

CANADA / JUDGMENT

Wang v. The Owners, Strata Plan LMS2970

2020 BCCA 356

COURT

British Columbia Court of Appeal

DECIDED

7 December 2020

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2020 BCCA 356 Wang v. The Owners, Strata Plan LMS2970

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Wang v. The Owners, Strata Plan LMS2970,

2020 BCCA 356

Date: 20201207

Docket: CA45731

Between:

Yi Wang

Appellant

And

The Owners, Strata Plan LMS2970 and Chao Wang

Respondents

Before:

The Honourable Chief Justice Bauman

The Honourable Madam Justice Dickson

The Honourable Mr. Justice Hunter

On appeal from: An order of the Supreme Court of British Columbia, dated

November 5, 2018 (Wang v. The Owners, Strata Plan LMS2970, 2018 BCSC 2207, Vancouver Docket S1810253).

Oral Reasons for Judgment

The Appellant, appearing in person

(via videoconference):

Y. Wang

Counsel for the Respondent, The Owners, Strata Plan LMS2970

(via videoconference):

P. Cross

Counsel for the Respondent, C. Wang

(via videoconference):

A.J. Chang

Place and Date of Hearing:

Vancouver, British Columbia

December 7, 2020

Place and Date of Judgment:

Vancouver, British Columbia

December 7, 2020

Summary:

Appeal from an order of the Supreme Court dismissing the appellant's application for leave to appeal from a decision of the Civil Resolution Tribunal. The chambers judge had declined to grant leave under s. 56.5 of the Civil Resolution Tribunal Act on the basis that the proposed appeal did not engage a question of law. Held: Appeal dismissed. The chambers judge did not err in dismissing the appellant's application. The appellant's proposed appeal did not raise a requisite question of law.

BAUMAN C.J.B.C.:

I. Introduction

- [1] Ms. Wang brought a proceeding before the Civil Resolution Tribunal ("CRT"). It focused on her claim that Chao Wang, a fellow resident in Ms. Wang's condominium complex (and the president of her strata council), allegedly vandalized Ms. Wang's car by "egging" it and pounding nails or screws into two of its tires.
- [2] Ms. Wang has had a number of disputes with her strata corporation and Chao Wang. Ms. Wang, essentially, wanted the strata corporation to post a notice describing the vandalism and Chao Wang's alleged responsibility for it within her condominium development.

- [3] The strata corporation refused.
- [4] The adjudicator in the CRT proceedings dismissed Ms. Wang's various claims against the strata corporation and Chao Wang. His reasons are indexed as 2018 BCCRT 473.
- [5] Leave to appeal that decision to the Supreme Court of British Columbia is permitted only on a question of law.
- [6] Ms. Wang sought leave in this regard. It was denied by a Supreme Court judge in reasons indexed as 2018 BCSC 2207.
- [7] Ms. Wang appeals to this Court from the refusal to grant leave to appeal. For reasons that follow, I would dismiss the appeal.

II. Background

- [8] I have noted the nature of the vandalism. It allegedly took place in the common area parking lot of the development on 9-10 February 2017, although Ms. Wang only reported it to the property manager on 19 March 2017, a number of days after any relevant surveillance footage had been erased pursuant to the strata corporation's established procedure.
- [9] Ms. Wang wanted the strata corporation to post notice of the vandalism in public areas of the development. She soon amended this demand to request that the public notice identify Chao Wang as the vandal.
- [10] The strata corporation refused to do this and further refused to allow Ms. Wang's spouse, a non-owner in the strata, to attend at a meeting of the strata council.
- [11] Ms. Wang brought her claim to the CRT. That claim advanced a number of specific claims. Under the "argument" section of Ms. Wang's CRT filing, she states her claim so:

Claim The strata council have refused to post the incidents of Chao Wang vandalizing our car at our parking lot at the 3rd floor of Tower A in the public areas of the buildings and have also refused to hold a hearing for the matter.

Desired Remedy I want the strata council to post the incidents of the car vandalism by Chao Wang in the public areas of the buildings

I want the strata council and Chao Wang to compensate for the damages for our emotional pains and sufferings totaling \$50,000.00

I want the strata council and Chao Wang to reimburse car tire fixing fee totaling \$56.00

- [12] In the body of her submission in support of the claim, Ms. Wang further complained that the strata council did not permit her spouse to attend a strata council meeting regarding the incidents.

- [13] Ms. Wang's claim came before the CRT. The responsible Tribunal Member dealt with it on the basis of the written record, satisfied that he could resolve the issues fairly in that manner. He dismissed Ms. Wang's various claims in comprehensive reasons issued on 24 August 2018.
- [14] The allegation driving Ms. Wang's whole "case" was that Chao Wang vandalized her car.
- [15] Accordingly, the Tribunal Member was required to determine if this had been shown to be the case on a balance of probabilities. He concluded, after an analysis spanning some 20 paragraphs in his reasons, that Ms. Wang had not met this burden.
- [16] This inquiry, of course, is one of fact, as is the finding of the Tribunal Member.
- [17] The Tribunal Member turned to consider whether the strata corporation acted "significantly unfairly" in refusing to issue a public notice regarding the vandalism. Here, the Tribunal Member was invoking the jurisdiction found in s. 48.1 of the Civil Resolution Tribunal Act, S.B.C. 2012, c. 25, as it then was in force.
- [18] The Tribunal Member reasoned so:
58. Section 48.1(2) of the Act gives the tribunal the authority to make an order to remedy a significantly unfair action by a strata. Section 48.1(2) of the Act mirrors section 164 of the SPA. The test for what actions are significantly unfair is found in *Dollan v. The Strata Plan BCS 1589*, 2012 BCCA 44, which I summarize as follows:
1. Did the owner or tenant have a reasonable expectation of the strata?
 2. If so, did the strata violate that reasonable expectation in a way that was significantly unfair?
59. The applicant's submission is essentially that because the strata posted other public notices of criminal activity, it has an obligation to post public notices of any allegation of criminal activity. For the reasons that follow, I disagree. I find that the applicant's expectation is not a reasonable one within the meaning of *Dollan*.
60. As mentioned earlier in these reasons, the applicant did not report the vandalism for over one month after the incident occurred. As a result, it was too late for the strata to review the security camera footage to see if they could identify who committed the vandalism.
61. Furthermore, there is no evidence of any further, similar vandalism of the applicant's vehicle or any other vehicle in the strata
62. As the strata points out, there is nothing in the strata's bylaws or the SPA that require it to post public notices.
63. With respect to the applicant's demand that the respondent be specifically named, it would have been irresponsible for the strata to do so given the lack of any persuasive evidence that the respondent was the vandal.

64. Therefore, the strata had little information that would have been useful for the other owners in the strata. A public notice simply would have stated that there had been an incident of car vandalism by an unknown person. Simply knowing that a vehicle had been vandalized several weeks or months ago, on its own, is likely not something that owners necessarily needed to know.
65. I therefore reject the applicant's argument that it was significantly unfair for the strata not to issue a public notice regarding the vandalism.
- [19] Advancing to the claim for damages, the Tribunal Member concluded:
74. I have found that the applicant failed to prove that the respondent committed the vandalism. I have also found that the strata did not act significantly unfairly as the applicant alleges. It follows that I dismiss the applicant's claims for damages.
- [20] Finally, the Tribunal Member concluded that it was not, in all the circumstances, significantly unfair of the strata corporation not to permit Ms. Wang's non-owner spouse to attend in her place at the meeting of council.
- [21] Ms. Wang sought to appeal the dismissal of her claim to the Supreme Court. The judge in chambers denied leave in brief reasons.
- [22] The judge noted that all of the relief sought by Ms. Wang "flowed from the alleged vandalism which she attributed to the respondent [Chao Wang]": at para. 1.
- [23] The judge noted that his jurisdiction was prescribed by s. 56.5 of the Civil Resolution Tribunal Act (as it was then in force): a person may appeal from a final tribunal decision "on a question of law arising out of the decision".
- [24] In distinguishing between questions of law and fact, the judge quoted from the Court's decision in *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 35:

Briefly stated, questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests.

[25] Applying that law, the judge concluded:

- [9] In this case, the burden of proof was on the appellant to prove the allegations that she was making. She put evidence before the Tribunal. The Tribunal member weighed that evidence and made findings of credibility and findings of the weight that could properly be put on that evidence. Credibility issues are the classic example of questions of pure fact as opposed to questions of law. That is precisely the area where the legislature has chosen to give the jurisdiction to the Tribunal and by clear language of s. 56.5 has said that those are matters with which this Court does not have jurisdiction to interfere.

- [10] Again, it is not for me to say whether the member of the Tribunal should or should not have believed certain evidence or for me to say what evidence I would have accepted if I were making the decision. It is a matter left to the Tribunal, and the Tribunal has made its decision on the evidence. I cannot say that there is a lack of evidence or any other aspect that brings that pure credibility finding within the definition of an error of law.

III. Analysis

- [26] In my view, the chambers judge was correct in concluding that Ms. Wang's claims were founded on an essential question of fact--her allegation that Chao Wang vandalized her car. Her claims against the strata corporation are, as well, based on her allegation that at all times it deliberately sought to cover up "Chao Wang's illegal acts". The entire focus, then, of Ms. Wang's claim is quintessentially a question of fact beyond the reach of appellate review in the case here.
- [27] Similarly, the further question before the Tribunal Member, centering on whether the strata corporation's actions were "significantly unfair", is a question of mixed fact and law. The test set out in *Dollan v. The Strata Plan BCS 1589*, 2012 BCCA 44, was cited by the Tribunal Member and applied to the facts he found before him. This is a question of mixed fact and law; that is, it involves the application of a legal standard to a set of facts: *Housen v. Nikolaisen*, 2002 SCC 33; *Allard v. The Owners, Strata Plan VIS 962*, 2019 BCCA 45. I can identify no question of law arising out of the Tribunal Member's disposition of this claim. The Tribunal Member cited the legal test correctly and then applied it to the facts before him.
- [28] Chao Wang seeks special costs. He submits:
26. The bald accusations of misconduct against not only the respondent, but also the Tribunal Member, are reprehensible and deserving of rebuke in an award for special costs.
- [29] In his decision the Tribunal Member cited this Court's decision in *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2015 BCCA 424 [*Sze Hang Holding*]. There, special costs were awarded against a self-represented litigant for making scandalous allegations against his opponent and their counsel. The Tribunal Member declined to award costs against Ms. Wang, but warned:
84. That said, the applicant now knows that persistent, unfounded allegations of fraud or other criminal behaviour may lead a subsequent tribunal or Court to order that they pay the other party's legal fees.
- [30] Notwithstanding this admonition, Ms. Wang, who indicated that she is a Chartered Professional Accountant, has persisted in this Court in making scandalous allegations extending even to the Tribunal Member. In the opening statement of her factum, Ms. Wang asserts:

Eric Regehr, Member of the CRT has knowingly made the following errors including misrepresentation, withholding information, bending of the truth, deliberate omissions and making up stories in the decision of the Civil Resolution Tribunal Wang v. The Owners, Strata Plan LMS 2970, 2018 BCCRT 473 on August 24, 2018 and acted as the respondents' defense lawyer. As it is dangerous to misrepresent, deliberately omit and withhold information, bend the truth, make up stories and garble legal documents, Eric Regehr shall lay the documents before the public just as it appears.

[31] Of Chao Wang, Ms. Wang said in her factum (at para. 66):

Chao Wang's Witness Statement is just a pack of lies without any supporting evidence.

[32] These themes, impugning the integrity of Chao Wang and the Tribunal Member, run through Ms. Wang's materials in this Court.

[33] Justice Donald for the Court in Sze Hang Holding said this of the conduct there in awarding special costs on the appeals of that matter (at para. 11):

Mr. Lam has not grasped this concept. In my view, he and his corporate associates must pay the consequences in special costs on these appeals.

[34] In my view, these words are apposite here. I would order that Ms. Wang pay special costs of the appeal in respect of Chao Wang. The strata corporation seeks ordinary costs and I would so order.

[35] In my view, the chambers judge was correct to deny leave in this case. I would dismiss the appeal.

[36] DICKSON J.A.: I agree.

[37] HUNTER J.A.: I agree.

[38] BAUMAN C.J.B.C.: The appeal is dismissed. Costs are as described in my reasons.

"The Honourable Chief Justice Bauman"

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