

CANADA / JUDGMENT

Zhang v. Davies

2020 BCSC 1549

COURT

Supreme Court of British Columbia

DECIDED

22 October 2020

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2020 BCSC 1549 Zhang v. Davies IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Zhang v. Davies, 2020 BCSC 1549 Date: 20201022 Docket: S201843 Registry: Victoria Between: Li Zhang Plaintiff And Benjamin Daniel Davies and Erin Naomi Richelle Davies Defendants And Steven Kelly Melnick and Kerry Angelina Marshall Defendants Supplementary Reasons to Zhang v. Davies, 2020 BCSC 1301 Before: The Honourable Madam Justice Tucker Supplementary Reasons for Judgment Counsel for the Plaintiff: J. Legh C. McGhie Counsel for the Defendants, Benjamin and Erin Davies: C. Gordon Counsel for the Defendants, Steven Melnick and Kerry Marshall: K. Hamilton D. Melnick Place and Dates of Correspondence received from Counsel: Victoria, B.C. September 11 and October 16, 2020 Place and Date of Supplementary Judgment: Victoria, B.C. October 22, 2020

- [1] Following issuance of my reasons for judgment indexed as 2020 BCSC 1301 (the "decision") on September 2, 2020, counsel for Mr. Melnick and Ms. Marshall (collectively, the "Purchasers") wrote to Supreme Court Scheduling indicating that the parties agreed that there were errors in the decision and that these should be corrected.
- [2] As the Purchasers were added to the existing claim on their own motion, I assumed they were joined as "interested parties". In fact, they were added as "defendants" to this action. (The order adding them was not entered until after the hearing.)
- [3] The style of cause, appearances, and paragraphs 3 and 54 of the decision all refer to the Purchasers as interested parties. The style of cause, appearances, and paragraph 3 are corrected accordingly. Also, Ms. Marshall's name in the style of cause is corrected by removing "Erin" as her first name.
- [4] At paragraph 54, however, the error forms part of the legal reasoning. In that paragraph, I declined to determine whether the Davies and the Purchasers were privies for purposes of res judicata because the Purchasers were only interested parties.
- [5] I sent a memorandum to the parties advising that the error in paragraph 54 would require supplementary reasons to be issued and raising the issue of further submissions. Counsel for the Purchasers wrote advising that none of the parties wished to make further submissions.

- [6] At the hearing, the Davies and the Purchasers submitted that the plaintiff, Ms. Zhang's 2020 claim was res judicata, and the Purchasers further submitted they were privies of the Davies for purposes of res judicata.
- [7] I concluded that the doctrine of merger applied to foreclose Ms. Zhang's 2020 claim against the Davies as the damages awarded to Ms. Zhang in 2017 included compensation for future harm. The unaddressed question is what, if any, impact those findings have with respect to the Purchasers as defendants.
- [8] Ms. Zhang received compensation for future glare in 2017. Claiming against the Purchasers in nuisance under the 2020 claim is seeking to be compensated twice over for the same glare over the same period of time. A plaintiff is not entitled to seek tort damages twice for the same injury. The 2020 claim is effectively identical to the 2017 claim. The First Decision is a final decision. Ms. Zhang has already been fully compensated for the glare.
- [9] The 2020 claim as against the Purchasers is vexatious and allowing it to proceed would bring the administration of justice into disrepute. I am satisfied that the claim as against the Purchasers constitutes a clear abuse of process by way of re-litigation in accordance with the law as outlined by Justice Voith (as he then was) in *British Columbia (Director of Civil Forfeiture) v Sanghera*, 2017 BCSC 1519 at paras. 74-86.
- [10] Accordingly, the 2020 claim as against the Purchasers is struck as an abuse of process. As abuse of process does not require privity, it remains unnecessary to determine whether the Davies and the Purchasers are privies.
- [11] Although the Purchasers are defendants, they were added as such on their own motion. In my view, it remains appropriate for them to bear their own costs. "Tucker J."

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Prepared on 26 October 2026 · Esheria