

CANADA / JUDGMENT

Wang v. Jiang

2020 BCCA 165

COURT

British Columbia Court of Appeal

DECIDED

3 June 2020

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2020 BCCA 165 Wang v. Jiang

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Wang v. Jiang,

2020 BCCA 165

Date: 20200603

Dockets: CA46734; CA46735

Docket: CA46734

Between:

Yi Meng Wang aka Sharon Wang

Respondent

(Claimant)

And

Jun Cheng Jiang aka John Jiang, Xiao Ling Jiang, Tian Qi Jiang, Wingsum International Trading Inc., Wingsum Food Inc., W & W Food Ltd., Win Sum Produce Corp., and Jun Shan Jiang aka Grace Jiang

Appellants

(Respondents)

Docket: CA46735

Between:

Jian Guo Wang

Respondent

(Plaintiff)

And

Jun Cheng Jiang aka John Jiang and Xiao Ling Jiang

Appellants

(Defendants)

Before:

The Honourable Madam Justice Fenlon

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated February 7, 2020 (Wang v. Jiang, 2020 BCSC 145, Vancouver Dockets E152456 and S165630).

Oral Reasons for Judgment

Counsel for the Appellants, appearing via teleconference:

G.A. Hooper

Counsel for the Respondent, Yi Meng Wang, appearing via teleconference:

L.N. MacLean, Q.C.

Counsel for the Respondent, Jian Guo Wang, appearing via teleconference:

D.L. Cayley

Place and Date of Hearing:

Vancouver, British Columbia

June 3, 2020

Place and Date of Judgment:

Vancouver, British Columbia

June 3, 2020

Summary:

The appellant applies for a two-day extension of time to serve his notices of appeal from orders in related family and civil proceedings. The respondents oppose the applications, but, in the event the extensions are granted, apply for security for costs in the appeals, costs of the trial, and security for the trial judgment. Held: Extension of time granted. Order for security for costs of both appeals granted by consent. With respect to the civil appeal, it is in the interests of justice to

require the appellants to post partial security for costs of about one-half of party and party costs. However, the respondent has not met the onus of establishing that it is in the interests of justice to order that the civil judgment be secured. With respect to the family appeal, the orders below were made against an appellant who has filed a notice of abandonment with respect to the family appeal. The remaining appellants are his parents and his sister. The order below has not been settled, and it is not clear whether they will be held jointly and severally liable in the family proceedings. Accordingly, the applications for security with respect to the trial costs and the judgment are premature, and are adjourned.

- [1] FENLON J.A.: Applications are made in two appeals, CA46734 and CA46735. I will adopt the nomenclature of the parties and refer to the 734 appeal as the "Family Appeal" and the 735 appeal as the "Civil Appeal."
- [2] The appellants in both appeals, Xiao Ling Jiang, Tian Qi Jiang, Wingsum International Trading Inc., Wingsum Food Inc., W & W Food Ltd., Win Sum Produce Corp, Jun Sian Jiang (also known as Grace Jiang), and Jun Cheng Jiang (also known as John Jiang), apply for an order under Rule 52 of the Court of Appeal Rules, B.C. Reg. 297/2001, to extend the time to serve the notice of appeal to March 11, 2020. In the event an extension is granted, the respondent Sharon Wang in the Family Appeal applies for a stay of the appeal until a number of orders for security are complied with:
 - (1) An order pursuant to section 10(2)(b), (d) and (f) of the Court of Appeal Act [R.S.B.C. 1996, c. 77] that if the appellants are granted extension of time to file their notice of appeal, then they must comply with the terms as set out below in paragraphs (2) through (8), and further, the appeal is stayed until the appellants are in compliance with those terms.
 - (2) An order pursuant to section 24(1) of the Court of Appeal Act that the appellants pay to or deposit with the Registrar of the Court of Appeal security for costs of the appeal in the amount of \$10,764.80 within 30 days from the date of this order.
 - (3) An order pursuant to sections 10(2)(b) and (f) of the Court of Appeal Act that the appellants pay to or deposit with the Registrar of the Court of Appeal partial security for costs of the trial in the court below, in the amount of \$462,303.56, within 30 days from the date of this order.
 - (4) An order pursuant to sections 10(2)(b) and (f) of the Court of Appeal Act that the appellants pay to or deposit with the Registrar of the Court of Appeal security for judgment in the court below in the amount of \$2,631,252.13, within 30 days from the date of this order.
 - (5) An order pursuant to section 10(2)(b) and (f) of the Court of Appeal Act that the appellant Jun Cheng Jiang aka John Jiang pay the arrears of child support in the amount of \$28,349.01, within 30 days from the date of this order.

- (6) An order pursuant to section 10(2)(b) and (f) of the Court of Appeal Act that the appellant Jun Cheng Jiang aka John Jiang pay the fines and arrears of \$62,009.82 for the mortgage owing pursuant to the Order of Madam Justice Balance made on December 14, 2015 in the court below.
- (7) An order pursuant to section 10(2)(b) and (f) of the Court of Appeal Act that the appellant Jun Cheng Jiang aka John Jiang pay the respondent the special costs of \$410,000, with post-judgment interest, pursuant to the Order of Madam Justice Warren made on January 19, 2018 in the court below.
- (8) An order pursuant to section 10(2)(b) and (f) of the Court of Appeal Act that the appellant Jun Cheng Jiang aka John Jiang shall indemnify the respondent for any expense, loss or liability she incurs with respect to the guarantee of 2772 West 20th, Vancouver, BC for the benefit of Wingsum International Trading Inc.
- (9) An order pursuant to section 10(2)(b) and (f) of the Court of Appeal Act that if any one or more of the conditions of extension is not met within 30 days from the date of this order, the respondent may apply on two business days' notice to counsel for the appellants, to a single justice to dismiss the appeal for failure to comply with an order.
- [3] The respondent in the Civil Appeal, Jian Guo Wang, is Sharon Wang's father. He applies for an order that the appellants John Jiang and his mother, whom I will refer to as Ms. Jiang, post security for costs in the appeal and costs of the trial in the court below, as well as security for the judgment in the court below.
- [4] I note that John Jiang filed a notice of abandonment with respect to his appeal in the Family Appeal on May 22, 2020. He continues his appeal in the Civil Appeal.

Background

- [5] The trial judgment below is indexed at Wang v. Jiang, 2020 BCSC 145. It sets out the background of two civil claims and a family law claim between the parties. The main parties to the family claim are John Jiang and Sharon Wang, who were married for about five years and have a daughter together. With respect to the civil claims, Mr. Wang alleged that in 2012 he entered into an oral agreement with John Jiang to acquire a piece of property on West 20th Avenue in Vancouver, which John and Sharon then lived in. Mr. Wang lent John and Sharon money for the purchase with the balance to come from a mortgage obtained by John and Sharon, who would repay the mortgage instead of paying rent. Mr. Wang was found to be the beneficial owner of that property.
- [6] Mr. Wang's second claim concerned property at Sunnymede Crescent in Richmond. The judge found Mr. Wang entered into an agreement with John for the purchase of that property. The ownership would be in accordance with their respective contributions and renovations and title would be held by John's mother, who would receive 5% of the profits after a sale.

- [7] The trial judge found that John and his mother advanced a "multitude of falsehoods" and "made patently absurd allegations" at trial. Further, he noted that John's and his mother's defences "were all steeped in lies that the defendants stuck to with unreasonable persistence throughout the proceeding" (at paras. 13-15). John was also found in November 2016 to have committed perjury and contempt of court during the course of the proceedings. He was sentenced to prison for six months with five months suspended in the family proceedings: *Wang v. Jiang*, 2016 BCSC 2461.
- [8] With respect to the Sunnymede property, the trial judge accepted Mr. Wang and Sharon's evidence over that of John and his mother. He found a bare trust had been created and that Mr. Wang was entitled to a declaration that he had beneficial ownership of that proportion of the property that related to his contributions. The judge also granted judgment for rents owed to Mr. Wang by John and his mother in relation to their occupation of the property.
- [9] With respect to the property on West 20th Avenue, the trial judge accepted Mr. Wang's description of the agreement. He was found to be the beneficial owner of that property. The house was ordered to be sold, with the proceeds going to Mr. Wang. The trial judge also accepted that John had registered a second mortgage on the property without Mr. Wang's knowledge or consent and granted judgment against John in the amount of the mortgage of \$500,000.
- [10] With respect to the loans from Mr. Wang to John, the trial judge accepted the evidence of Mr. Wang as well and found that Mr. Wang was entitled to have loans repaid to him with interest in the amount of about \$280,000.
- [11] In the family claim, Sharon Wang sought child support, division of property, special costs, and payment of certain fines. The claims included relief against companies owned or operated by John and other family members, because Sharon Wang alleged they were "straw people" holding property for John. The trial judge accepted that the various companies in which John participated were in effect one corporate group, owned and controlled by him, and that new companies were created to divert profit and as a means of hiding income. At trial John also admitted to engaging in an unreported cash scheme to avoid paying taxes through his companies. His mother, his father, and his sister, Grace Jiang, were also involved in that scheme.
- [12] The trial judge largely accepted Sharon Wang's evidence with respect to John Jiang's income and assets and various corporate structures used to divert profits. He found that several properties owned by John's family members, including warehouses owned by John's father, whom I will refer to as Mr. Jiang, were in fact family property. He drew an adverse inference against Mr. Jiang from the fact that he did not testify in trial but remained in China. The judge found that the circumstances justified a shift of the burden of proof to Mr. Jiang to prove that certain non-arm's length and above market value payments made by John's company to him were not fraudulent. Given that Mr. Jiang had chosen not to testify, the trial judge accepted Sharon Wang's claim that the high rents were paid to divert profits from

John's company. The trial judge found the warehouses were family assets subject to division.

- [13] The trial judge set John's Guidelines income, ordered retroactive child support, and a lump sum payment of spousal support. With respect to the division of family property, he fixed \$1.2 million as Sharon Wang's share of the assets.
- [14] Lastly, the judge decided that special costs should be dealt with at a later date and that the determination in relation to the costs should be made in light of John's performance of the terms of the judgment.
- [15] The trial judgment was released in February of 2020 and a summary of the orders is set out at paras. 768-795 of the judgment.
- [16] I turn now to the applications, having dealt with a minimal amount of information relating to the background as it is relevant to these applications.

The Application to Extend Time to Serve the Notice of Appeal

- [17] The appellants had until March 9, 2020, to file an appeal, as the judgment was released on February 7, 2020. The notice of appeal was filed on March 6 and the respondents were notified of the appeal on March 9 by email. When counsel for the respondents indicated he would not accept electronic service, paper copies of the notice of appeal were served on counsel in both appeals on March 11, two days late.
- [18] The criteria on an application to extend time to begin an appeal or apply for leave were set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259-260 (C.A.):
- Was there a bona fide intention to appeal?
 - When were the respondents informed of the intention?
 - Would the respondents be unduly prejudiced by an extension of time?
 - Is there merit in the appeal?
 - Is it in the interest of justice that an extension be granted?
- [19] I conclude that the extension of time by two days to March 11, 2020, should be granted. The late service of the notice of appeal was inadvertent. It was filed and sent to the respondents' counsel by email within time. There was also clearly an intention to appeal within the time limit, and the respondents were aware of that intention within the 30 days provided in the Rules.
- [20] With respect to any prejudice alleged by the respondents, the focus of the submissions was on the conduct of the parties below -- the non-payment of the judgment and the significant legal fees that the respondent Ms. Wang and her father have had to incur. That kind of prejudice does not stem from the fact that the service of the notice of appeal was late, and counsel did not assert that to be so. The submission made was rather that this was such an extraordinary case given the egregious circumstances in the court below that the interests of

justice simply do not warrant any extension, even a minor two-day extension of the time for service of the notice of appeal in the form required by the Rules.

- [21] With respect to the merits of the appeal, it cannot be said at this stage of the proceeding that the appeal is bound to fail. A review of the trial judgment indicates a trail of dishonesty, fraud and schemes to hide and divert assets. However, the threshold is a low one, and I cannot say with confidence that the appeal has absolutely no merit. In the Family Appeal, the appellants argue the judge did not provide sufficient reasons to permit appellate review with respect to his finding that the warehouses owned by Mr. Jiang were actually family assets. In the Civil Appeal, the appellants say the judge erred in ordering occupation rent against Ms. Jiang and John and in not taking into account mortgage payments in lieu of rent, which I acknowledge the respondents' say would amount to a new issue on appeal. In both the Family Appeal and the Civil Appeal, the appellants argue that the judge erred in his application of the rule in *Browne v. Dunn* (1893), [1894] 6 R. 67 (H.L.).
- [22] Even parties who have been found to have behaved egregiously and who have a weak case are entitled to an appeal, and it is not, in my view, in the interests of justice to prevent that right from being exercised due to a minor mistake on their lawyers' part. I would therefore extend the time for service of both notices of appeal to March 11, 2020.

Orders sought by the Respondents

- [23] I come now to the more difficult issue of security -- security for costs of the appeals, first of all. The appellants in both appeals consent to the posting of security for costs of the appeals, but ask for 45 days to do so. No particular reason was given for requiring that length of time. I am mindful of the conduct of the appellants as found in the court below. I order, and by consent with respect to the amount, that the appellants in the Family Appeal are to post security for costs of \$10,765 within 30 days, pending which the appeal is stayed. And I order, again by consent with respect to the amount, in the Civil Appeal that the appellants in that appeal post security for costs of \$10,629, within thirty days, pending which that appeal is stayed.
- [24] I turn now to security for the trial costs and security for the judgment. First of all I will deal with the Civil Appeal.
- [25] The court below has not yet made a final ruling on costs payable to Mr. Wang, but he was entirely successful and there is no dispute that he will be entitled to at least party and party costs.
- [26] The jurisdiction to order security for trial costs is found in s. 10(2)(b) of the Court of Appeal Act. That kind of security is not ordered as readily as security for costs of appeal. The onus is on the applicant to show that it is in the interests of justice to order security for a trial judgment or for trial costs, and the applicant must show prejudice if the order is not made. In determining the interests of justice, this court must consider the merits of the appeal and the effect of such an order on the ability of the appellants to continue the appeal: *Aikenhead*

v. Jenkins, 2002 BCCA 234.

- [27] In terms of the impact of an order for security on the appellants, both John Jiang and Ms. Jiang appear to have the means to post substantial security, based on the judge's finding that the appellants had removed or hidden millions of dollars in cash from the companies. TD Bank appointed a receiver to deal with the foreclosure proceedings relating to West 20th Avenue and other properties registered in the names of the businesses. The receiver swore an affidavit stating that John Jiang emptied a previously undisclosed bank account on the same day the receivership order was made.
- [28] As I have already observed, the trial judge found egregious conduct on the part of John Jiang and to some extent on the part of his mother -- the two appellants on the Civil Appeal. John Jiang has been found to have repeatedly hidden personal and corporate assets and to have done all he could to prevent the resolution of these claims on their merits. In these circumstances, it is in the interests of justice to require the appellants in this appeal to post partial security for costs of about one-half of party-party costs, presently identified by the respondent in the amount of \$51,365: *Bronson v. Hewett*, 2012 BCCA 268; *Young v. Young*, 2016 BCCA 64.
- [29] I give leave to the respondent to apply for increased security, once his costs have been assessed.
- [30] I am not satisfied that Mr. Wang has met the onus of establishing that it is in the interests of justice to order that the judgment be secured. There appears to be security for Mr. Wang's judgment in the Sunnymede property, with respect to which he has conduct of sale. Once sold, all of John Jiang's interest is to be held in trust pending an application by Mr. Wang for payment to him of that sum. I recognize that there may be competing creditors.
- [31] In addition, there appears to be at least some merit to the appeal with respect to whether the occupation rent grounding his claim should have been offset against mortgage payments made by the appellants. Again, I recognize that there is a dispute about whether that would amount to a new issue not raised below.
- [32] I would accordingly dismiss Mr. Wang's application to secure the trial judgment.
- [33] I turn now to the remaining applications in the Family Appeal notice of motion. Ms. Wang seeks security for trial costs of about \$462,000 and security for the judgment of about \$2.6 million dollars, as well as orders that John Jiang pay arrears of child support of about \$28,000, that he pay fines and arrears relating to a mortgage under an order made in December 2015, that he pay outstanding special costs ordered below of \$410,000 in relation to -- I believe it was the contempt proceedings but in any event it was a separate special costs order -- and that he be ordered to indemnify Ms. Wang for liability she assumed under a guarantee of his companies, which was secured against the West 20th property. Finally, there is an application to be given the right to apply on two days' notice if any of the orders granted are not complied with within 30 days.

- [34] I will begin with the last aspect of the application first: number nine on the notice of motion filed by Ms. Wang. I would dismiss that. There is no need for an order to be made now. Short leave can be applied for and obtained if it is required.
- [35] I begin by noting that John Jiang is not a party to this appeal any longer. Ms. Wang seeks to have the remaining appellants, John's parents and his sister, post security and comply with support orders and other orders made against John personally. Ms. Wang argues that the Jiang family were "all in this together" and worked with John to hide assets and frustrate her recovery in the family proceedings. On that basis, she says, they are all liable for the trial judgment, even though it relates to support and a division of family property. To that end, she has drafted an order making all of the remaining appellants jointly and severally liable for the orders in the family proceedings. That order has not been settled on those terms. It remains to be seen whether it will be.
- [36] At trial, Ms. Wang also sought special costs against some of the appellants. The judge expressly reserved the question of costs to give Mr. Jiang an incentive to comply with the terms of the judgment. If he were still a party to this appeal, an order for partial security for costs might indeed be appropriate. But at this point, it is not clear what the judge will order with respect to costs as against the remaining appellants. In my view, the applications for security with respect to the trial costs and the judgment are premature. I therefore adjourn those applications, which can be reset once the form of order is finalized. I am referring here to the orders sought at paras. 3 and 4; they are adjourned generally.
- [37] With respect to the existing and other orders sought against John Jiang personally in the notice of motion at paras. 5-8, he is no longer an appellant and I would dismiss those applications for security at this time.
- [38] In my view, costs of the applications before me today should be in the cause.
- [39] Finally, counsel, if it would be of assistance to you, I am prepared to hear the adjourned applications at some point once those various matters are ready to be brought back before this Court. However, I am not going to seize myself of those applications.

[Discussion with counsel re: clarifying timeline for posting security for trial costs]

- [40] FENLON J.A.: It will be 30 days for all security that has been ordered. It is always open to a party to apply for an extension if it is necessary. They are not lightly granted, but there may be particular reasons. I have nothing before me which would justify anything other than 30 days.

"The Honourable Madam Justice Fenlon"

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