
CANADA / JUDGMENT

Wang v. Lee

2021 BCSC 2028

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Supreme Court of British Columbia

DECIDED

26 March 2021

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2021 BCSC 2028 Wang v. Lee

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Lee,

2021 BCSC 2028

Date: 20210326

Docket: S208858

Registry: Vancouver

Between:

Zi An Wang

Plaintiff

And

Ryan Lee and Watson Goepel LLP

Defendants

Before: The Honourable Mr Justice Crerar

Oral Reasons for Judgment

Appearing on own behalf:

Z.A. Wang

Counsel for Defendants:

J. Corbett

Place and Date of Trial/Hearing:

Vancouver, B.C.

March 26, 2021

Place and Date of Judgment:

Vancouver, B.C.

March 26, 2021

- [1] THE COURT: Before me is an application brought by the defendants to either strike the claim dated September 1, 2020, on the basis that it is plain and obvious that it discloses no reasonable claim under Rule 9-5(1)(a), or dismiss the claim under the summary judgment rule, Rule 9-6, as disclosing no genuine issue for trial and being bound to fail.
- [2] In the underlying claim, Mr Zi An Wang, who also goes by the name of Charles Wang, sues Ryan Lee, a lawyer, as well as Mr Lee's law firm, Watson Goepel LLP.
- [3] I will get into more details momentarily, but in three pieces of litigation Mr Lee represented former employees of Mr Wang's companies in an adverse capacity to Mr Wang.
- [4] Mr Wang argued on his own behalf in this application, and he started this present action on his own as a self-represented litigant. He has, however, used a lawyer in at least one of the past actions that I have just referred to.
- [5] Apart from his personal experience in litigation, he is also a reasonably sophisticated professional. He is the owner of several businesses, including one business, CPIG Tax, which serves as a professional tax advisor. He himself also has many years' experience as a financial services advisor.
- [6] The notice of claim filed by Mr Wang on behalf of himself and CPIG Tax states at para 1:

I would like to have Ryan and his company Watson Geopel LLP to compensate 5 Million CAD as compensation of their damage of my trust toward BC legal system and the time and efforts I have spent to response to Ryan and his office.

I seek this compensation from Ryan and his company's error and omission insurance and expect their professional insurance increase. I hope in the following months, Ryan and his company would learn from this mistake and learn to closely comply to BC lawyers' professional conduct to ensure fairness in their practices and to ensure the public's trust and believe in BC legal system and lawyers. It is because the BC legal system is functioning on the trust of the general public.

[as original]

- [7] I will briefly set out the law under which this application is brought. The defendants rely upon Rule 9-5(1):

-
- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
- (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
 - (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
 - (d) it is otherwise an abuse of the process of the court
- [8] The test for striking a claim under the rule is whether, assuming the facts pleaded to be true, it is plain and obvious that the claim discloses no reasonable cause of action or that the action is bound to fail.
- [9] While the pleadings of an unrepresented litigant should be interpreted liberally, they will be struck if in substance they are unintelligible, confusing, and difficult to understand or do not establish a cause of action or advance a claim known in law: *Edmond v British Columbia*, 2013 BCSC 1102.
- [10] Rule 9-6(5), the summary judgment rule, states:
- (5) On hearing an application under subrule (2) or (4), the court,
- (a) if satisfied that there is no genuine issue for trial with respect to a claim must pronounce judgment or dismiss the claim accordingly
- [11] *4 Corners Properties v Boffo Developments*, 2013 BCSC 1926 holds that if the law is clear, and if there is a straightforward answer that allows the court to dispose of a claim, it will do so.
- [12] I will set out the background facts leading to this litigation against Mr Lee and Watson Goepel.
- [13] Mr Wang's companies employed three women, Carol Zhu, Flora Han and Stacy Zhang. Mr Wang has commenced at least three lawsuits against those individuals, or a combination of those individuals, alleging, that, inter alia, they used confidential information of the Wang companies and committed theft. Those lawsuits were filed in May 2019, July 2019, and February 2020.
- [14] The second action, filed in July 2019, was filed on Mr Wang's behalf by a lawyer retained by him for that purpose, specifically Mr David Chen of Redmond Law. I mention this because it is relevant to one of the claims that is now advanced against Mr Lee and Watson Goepel in the present claim.
- [15] Mr Wang says that he could not afford to retain Redmond Law for the other lawsuits, and that that he told Mr Lee that he wished Redmond Law to be only communicated with and involved in that one specific piece of litigation.

[16] In other words, since at least as early as August 2019, Mr Wang has been aware that Mr Lee and Watson Goepel have been representing the former employees of his whom he was suing. He has understood since then that Mr Wang was acting against his interests, on behalf of those individuals against whom he was levelling very serious allegations.

[17] I will turn now to the impugned notice of civil claim filed by Mr Wang.

[18] First off, I will say that none of these statements are meant to be critical of Mr Wang, who of course is not a professional lawyer. Indeed, the thrust of his own submissions today has been that he is not sophisticated in the ways of the British Columbia legal system.

[19] I agree with the preliminary observations of the applicants that the claim is prolix, difficult to follow, and obviously is not pleaded in an orthodox or correct manner. That said, I have done my best to understand it as it exists and as hypothetically it could be amended.

[20] In the relief sought portion of his notice of civil claim, Mr Wang states at para 1:

I would like to have Ryan and his company Watson Goepel LLP to compensate \$5 million Canadian as compensation of their damage of my trust toward BC legal system and the time and efforts I have spent to response to Ryan and his office.

I seek this compensation from Ryan and his company's error and omission insurance and expect their professional insurance increase. I hope in the following months Ryan and his company will learn from this mistake and learn to closely comply to BC lawyers' professional conduct to ensure fairness in their practices and to ensure the public's trust and believe in BC legal system and lawyers. It is because the BC legal system is functioning on the trust of the general public.

[phrased and worded as in the original]

[21] The notice of civil claim advances two primary categories of claims against Mr Lee and the law firm. The focus of the first claim is in breach of confidentiality, perhaps defamation, and perhaps breach of privacy, with respect to communications that Mr Lee had in the course of defending the three lawsuits brought by Mr Wang and his company against Mr Lee's clients: the former employees of Mr Wang's companies.

[22] Mr Wang's claims appear to focus on two acts by Mr Lee in the course of litigation.

[23] First, Mr Lee apparently on several occasions carbon-copied Mr Wang's legal counsel in one of the proceedings, specifically Mr Chen of Redmond Law, when he was making communications with respect to the other two Wang-initiated proceedings that Mr Lee was acting to defend. Mr Wang objects to this involvement of his lawyer retained for one specific action in the other actions.

[24] The second main focus of the communication-based claim is that Mr Lee attached various documents to an affidavit, in the course of preparing for an application on behalf of his clients against Mr Wang.

- [25] Before turning to the second prong of the claim against Mr Lee and Watson Goepel, I would note that, for the assistance of Mr Wang, that it is altogether normal for a lawyer representing a party against an individual whom they know is represented by a lawyer on other matters to carbon-copy that lawyer. Indeed, if it turns out that that lawyer is in fact representing the seemingly unrepresented party in the matter, it could be an ethical problem for the other lawyer if they have not involved that lawyer or at least carbon-copied that lawyer on communications. It is a prudent and responsible action for someone in Mr Lee's shoes to carbon-copy that lawyer known to be representing Mr Wang.
- [26] Second, I would note, again, that it is not unusual to attach exhibits to an affidavit that do not, on their face, directly relate to the litigation. And the relevance of those exhibited documents may not be clear to an unrepresented litigant against whom those affidavits are filed.
- [27] Sometimes documents are attached to affidavits in a court application in anticipation of various points that the unrepresented litigant might raise during the course of the proceeding. Unless those materials are attached to an affidavit, it may be practically difficult to respond to matters raised in the course of a hearing by an unrepresented litigant. When one is dealing with an unrepresented litigant, as Mr Lee was in that circumstance, it is always a wise course to attend a court hearing prepared for any possible eventuality or strategy or outcome.
- [28] I turn to the second thrust of the Wang claims against Mr Lee. It alleges a form of negligence or intentional act against Mr Lee by Mr Wang. These allegations involve the filing of a notice of discontinuance to discontinue two of the actions brought by Mr Wang against Mr Lee's clients: again, Mr Wang's former employees.
- [29] In March 2020, Mr Wang attempted to withdraw his claims against his former employees. Mr Wang sent to Mr Lee two notice of withdrawal forms in the wrong court form: the form for defendants wishing to withdraw their filed responses.
- [30] I will start with Mr Wang's characterization of the communication and then turn to Mr Lee's original email. Mr Wang's notice of civil claim describes the communication:

14. March 16, 2020, I wrote my email that:

"As I determine to fight on Stacey's case by myself, I made mistake on paper files. I have to thank you for your timely reply and taught me about the correct form. I will cancel the both files tomorrow (Notice of withdraw of an action ending in 560 and another action ending in 561) at Vancouver Supreme Court."

I also express my believe Stacey should ultimately responsible of her legal charges because her mistakes on directorship transfer initiated the legal charges of both parties. And I emphasize to Ryan to stop CC to my counsel.

15. After the emails between Ryan's office and me, he never advised me to seek independent legal advice. After the email of 7:08, he never replied me to clarify the advice he made to me about Notice of Discontinue was not a short term summary legal service, especially after I thanked him for what "he taught me." And he also never correct my wrong impression of Stacey's ultimate responsibility of the legal charge and my imprecision that I felt being protected by Ryan's advice.

[as in original]

- [31] I am now going to go back in time, as it were, and quote Mr Lee's actual email to Mr Wang after Mr Wang had provided the incorrect notices of withdrawal:

If you are seeking to discontinue these actions, you must file a notice of discontinuance. We take the position that Ms Zhang is entitled to her costs.

We take the position that Ms Wang is entitled to her costs payable by you for all steps taken at each of the proceedings up until the date of service for your notices of discontinuance and will seek a court order enforcing this position and staying any further actions from you pending payment of those costs. As previously advised, we have been retained to represent Ms Zhang for actions ending in 560 and 561. We have not been retained to act for the small claims notice contained in your email as of this time. Accordingly, we cannot accept service on Ms Zhang's behalf for any documents in the small claims action at this time.

- [32] I pause here to emphasise two items.

- [33] First, Mr Lee emphasised that he intended, on behalf of his client Ms Zhang, who is in an adverse position to Mr Wang and represented in that adverse position by Mr Lee, to seek costs against Mr Wang for the two actions that Mr Wang was now discontinuing against her.

- [34] Second, and I do not need to emphasise it because it would have been clear to Mr Wang from the activities and communications of the many previous months: Mr Lee expressly re-emphasised that he was acting on behalf of Ms Zhang.

- [35] In his submissions today, Mr Wang said that he, perhaps naïvely, thought that Mr Lee was trying to educate him, was trying to teach him, was trying to help him. By implication, he argued that he was relying on Mr Lee's statements.

- [36] The reading of Mr Lee's email and the specific reminders to Mr Wang that I have just referenced should have made clear to any reasonable person, and certainly Mr Wang who had commenced several pieces of litigation against Stacey Zhang, that he should not be relying upon anything that Mr Lee, the counsel opposite, was saying to him. Mr Wang should have known that Mr Lee was only acting on behalf of Ms Zhang, and, indeed, that Mr Lee was going to seek remedies in the form of costs against Mr Wang on behalf of Ms Zhang.

- [37] I pause here to address Mr Wang's frustration with the process and Mr Wang's characterization that Mr Lee was in effect deceiving him by stating that Mr Wang should file a plaintiff's notice of discontinuance.
- [38] First of all, as its name implies, a notice of discontinuance is the precise and obvious way by which a plaintiff discontinues a claim.
- [39] It is true that one can file a consent dismissal order as another way of ending a process if the defendant agrees to that process, and if the defendant agrees to waive costs. However, a discontinuing plaintiff in Mr Wang's shoes cannot force a defendant to agree to waive costs.
- [40] Hypothetically, even if Mr Lee had provided a clear explanation as to the two different typical ways of ending litigation, it would have not helped Mr Wang in any manner, given Mr Lee's expressly stated position that he would be seeking to obtain and enforce a costs order against Mr Wang.
- [41] In other words, the only way for Mr Wang to discontinue the action against Mr Lee's client Ms Zhang was to file the notice of discontinuance, as indicated by Mr Lee. It was his only option.
- [42] In this manner, no damages or harm can be ascribed by Mr Lee's responsible and accurate observation in his email.
- [43] I will turn briefly to the law governing lawsuits brought against a lawyer acting on behalf of an adverse party. These have been recently usefully summarized in *Durkin v Crease Harman*, 2020 BCSC 642, by Basran J:
- [14] I also note that in *0976820 B.C. Ltd. v. Leung*, 2018 BCSC 1725, Justice Norell reviewed the relevant law in respect of this issue at paras 33, 36, 39-42 and 45. I have taken into consideration the summary of the law set out in those paragraphs and concur that this is the relevant law that applies in these circumstances:
- [33] Statements made in the course of judicial proceedings are made on an occasion of absolute privilege. The privilege extends to pleadings, statements made in documents used in the proceeding, and statements contained in affidavits: *Bernstein v. Stoytcheva-Todorova*, 2007 BCSC 14 at para. 66; *Hamouth v. Edwards & Angell*, 2005 BCCA 172 [Hamouth] at paras. 2-3; *Schut v. Magee*, 2003 BCCA 417 at para. 15; *McDaniel v. McDaniel*, 2009 BCCA 53.

...

- [36] As stated in *Hamouth* at para. 3:

There is also no dispute that absolute privilege provides immunity against suit. If the alleged defamatory statement was made on an occasion of absolute privilege, the statement of claim may be struck out under Rule 19(24)(a), as it "discloses no reasonable claim":[citations omitted].

...

- [39] Counsel for the Law Firm submits that, generally, counsel do not owe a duty of care to opposing litigants. In *Awad v. Salna*, 2017 BCSC 429, the Court stated:
- [22] There is an absolute privilege extended to counsel for all communications made in the course of or incidental to their representation of clients in the judicial or quasi-judicial proceedings. In *Lawrence et al v. Sandilands et al*, 2003 BCSC 211, Madam Justice Wedge stated at paras. 77-80:
- [77] It is well established that in the course of counsel's representation of his or her clients interests, it is to be expected that "much may be done that is intentionally and necessarily directed toward injuring the opposing party's interests." (*Crooks v. Manolescu*, [1995] B.C.J. No. 17 (BCSC) at paragraph 10).
- [78] In *Kamahap Enterprises Ltd. V. Chu's Central Market Ltd.* (1989), 1989 CanLII 242 (BC CA), 40 B.C.L.R. (2d) 288 (C.A.), the Court of Appeal said at page 291 and 292:

The cause of action asserted, were it to be upheld, would be one imposing on the solicitors for one party an obligation of care to all others involved in the transaction to see the transaction properly carried into effect, even though the solicitors were retained and paid only by one of them.

.where the only damage foreseeable is damage to another's pocket or estate--where there is no foreseeable risk of personal injury or physical property damage--foreseeability of such economic loss, while essential to the existence of a duty of care, cannot, it now seems clear, generally be regarded as sufficient to create proximity and thus impose such a duty.

- [79] While a solicitor may owe an ethical duty to the court to be candid and fair, the only party to whom a solicitor owes an actionable duty is his or her client (*Jensen v. MacGregor* (1992), 1992 CanLII 2167 (BC SC), 65 B.C.L.R. (2d) 224 at p. 228 (BCSC)).
- [80] The court in *Jensen* found that in the absence of a contractual obligation and any duty of care owed between counsel for one party and the party adverse in interest, there was no recognizable cause of action, no plausible argument and no triable issue raised on the pleadings.
- [23] In *Pearlman v. Critchley*, 2012 BCSC 1830, Mr. Justice Crawford stated at paras. 44 and 48:
- [44] I start with the settled law that Mr. Critchley, acting for an opposing party, owed no duty to Mr. Pearlman. No tort action could lie against him. As well, all communications made by a lawyer in the course of, or incidental to, judicial proceedings are protected by actual privilege: *Lawrence v. Sandilands*, 2003 BCSC 211.
- [48] I find Mr. Pearlman's claims in this regard are bound to fail in law, and furthermore are frivolous and vexatious.
- [41] In *Young v. Borzoni*, 2007 BCCA 16, para. 52, the Court cited with approval a decision of Master Bolton on a similar argument as is advanced by Mr. Wong in this action:

- [52] An application was brought to strike out portions of the statement of claim as disclosing no reasonable claim. In a well written judgment Master Bolton said:
- [8] The existence of a fiduciary duty or duty of care is not an allegation of fact, however, but a conclusion of law which must depend on proof (or for present purposes, allegations) of fact. And particulars of the breach of a duty are not relevant to the question of the existence of the duty. Thus, while I accept as a fact, for example, for the purposes of this hearing, that [solicitor B] filed affidavits which she ought to have known were false, that fact is of absolutely no significance to the question of the existence of a duty of care to the plaintiffs.
- [10] the plaintiff's position is tantamount to an assertion that all counsel who represent litigants owe a fiduciary duty or a duty of care to the other party to the litigation. This is patently absurd, as in the course of counsel's representation of her own client, much may be done that is intentionally and necessarily directed toward injuring the opposing party's interest. On the facts as pleaded here, it is, to borrow the emphatic language of Taylor, J.A. in *Kamahap Enterprises Ltd. v. Chu's Central Market Ltd.* (1990), 1989 CanLII 242 (BC CA), 40 B.C.L.R. (2d) 288, impossible that [solicitor B] could owe a duty of care to Ms. Crooks.
- [11] The impossibility arises out of the very nature of a solicitor's duty to her own client.
- [12] The impossibility of the existence of a duty of care that I referred to in paragraph 10 above is an impossibility on these pleadings. Clearly, a solicitor will in some circumstances be held to owe a duty to persons other than her own client, and so may be a barrister. I do not intend to say that [solicitor B] could in no circumstances be held to owe a duty of care to Ms. Crooks. But I do say that before such a duty can be found to exist, facts must be proved in evidence - and alleged in pleadings - which describe the relationship and the circumstances from which the duty arose.
- [42] Mr. Wong must plead facts that would establish a duty of care owed by the Law Firm to him. He has not done so. Simply alleging that the Law Firm filed affidavits or a notice of application which contained statements that they ought to have known were false because there is conflicting evidence between the parties, does not establish a duty of care. By filing the Third Party Application, the Law Firm was taking steps in furtherance of its client's position in the Underlying Action. Mr. Wong has not pled any facts which could found a duty of care owed by the Law Firm to him.
- [15] Furthermore, any communications by lawyers in the course of or incidental to the action on behalf of their clients are protected by absolute privilege: *Hamouth v. Edwards & Angell*, 2005 BCCA 172; *M.A. (Guardian ad Litem of) v. I.A.S.M.A.* (1992), 1992 CanLII 254 (BC CA), 69 B.C.L.R. (2d) 99; *Lawrence v. Sandilands*, 2003 BCSC 211; *Elliott v. Insurance Crime Prevention Bureau*, 2005 NSCA 115.

[17] The effect of the principle is to provide immunity against suit. Thus any pleading directed at a privileged communication, even if it did allege the elements of some cause of action, may nevertheless be struck as disclosing no reasonable claim. I refer here again to Hamouth and Workum.

[emphasis added]

[44] The passage quotes several passages that judges of this Court have relied upon in dismissing lawsuits very similar to the one that Mr Wang is bringing against the lawyers acting on behalf of the people he is suing.

[45] I will pause. Again, this is addressed to Mr Wang for his benefit. Mr Wang will appreciate that he is not unique in suing or trying to sue a lawyer that formerly represented or represents the opposite side. It is not an unusual phenomenon.

[46] The essence distilled from these authorities is that a claim against an adverse party's lawyer based in communications or acts carried out by that lawyer in the course of fulfilling his or her duties as a zealous advocate to their client will be protected, will disclose no reasonable cause of action, and will be struck as disclosing no reasonable cause of action under the claim.

[47] Note as well, the passage quoted above, at para 14([33]):

Statements made in the course of judicial proceedings are made on an occasion of absolute privilege. The privilege extends to pleadings, statements made in documents used in the proceeding, and statements contained in affidavits.

[48] This passage directly addresses the first category of the claims that Mr Wang is making against Mr Lee, namely, the communications in the form of carbon-copying Mr Wang's lawyer and the attachment of documents to the affidavit.

[49] I also note that the notice of civil claim filed by Mr Wang neither directly or indirectly alleges any special duty of care owed by Mr Lee and Watson Goepel to him. Indeed, given the facts that are alleged in the notice of claim as well as the cases I have just canvassed (specifically para 14 (41)-[42]), it is not possible in my estimation to allege such a duty of care. Thus the Court concludes that leave should not be granted to attempt to amend and rehabilitate this impossibly bad claim against Mr Lee and Watson Goepel.

[50] Accordingly, the application of the defendants is granted. The notice of civil claim in action S208858 is struck, and the defendants are entitled to their costs of this application and of the claim under the usual scale.

[51] Anything arising from that?

[52] CNSL J. CORBETT: Nothing arising, My Lord.

[53] THE COURT: Anything arising from that, Mr Wang?

- [54] Z. WANG: The relief is actually in the amended notice of claim, not our original one. There is one looking for Ryan to lower down or to remove the liability which he actually added to me to allow me to keep on suing the client in court. Apparently how to prove that is -- his client is using a lot of excuses. Maybe my mistakes at the beginning. Maybe I should not make -- move this case from the Supreme Court to the Small Claim Court. I was just too naïve, and I didn't have any experiences on the Court. I specifically insist to carry on my suing on the Supreme Court, so there is nothing excuse they can block me from doing that. And right now basically block me to suing Stacey Zhang [indiscernible] Supreme Court, and I cannot afford on that.
- [55] THE COURT: Yes.
- [56] Z. WANG: I cannot afford on any of it. Right now you just get me to also pay for their legal fee, but I also cannot afford on those too.
- [57] THE COURT: Yes. Mr Wang, I am going to stop there. I have made my ruling. I would recommend that you and your companies seek some legal advice with respect to this. There are many law firms that will give you one hour of free legal advice, and there are also legal clinics that can help people who cannot afford a full retention of a lawyer. I do not know if you still have a relationship with Mr Chen of Redmond Law. He may also be able to give you some brief legal advice. I would encourage you to do that.
- [58] Z. WANG: You know what? I did. I did.
- [59] THE COURT: And we will adjourn this matter for the day. Thank you everyone.

"Crerar J"

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Prepared on 29 October 2026 · Esheria