is that she knew about the unreported cash and was helping Summer Wang destroy evidence.
- [30] Ms. Jiang was thus found to have obstructed the search authorized by the Anton Piller order.
- [31] Ms. Jiang was also found to have lied about her knowledge of unreported cash and four-digit invoices.

- [32] Ms. Jiang's evidence about lending money to John was found to be a complete fiction by McEwan J.
- [33] Ms. Jiang's evidence that money in a stock account was her own money, not John's was rejected by McEwan J.
- [34] Mr. Justice McEwan also found that Ms. Jiang colluded with John to divert income by receiving overpayment of salary, dividends and commissions by creating new companies.
- [35] I find that each of the criteria discussed by Griffin J. in *Kim* are met in this case with respect to Ms. Jiang, and that an award of special costs against her is warranted.

(c) Grace

- [36] Grace became a party to this proceeding less than six months before trial. She contends that it would be wholly disproportionate to award costs against her starting in November 2016.
- [37] Grace contends that although McEwan J. did not accept her evidence, he did not make a clear finding that she had intentionally misled the Court.
- [38] In my view, Mr. Justice McEwan was critical of Grace's conduct, especially her dishonesty with respect to unreported cash. Grace claimed she did not know WIT was not reporting cash income to CRA, or of a double invoicing scheme. She gave evidence that she did not see drivers coming in and leaving cash on desk. Given her high-level involvement and her education, McEwan J. accepted Sharon's submission that it is highly unlikely that Grace, with a diploma in accounting, and working in the accounting department, could have somehow missed the vast, at least \$2,700,000, unreported cash scheme.
- [39] While Grace's misconduct is less extensive than that of Ms. Jiang, it is nonetheless reprehensible and warrants an award of special costs against her.

(d) Mr. Jiang

- [40] Mr. Jiang was added to this action by an order made October 19, 2017, less than eight months before trial. As I have mentioned above, his participation in the trial was limited to parts of three days, and he called no evidence.
- [41] I am unable to find that Mr. Jiang mislead the Court or unnecessarily lengthened the trial of this action. He contends that he provided all relevant documents to the claimant in a timely manner and alleges that he proved that he paid for his warehouse units with his own money for the purchase from a third party seller.
- [42] In his reasons for judgment, McEwan J. did not find that Mr. Jiang had engaged in misconduct or that he had committed fraud. In fact, Mr. Justice McEwan referred to Mr. Jiang only in one paragraph of his reasons:

The Respondent, Tian Qi Jiang, submits that there are no grounds on which an order for special costs should be made against him.

[43] Accordingly, I will exercise my discretion, as required by Rule 16-1 of the Family Rules, and make no order against Mr. Jiang for costs.

Conclusion

[44] In my reasons for judgment on costs in the Civil Actions, indexed at 2020 BCSC 1759, I allotted costs for 60% of the Civil Actions heard by McEwan J. That was in recognition of the fact that Mr. Wang, the plaintiff in those Civil Actions, did not need to participate in this family action.

[45] I am satisfied that Sharon is entitled to special costs against both John and Ms. Jiang, jointly and severally, and award such costs to her in all three actions. I find that the special costs against John and Ms. Jiang should be 100% of the actual costs incurred by Sharon in this action, which can be determined by a reference to the Registrar.

[46] Grace was a party in only this action, so I decline to order costs against her in the Civil Actions. I find that it would be unfair to award full costs against Grace on a joint and several basis on this action. I award Sharon 25% of her total costs against Grace. As to that part, the award against Grace will be joint and several with 25% of the 100% costs awarded against John and Ms. Jiang.

The Honourable Chief Justice Hinkson

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