

CANADA / JUDGMENT

Wang v. The Owners, Strata Plan LMS2970

2021 BCCA 416

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 416 Wang v. The Owners, Strata Plan LMS2970 COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Wang v. The Owners, Strata Plan LMS2970, 2021 BCCA 416 Date: 20211018 Docket: CA45143 Between: Yi Wang Appellant (Appellant) And The Owners, Strata Plan LMS2970 and Civil Resolution Tribunal Respondents (Respondents) Before: The Honourable Mr. Justice Willcock The Honourable Madam Justice Dickson The Honourable Madam Justice Griffin On an application to vary: An Order of the Court of Appeal for British Columbia, dated December 23, 2020 (Wang v. The Owners, Strata Plan LMS2970, Vancouver Docket CA45143). Oral Reasons for Judgment The Appellant, appearing in person (via videoconference): Y. Wang Counsel for the Respondent, The Owners, Strata Plan LMS2970: P. Cross Place and Date of Hearing: Vancouver, British Columbia October 18, 2021 Place and Date of Judgment: Vancouver, British Columbia October 18, 2021 Summary: This application to review and vary the judgment of a justice in chambers founded upon the grounds that he erred: (1) by misinterpreting s. 167(2) of the Strata Property Act, S.B.C. 1998, c. 43; (2) by not considering Rules 49 and 67 of the Court of Appeal Rules; and (3) in misinterpreting the strata insurance policy's legal expense coverage provision, is dismissed. The first question has been previously decided against the appellant. The Rules referred to in support of the second ground have no application. There was no error in principle in rejecting the appellant's argument that she is not liable to indemnify the respondent for litigation costs paid by its insurer.

- [1] WILLCOCK J.A.: Yi Wang applies pursuant to s. 9(6) of the Court of Appeal Act, R.S.B.C. 1996, c. 77 for an order discharging or varying the order of Justice Hunter, in chambers, made December 23, 2020. This is not a re-hearing of the original application. It is a review of what the chambers judge did against the test encompassed by asking: was the chambers judge wrong in law, or wrong in principle, or did the chambers judge misconceive the facts: *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at para. 7.
- [2] The underlying dispute between the parties involves a \$200 fine.
- [3] The appeal is from the order of Justice McEwan made February 13, 2018, dismissing an application for leave to appeal a decision of the Civil Resolution Tribunal ("CRT"), and requiring the appellant to pay the respondent Strata Corporation's costs.

- [4] An appeal of that decision was dismissed on the merits by this Court on April 29, 2019 in reasons indexed at 2019 BCCA 182. Ms. Wang advises us she has sought leave to appeal that decision to the Supreme Court of Canada
- [5] The division addressed the appellant's submission that costs of the application should not have been awarded to the Strata Corporation, as follows:
- [22] Ms. Wang raised a second ground of appeal. She says costs should not have been awarded against her given provisions in the Strata Property Act, S.B.C. 1998, c. 43, and the CRT Rules. On this ground, I need only say that Ms. Wang's reliance on those provisions is misguided. Costs orders made in relation to proceedings in the Supreme Court are governed by Rule 14-1 of the Supreme Court Civil Rules not by the CRT Rules or the Strata Property Act. Costs are generally awarded to the party who succeeds on an application. Accordingly, I see no error in the judge's decision to award the Strata costs of the application for leave to appeal.
- [6] The appellant did not approve the form of the order made on April 29, 2019, and the respondent eventually took out an appointment to settle the order before the Registrar on November 26, 2020.
- [7] The appellant contested her liability to pay costs and so advised the Registrar by letter dated November 24, 2020.
- [8] The Registrar approved the form of order drafted by the respondent, and awarded costs of the appeal in the amount of \$3,764.25.
- [9] Ms. Wang applied to review the Registrar's decision setting the terms of the order and assessing costs. Her application was dismissed by Justice Hunter and she was ordered to pay costs of that application, in addition to costs she had previously been ordered to pay. I should note, at this point, that at that time the respondent asked that costs be assessed by Justice Hunter, however, he made no order to the effect sought by the respondent.
- [10] The appellant's refusal to approve the order, in particular her objection to the costs provision, was described by Justice Hunter in his reasons as follows:
- [4] The appellant refused to sign the order dismissing the appeal with costs to the respondent on the basis that she should not be required to pay the litigation costs of the strata corporation for two reasons. First, she relies on s. 167(2) of the Strata Property Act, which provides that "[t]he expense of defending a suit brought against the strata corporation is shared by the owners in the same manner as a judgment is shared " This appears to be the same argument she made in the appeal, and which was rejected in the decision of the Court that I have referenced.
- [5] The appellant also objects to a costs order against her on the ground that the strata corporation has insurance coverage for legal defence costs, and has paid those costs pursuant to that coverage.

- [11] He held as follows:
- [9] The Registrar was correct to include a provision for costs in the formal order, and to assess those costs in the usual fashion. I have reviewed his assessment and I can see nothing that would cause this Court to interfere with it. The application to review the Registrar's decision is dismissed with costs to the respondent.
- [12] I pause here in describing the history of these proceedings to note that Ms. Wang has been involved in other protracted litigation with the Strata Corporation, and in that litigation has also taken the position that she is not liable to pay costs awarded against her. That litigation also started as a matter before the CRT. She was unsuccessful there. An application for leave was dismissed, with costs. An appeal from the denial of leave was dismissed, with special costs awarded against Ms. Wang: 2020 BCCA 356.
- [13] The Registrar then assessed costs. Ms. Wang sought a review of that assessment. That application was dismissed in chambers. She sought to have that decision varied or set aside by a division of the Court. The application was dismissed for reasons canvassing the history of that distinct but very similar dispute. The argument made by Ms. Wang before the Court on October 1, 2021 is the same argument she makes today. It was dealt with by Justice Groberman as follows in reasons indexed at 2021 BCCA 369:
- [9] It is not open to Ms. Wang to argue, at this juncture, that the Court lacks jurisdiction to make an order of costs against her. The order for costs was made by the Court in its judgment (2020 BCCA 356). It is not open to this panel to overturn that decision.
- [10] In any event, Ms. Wang has advanced her misguided interpretation of s. 167(2) of the Strata Property Act before this Court on other occasions, and it has been rejected: *Wang v. The Owners, Strata Plan LMS2970*, 2019 BCCA 182 at para. 22; *Wang v. The Owners, Strata Plan LMS 2970*, 2021 BCCA 255 at para. 7.
- [11] Section 167(2) deals with the manner in which a strata corporation imposes assessments to finance defence of a lawsuit. It has nothing to do with whether a court may exercise its jurisdiction to award costs against an unsuccessful plaintiff at the end of the litigation.
- [14] Before us today Ms. Wang says Justice Hunter erred: (1) by misinterpreting s. 167(2) of the Strata Property Act, S.B.C. 1998, c. 43; (2) by not considering Rules 49 and 67 of the Court of Appeal Rules; and (3) in misinterpreting the strata insurance policy's legal expense coverage provision. Misinterpreting s. 167(2) of the Strata Property Act
- [15] In the words of Justice Groberman, it is not open to Ms. Wang to argue, at this juncture, that the Court lacks jurisdiction to make an order of costs against her.
- [16] The argument is founded upon a misapprehension and has no merit. The provision in question does not preclude a judge from making a costs order against a strata owner in their capacity as an unsuccessful litigant. Not Considering Rules 49 and 67 of the Court of Appeal Rules

- [17] Justice Hunter held that R. 67 has no application in the case. I agree. Nor is R. 49 of any assistance to the appellant. Misinterpreting the Strata Insurance Policy's Legal Expense Coverage Provision
- [18] Justice Hunter considered the argument that the Strata Corporation's insurance stood as a bar to it recovering its costs, and the argument that the Strata Corporation had been fully paid by the insurer. He held as follows:
- [7] Whether the respondent has insurance to cover litigation costs is not a matter that is relevant to the Court's disposition of costs. The Court awards costs for or against the parties before it. I am aware of no authority to support the proposition that a party who is required to pay costs is entitled to the benefit of the insurance maintained by the winning party.
- [19] There is no error in principle in the manner in which this question, or any other question, was addressed, in my view.
- [20] I would dismiss the application.
- [21] The Strata Corporation seeks orders with respect to costs that are set out at para. 29 of the memorandum filed in reply:
29. The Respondent Strata seek the following orders:
- a) an order for the assessment and forthwith payment of their costs awarded by Justice Hunter;
 - b) an order for the assessment and forthwith payment of their costs of their successful February 12, 2021 application for an extension to file and serve its Reply book to the present Application; and
 - c) an order for the assessment and forthwith payment of costs of the present Application.
30. The Respondent Strata seeks an award for costs to be payable forthwith fixed at the amount enclosed in the attached Bill of Costs.
31. The Respondent Strata seeks an award for the forthwith payment of the November 27, 2020 Certificate of Costs that remains payable by the Appellant in the amount of \$3,764.25.
- [22] In light of the history of these proceedings, I would grant the order sought by the respondent, with one exception. In my view, we cannot revisit the decision of Justice Hunter to leave the question of costs to be determined by the Registrar. We can, however, address costs that have been incurred since, in relation to this review.
- [23] Having reviewed the bill of costs in this case, I am of the view costs should be assessed, as they were in the prior appeal, summarily and at a similar amount, including taxes and disbursements, of \$1,400.
- [24] I would only add, as a cautionary note to Ms. Wang, that the costs of litigation arising from the \$200 fine in these proceedings, and other proceedings to which we have been referred, have been disproportionate to the amount in issue, or any principles at stake. Despite its

recovery of costs, the Strata Corporation has been obliged to spend time and effort in this litigation far beyond that warranted by its relatively minimal importance or value. Initiating further or other litigation may be regarded as vexatious conduct. I make this comment both to attempt to dissuade Ms. Wang from vexatious conduct, and so that it will be clear in further litigation, if there is any, that Ms. Wang has been cautioned about potential misuse of the public resource that is the judicial system.

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

[26] GRIFFIN J.A.: I agree.

[27] WILLCOCK J.A.: The application to review the order of Justice Hunter is dismissed. There will be an order for the assessment and forthwith payment of costs on this application in the amount of \$1,400. The Court will dispense with the requirement that the appellant approve the form of the order. "The Honourable Mr. Justice Willcock"

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