

CANADA / JUDGMENT

Wang v. Wang

2020 BCCA 158

COURT

British Columbia Court of Appeal

DECIDED

4 June 2020

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2020 BCCA 158 Wang v. Wang COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Wang v. Wang, 2020 BCCA 158 Date: 20200604 Docket: CA45052 Between: Hong Jie Wang also known as Anita Wang Appellant (Plaintiff) And Yong Li Wang also known as William Wang Respondent (Defendant) Before: The Honourable Madam Justice Saunders The Honourable Mr. Justice Harris The Honourable Madam Justice Dickson Supplementary Reasons to Wang v. Wang, 2020 BCCA 15, Vancouver CA45052. Counsel for the Appellant: S.A. Griffin Counsel for the Respondent: M.B. Funt Place and Date of Hearing: Vancouver, British Columbia November 7, 2019 Place and Date of Judgment: Vancouver, British Columbia January 16, 2020 Written Submissions Received from the Appellant: March 16, 2020 and May 8, 2020 Written Submissions Received from the Respondent: April 21, 2020 Place and Date of Supplementary Judgment: Vancouver, British Columbia June 4, 2020 Supplementary Reasons of the Court Summary: These supplementary reasons award costs in the Supreme Court of British Columbia to Ms. Wang. Supplementary Reasons of the Court:

- [1] By order made January 16, 2020, this court allowed the appeal for reasons indexed as 2020 BCCA 15. The reasons for judgment said:
- [62] Mr. Wang contributed \$75,000 to the purchase, about 6% of the purchase price. In my view Mr. Wang is entitled to a beneficial interest in the property to that degree, and return of the principal amount of the mortgage which he has paid. His interest in the property beyond 6% should be held in a constructive trust for Ms. Wang, provided also there is a charge in Mr. Wang's favour of \$570,000. I would not allow Mr. Wang to recover interest paid on the mortgage because his placement of the mortgage is the very breach of fiduciary duty calling for a remedy. To the extent Mr. Wang has paid taxes or expenses on account of the property, and received rental incomes, there should be an accounting and payment from one party to the other as that accounting indicates.
- [63] At the hearing of the appeal we did not receive submissions on the details of a disgorgement order as it relates to accounting for Mr. Wang's legitimate interest and monies paid on account of the property (including redemption of the mortgage) post completion. Further, these comments are made on the premise that the remedy contemplated does not negatively affect Ms. Wang, that is, that the property has been rising in value.

- [64] I have described here only in general terms the nature of the interests that should result from an order, in my view. The parties may be able to agree on a form of order that accomplishes what has been described. Absent agreement, I would receive further submissions concerning remedy. [Emphasis added.]
- [2] The parties, unable to agree on the form of order, now have made supplemental submissions. The supplemental submissions also address the issue of trial costs, not addressed in our reasons for judgment.
- [3] The initial supplementary submission identified two points of dispute with respect to the language proposed by the appellant: AND THIS COURT FURTHER ORDERS that the Respondent disgorge his interest in the Property in favour of the Appellant and the Respondent hold his interest in the Property on a constructive trust for the Appellant subject to:
1. a 6% interest in the Property in favour of the Respondent;
 2. a charging order for \$570,000 in favour of the Respondent;
 3. an accounting between the parties as to other income and expenses of the Property, namely, in the Appellant's favour, \$99,000 being the difference between the \$750,000 advanced by the Appellant and the \$651,000 thereof used on acquisition of the Property; and taxes or expenses on account of the property post completion less rental income in the Respondent's favour. [Emphasis added.]
- [4] The first point of dispute was the inclusion of the sum of \$99,000 in sub-paragraph 3 of the proposed language. Through the submission process, that concern has melted away, and the respondent agrees the accounting ordered is adequately described in sub-paragraph 3. The second point of dispute concerned the underlined portion of the paragraph. It, too, has resolved; the respondent does not oppose the language drafted by the appellant on the understanding that Mr. Wang's interest is held on a constructive trust only. The appellant has provided a suitable assurance. For certainty, it is convenient to set out that assurance:
37. Currently the registered title is held in joint tenancy. The "disgorgement" is effected by Mr. Wang's equitable interest in the property being held by Mr. Wang on a constructive trust for Ms. Wang, with the result that the property is beneficially held for Ms. Wang, subject only to the three components of the accounting ordered by this Court (the "Accounting"):
- (a) a 6% interest in the Property in favour of Mr. Wang;
 - (b) a charging order for \$570,000 in favour of Mr. Wang;
 - (c) an accounting between the parties as to other income and expenses of the Property, namely,
 - i) in Ms. Wang's favour, \$99,000 being the difference between the \$750,000 advanced by Ms. Wang and the \$651,000 thereof used on acquisition of the Property; and ii) in Mr. Wang's favour, taxes or expenses on account of the Property post completion less rental income.

38. Subject to any further direction or clarification by this Court, since the Property is beneficially Ms. Wang's (subject to the Accounting), she can either direct the sale of the Property (which is the most likely practical scenario), in which case the sale proceeds are subject to distribution in accordance with the Accounting; or direct Mr. Wang to transfer his legal interest to her such that title is solely in her name, upon payment to Mr. Wang of his interest as determined under the Accounting.
- [5] The parties remain at odds on the disposition of costs in the Supreme Court of British Columbia. The appellant says she has succeeded in the action and is entitled to costs. The respondent does not agree. He says that Ms. Wang is not entitled to costs because she was not truthful at trial and provided late disclosure, and in any event the result was mixed. On the first of these contentions he refers to the judge's finding that "little, if anything [Ms. Wang] testified to can be relied upon" and the judge's conclusion that Ms. Wang deliberately lied to the court in her testimony. On the second, he says the remedy Ms. Wang sought at trial did not provide for the credit to him of \$570,000 as reimbursement for money he paid to discharge a mortgage he had placed on the property, and so the result is accurately described as "mixed".
- [6] Mr. Wang relies upon decisions of the trial court exercising its discretion to deny costs to a successful party as a sanction for dishonesty in the course of the litigation, and he refers to this court's decision in *Lawrence v. Lawrence*, 2001 BCCA 386 upholding such a result.
- [7] In the alternative to an order that each party bear his or her own costs, Mr. Wang says the question of costs should be returned to the trial court.
- [8] The litigation concerned property purchased in joint tenancy by Mr. Wang and Ms. Wang. Ms. Wang was resident in China and provided a power of attorney to Mr. Wang to execute such documents as were required for her part in the transaction. She provided \$750,000 as her share of the purchase price. Mr. Wang paid a deposit in the amount of \$75,000, but did not contribute other funds for the purchase. Instead, using Ms. Wang's power of attorney, he obtained a mortgage on the property in the principal amount of \$570,000. After the action was commenced, Mr. Wang paid the sum owing on the mortgage.
- [9] The judge considered the testimony of both parties in her reasons for judgment. She believed neither Ms. Wang nor Mr. Wang and said:
- [42] I agree that neither party is credible. I did not find any of the witnesses who testified in this case credible. In my opinion, no one told the truth about their relationship and the circumstances surrounding the purchase of the Property. They all testified to occurrences and events that made no sense and were not credible.
- [10] The judge found Mr. Wang had not breached a fiduciary duty to Ms. Wang, and limited a remedial order to an order for an accounting, so as to even out the parties' contributions in respect of the property. On appeal we concluded that Mr. Wang had breached his fiduciary duty to Ms. Wang by using the power of attorney to place a mortgage against Ms. Wang's

interest. The result on appeal is that Ms. Wang now has succeeded on the issue of liability, and she has succeeded in deriving, but for 6%, the entire beneficial interest in the property after crediting Mr. Wang for the sum paid to discharge the mortgage as may be adjusted by the accounting ordered. In other words, any enhancement in the property value enures almost entirely to the benefit of Ms. Wang.

- [11] We consider that Ms. Wang should receive costs of the proceedings in the Supreme Court of British Columbia. On our view of the outcome, Ms. Wang was largely successful. More significantly, given the judge's even-handed unfavourable conclusions on credibility, Mr. Wang's liability arises from his fault of breach of the fiduciary duty he owed to Ms. Wang; to deny Ms. Wang costs in the trial court is to wrongly reward a faithless fiduciary.
- [12] Costs of the proceeding in the Supreme Court of British Columbia shall be to Ms. Wang. "The Honourable Madam Justice Saunders" "The Honourable Mr. Justice Harris" "The Honourable Madam Justice Dickson"

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