

CANADA / JUDGMENT

Wong v. Chan

2022 BCSC 1471

COURT

Supreme Court of British Columbia

DECIDED

29 July 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 1471 Wong v. Chan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wong v. Chan,

2022 BCSC 1471

Date: 20220729

Docket: S194980

Registry: Vancouver

Between:

Kam Oi Wong

Petitioner

And

Jack Chan, Chiu Ling Chan, Eric Chan, Jason Chan, Tammy Khaner, Chan's King George, 1188613 B.C. Ltd., and Ocean Village Farm Market Ltd.

Respondents

Before: The Honourable Justice E. McDonald

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

J.J. Kinghorn

G.E. Flores

Counsel for the Respondents:

J.B. Rotstein

S. Hirji

Place and Date of Hearing:

Vancouver, B.C.

July 27, 2022

Place and Date of Judgment:

Vancouver, B.C.

July 29, 2022

- [1] THE COURT: On July 27, 2022, I heard the respondents' application filed June 10, 2022, seeking to strike out or stay various pleadings filed by the petitioner, Ms. Wong.
- [2] Ms. Wong was previously involved in a business, Ocean Village Farm Market Ltd., which operated a fresh produce store. Ms. Wong is a shareholder in Ocean Village. Mr. Jack Chan was also involved in Ocean Village, including as its sole director.
- [3] Through her petition, Ms. Wong seeks payments from the respondents for her shares in Ocean Village and a variety of other relief, for example, pursuant to s. 227 of the Business Corporations Act, S.B.C. 2002, c. 57 [BCA].
- [4] In addition to the petition, Ms. Wong commenced two civil actions, naming the same parties to the petition proceeding as defendants.

The Application

- [5] The applicants, who are the respondents in the petition proceeding, apply for the following relief:
 - a) an order that the amended notice of civil claim filed in this proceeding be struck out as a nullity;
 - b) an order striking out the petition as against Chiu Ling Chan, Eric Chan, Jason Chan, Tammy Khaner, Chan's King George, and 1188613 B.C. Ltd.;
 - c) an order striking out the notice of civil claim filed in action no. S213508 or staying that action; and
 - d) an order striking out the notice of civil claim filed in action no. S224084 or staying that action.

- [6] This application requires me to determine, pursuant to Rule 9-5(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], I ought to strike out pleadings in their entirety or in respect of the respondents other than Jack Chan and Ocean Village Farm Market Ltd.

Procedural background

- [7] On April 26, 2019, Ms. Wong filed a petition. The proceeding was assigned action no. S194980.
- [8] On March 24, 2021, Ms. Wong filed a notice of civil claim in action no. S213508 naming each of the petition respondents as defendants (the "March 2021 Claim"). The March 2021 Claim was not served on the defendants.
- [9] On April 19, 2022, Ms. Wong applied in action no. S194980 to convert the petition proceeding into an action. That application was unsuccessfully opposed by the respondents.
- [10] On April 19, 2022, Master Nielsen ordered as follows in petition action no. S194980:
- 1) this proceeding shall be converted into an action and be remitted to the trial list;
 - 2) the petitioner is permitted to file within 30 days of the date of this order a notice of civil claim for the purpose of adding this matter heard as a trial;
 - 3) the respondents are permitted to file a response to civil claim within 30 days of being served with the petitioner's notice of civil claim; and
 - 4) costs of this application shall be in the cause.
- [11] On May 19, 2022, Ms. Wong filed a notice of civil claim naming each of the petition respondents as defendants. (the "May 2022 Claim"). The May 2022 Claim did not reference action no. S194980 and it was not followed in action no. S194980. Rather, the May 2022 Claim was assigned a new docket number, being action no. S224084.
- [12] As of May 19, 2022, Ms. Wong had commenced three proceedings in the Vancouver Registry of the BC Supreme Court involving identical parties, respondents or defendants, namely action nos. S194980, S213508, and S224084.
- [13] Ms. Wong's counsel then served the May 22 Claim on counsel for the defendants. On May 24, 2022, counsel for the defendants responded and pointed out that, among other things, Ms. Wong had failed to file the May 2022 Claim in the petition proceeding which had been converted into an action.
- [14] On June 1, 2022, Ms. Wong filed an amended notice of civil claim pursuant to Rule 6-1(1)(a). This was purportedly an amendment to the May 2022 Claim. The only amendment noted was to strike out action no. S224084 in the style of cause and replace it with action no. S194980.

[15] I note that this step was contrary to the instructions given to Ms. Wong's counsel by CSO support of the Court Services Branch. According to an email exchange, CSO support told someone at the office of Ms. Wong's counsel to file the notice of civil claim again in the petition file (i.e. action number S194980) and to submit a discontinuance for the new file (i.e. action number S224084).

Issue #1 - Should the Amended Notice of Civil Claim filed in action no. S224084 be struck out as a nullity?

[16] The Rules set out how to select a correct form of proceeding in Rule 2-1. This rule discusses the ways in which proceedings are "commenced" or "started." In general, unless the Rules or an enactment states otherwise, the default is to file a notice of civil claim under Part 3. In certain circumstances described in Rule 2-1(2), a person must file a petition or a requisition to start a proceeding.

[17] Usually, when a person starts or commences a proceeding under Rule 2-1(2) they leave blank the action number in the style of cause. That is because the action number is assigned to the proceeding at filing when the action number is recorded and stamped onto the originating document by registry officials at the Supreme Court Registry.

[18] As I already explained, Ms. Wong commenced a proceeding on May 19, 2022. The notice of civil claim she filed that day was assigned action no. S224084.

[19] The respondents submit that it is not open to a party when amending a notice of civil claim under Rule 6-1(1)(a) to change the action number. I agree with counsel for the respondents that this is not a proper amendment to the pleading.

[20] Rule 6-1 provides that:

a party may amend the whole or any part of the pleading filed by the party other than to change parties or withdraw an admission...

However, changing an action number on a pleading is not, in my view, part of the pleading filed by the party. Rather, it is a number assigned for administrative purposes by officials at the registry.

[21] The problem with the amended notice of civil claim filed by the plaintiff on June 1, 2022, is that it creates the impression that a notice of civil claim was filed in action no. S194980 when in fact a notice of civil claim was filed in action no. S224094. In other words, in action no. S194980 there was no notice of civil claim to be amended.

[22] In my view, it would be a rare situation where it would be appropriate to change an action number on a pleading through an amendment under Rule 6-1. That is because changing action numbers on filed documents has the potential to create serious negative effects for the court's administration and record keeping. That is likely why CSO support advised Ms. Wong's counsel to file the notice of civil claim in action no. S194980 and to discontinue action no. S224094.

[23] I therefore conclude that the amended notice of civil claim filed on behalf of Ms. Wong on June 1, 2022, in action no. S194980 is not a proper amendment to a pleading and it is an abuse of process of the Court. This pleading shall be struck out in its entirety pursuant to Rule 9-5(1)(d).

Issue #2 - Should the court strike out action nos. S213508 and S224084 or stay these actions?

[24] The respondents submit that the March 2021 Claim and the May 2022 Claim are an abuse of process because they are duplicative proceedings that effectively seek the same relief as the petition and they involve the same parties. Pursuant to Rule 9-5(1)(b), the respondents submit that these actions should be struck out or stayed.

[25] Ms. Wong's counsel submitted during the hearing that the March 2021 Claim was filed to preserve the limitation period but it was never served. Her counsel also agreed that with the filing of the May 2022 Claim, the March 2021 Claim was rendered superfluous.

[26] There is evidence before me that the May 2022 Claim was commenced with the intention of complying with the Master's order. I also note that Ms. Wong filed the May 2022 Claim within the 30-day period provided by the Master's order.

[27] Counsel for the respondent submitted that the Master's order is clear that Ms. Wong was granted leave to file a notice of civil claim in the petition proceeding which the Master converted into an action. Since Ms. Wong failed to file a notice of civil claim in the petition proceeding that had been converted into an action within the time specified, the respondents say that Ms. Wong ought to have, for example, applied to vary the Master's order. Instead, the plaintiff's counsel tried to fix the problem with the improper amendment to the May 2022 Claim.

[28] I turn now to consider an aspect of the dispute that underlies this application. Following the contested application, Ms. Wong obtained an order from the Master that converted the petition proceeding into an action. That order did not state that the petition shall stand as the notice of civil claim. However, it did provide Ms. Wong with a period of time in which to file a notice of civil claim.

[29] I note that the order did not explicitly state that the notice of civil claim was to be filed in the converted petition proceeding (i.e., action no. S194980). However, in my view that was the obvious inference to be drawn when the order is considered as a whole and in its overall context.

- [30] In my view, when Ms. Wong's counsel proceeded to file the May 2022 Claim what occurred was an inadvertent slip or mistake. Ms. Wong's intention was to file the notice of civil claim within the time provided by the order. However, due to what I regard as an inadvertent slip or mistake, the notice of civil claim was submitted by her counsel's office without including action no. S194980 in the style of cause. As a result, as is normally done, a new action number was assigned to the matter.
- [31] In light of all the circumstances and bearing in mind the overarching object of the Rules, which is to secure the just, speedy, and inexpensive determination of every proceeding on its merits, I find that it would not be appropriate to strike out the May 2022 Claim. I conclude that the just and proportionate solution to the problem that has arisen is to order that the May 2022 Claim shall be consolidated with the petition proceeding that has already been converted into an action.
- [32] For clarity, I am ordering that the consolidation of action nos. S194980 and S224084 and the consolidated proceeding shall continue under action no. S194980.
- [33] With respect to the May 2021 Claim, I agree that the May 2021 Claim, which was filed in the Vancouver Registry under action no. S213508, should be struck out in its entirety. It duplicates other proceedings and it is an abuse of process.
- [34] The respondents also requested an order striking out the petition as against all of the respondents except for Jack Chan and Ocean Village Farm Market Ltd. This relief was sought pursuant to Rule 9-5(1)(a) and (b) on the basis that the petition is unnecessary and it discloses no reasonable claim against these respondents.
- [35] The respondents point out that there are no material facts alleging any oppressive or unfairly prejudicial behaviour on the part of any of the respondents other than Jack Chan and Ocean Village. Due to the dearth of material facts supporting the cause of action, which is oppression pursuant to s. 227 of the BCA, the respondents submit that the petition should be struck out.
- [36] I was referred to the decision of *Canfor Pulp Limited Partnership v. Siemens Building Technologies Ltd.*, 2016 BCSC 2089 at para. 22 where Justice Voith (as he then was) discusses the legal framework for striking pleadings. Voith J. notes that where several causes of action are being alleged against multiple parties, a claim must clearly identify what facts relate to what cause and which party; otherwise, it is liable to be struck.
- [37] However, the pleading will only be struck for disclosing no cause of action where it is plain and obvious the claim has no prospect of success: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 64, 66. In situations where an attack is made on a pleading, the Court should first consider whether an amendment could correct a deficiency in the pleading.

- [38] Ms. Wong's counsel took me to the parts of the May 2022 Claim that are said to set out material facts against the respondents other than Jack Chan and Ocean Village. Those material facts are extremely thin, and counsel mostly relied on things stated in the legal basis part of the claim.
- [39] Overall, I agree that the claim presently lacks sufficient material facts to ground the claim against the respondents other than Jack Chan and Ocean Village.
- [40] In my view, keeping in mind the high bar required to strike pleadings and the other applicable legal principles, I conclude this is a circumstance where it is appropriate to grant Ms. Wong an opportunity to amend the notice of civil claim to address the deficiencies raised by the respondents in respect of the lack of material facts supporting the claim against the respondents other than Jack Chan and Ocean Village.
- [41] Ms. Chan shall have 30 days from today's date to file an amended notice of civil claim in action no. S994980 and the respondents shall have 30 days from the date of the service of the amended claim to file an amended response.
- [42] I dismiss the application to strike out the petition as against the respondents other than Jack Chan or Ocean Village. However, the respondents have leave to reapply following the amendments that I have ordered.

Costs

- [43] The respondents seek costs to be assessed as special costs. Most of the relief sought by the respondents has not been granted. To a certain extent, this creates the impression that the plaintiff has been largely successful in defending the respondents' application.
- [44] However, I am of the view that under the particular circumstances of this application it is not appropriate to grant the plaintiff the costs of this application. In my view, the actual circumstances and outcome of the respondents' application is that it resulted in fixing a mistake related to the plaintiff commencing a new cause of action when she filed the May 2022 claim. It also allowed her the opportunity, through a potential amendment, to address deficiencies in the pleading.
- [45] In light of these circumstances, I have decided to exercise my discretion to reward the respondents' costs of the application at scale B in any event of the cause, payable by the plaintiff forthwith after assessment. I have concluded that in the unusual circumstances giving rise to this application, it is both judicial and fair to make this award of costs.

"E. McDonald J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/14/2022BCSC1471.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/wong-v-chan-2022>

Prepared on 28 October 2026 · Esheria