IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ningbo Zhelun Overseas Immigration Service Co. Ltd. v. USA-Canada International Investment Inc.,* 2024 BCSC 2314

Date: 20241220
Docket: S1611920
Registry: Vancouver

Between:

Ningbo Zhelun Overseas Immigration Service Co. Ltd., Mega International Labor and Immigration Services Inc., Hongshu Lan, Xiao Wang, Chunhua Ye, Yuk ai He, Ying Zhang, Chunhui Bian, Jing Li, Welli Bai, Zongbiao Chen, Xionhing Xu, Yunfeng Zhang, Donghui Xu, Shufan Chen, Yanli Wang, Juntao Wen, Red Leaves Investment Group Inc., Ling Yang, Xiao Lei Zhu, Yan-Zhang, Jiancheng Jin, Honghai Chen, Zijun Huang, Lijie Meng, Guo Zhong, Botao Tang, Shuhua Wang, Bengiang Zou, Ming Zhang, Lifeng You, Weiguang Lai, Guoan Ning, Yafang Li, Jianting Ye, Jie Zhang, Gong Zheng, Taoyun Zhang, Hua Li, Guifen Zhang, Honghong Yan, Jianbiao Yang, Jingfeng Li, Chengquan Xie, Mei Yang, Zheng Lei, Xuegin Song, Wanhong Yu, Jiguang Shi, Li Chen, Jie Lu, Hesan Li, Yuqun Gao, Rui Zheng, Piny an Qian, Hongfu Shi, Yang Zhou and Jing Feng

Plaintiffs

And:

USA-Canada International Investment Inc., Yukon Resources Investment Inc., Elite Hotel and Travel Ltd., First Choice Immigration Services Ltd., Ajay Sehgal, Kashif A. Ahmed, Canada International Education Centre; Cornerstone International Education Inc., Tzuchan Chang, Jiang Xunfan, Yueming Zeng, Qiong Joan Gu, Allison Shaunt Liu a.k.a. Allison Shaunt Liu, Shouzhi Stanley Guo, and Jane Doe, personal representative of the Estate of Ian David Young, deceased

Defendants

Before: The Honourable Justice Morley

On appeal from: An order of the Supreme Court of British Columbia dated June 20, 2023 (*Ningbo Zhelun Overseas Immigration Service Co. Ltd. v. USA-Canada International Investment Inc.*, 2023 BCSC 1057, VA S1611920)

Reasons for Judgment
(Settling Order of April 25, 2024)

Counsel for the Appellant/Defendant Tzuchan Chang, a.k.a. Joyce Chang:	J. S. Forstrom
Counsel for Respondent/Plaintiffs Ningbo Zhelun Overseas Immigration Service Co. Ltd. and Mega International Labor and Immigration Services Inc.:	D. L. Cayley
Exchange of Written Submissions:	Vancouver, B.C. December 3, 2024
Place and Date of Judgment:	Vancouver, B.C. December 20, 2024

I. INTRODUCTION

[1] On April 25, 2024, in reasons indexed as *Ningbo Zhelun Overseas Immigration Service Co. Ltd. v. USA-Canada International Investment Inc.*, 2024 BCSC 682, I allowed an appeal by the defendant Tzuchan Chang (also known as Joyce Chang) of the decision of Associate Judge Bilawich (indexed as 2023 BCSC 1057) to add a large number of individual plaintiffs (the "New Plaintiffs") to this action after the limitation period that would have applied if they had independently brought their own lawsuit had expired. While I found that Associate Judge Bilawich did not err in principle, I concluded that the governing standard of review was a "rehearing", and I decided I would have exercised my own discretion differently than he did.

[2] Before me now is an application to settle my order. The main issue arises because while Ms. Chang appealed Associate Judge Bilawich's order, the other defendants did not. Does that mean that the individual plaintiffs can continue to sue them, but not Ms. Chang, or does it mean that they cannot be added at all, pending further appeal?

[3] I am going to break this question down into two parts:

a) As a matter of principle or jurisdiction, can Ms. Chang's success in her appeal redound to the benefit of the non-appellant defendants?

b) If the answer to the first question is "yes", is there any reason in this case to distinguish the action as against Ms. Chang from the action as against the other defendants?

II. AS A MATTER OF PRINCIPLE, CAN AN APPELLANT'S SUCCESS REDOUND TO THE BENEFIT OF NON-APPELLANTS?

[4] The answer to the first question is "yes." As a general matter, there is no problem, jurisdictional or otherwise, with a non-appellant benefiting from the appeal of an order by another party. This follows from basic principles about what an appeal is.

[5] An appeal is a proceeding, provided for by an enactment, in which an order or judgment of a court or tribunal can be set aside or varied. It is trite law that appeals are from *orders* (including judgments), which are what can be set aside or varied, and not from *reasons*. A successful appeal, then, is what that results in setting aside or varying the order below. If that order affected non-appellants, then setting aside or varying it can redound to their benefit.

[6] If, as is typically the case with an interlocutory order in the course of civil proceedings, the order affected all the parties to the underlying action, then setting aside the order below will, and varying the order may, affect non-appealing parties to the underlying litigation. This happens all the time and raises no jurisdictional issue.

[7] This uncontroversial effect of successful appeals should not be confused with the question of "standing". Standing is the status of having the *right* to challenge a state of affairs in a legal proceeding. In the context of an appeal, standing is the right to bring the appeal. For reasons that are obvious enough, standing to appeal is normally limited to those parties affected by the order appealed from. Conversely, parties affected by an order will always have standing, assuming an appeal is available at all.

[8] Being affected by an order *gives* standing; standing is not why the order affects the party having it. Standing, as a right to appeal, is an option, not a duty. If it is not exercised, then the party is still affected by the order. Standing is an option, not a duty. The party deciding not to exercise it cannot make submissions on the appeal, but that does not change their relationship to the order being appealed.

[9] A party that has standing because it is affected by the order, but decides not to appeal, not only *may* be affected by the result of the appeal, but, at least typically, *will* be. If they chose not to appeal, they lose their right to influence whether this will occur, but there is no principle that they are not entitled to the benefit of others' efforts.

[10] Such a principle would be perverse for a number of reasons. It would encourage duplicative litigation efforts and, in the context of appeals of interlocutory orders in civil proceedings, it would require oddly bifurcated proceedings. There is no merit to such a principle and, not surprisingly, no authority for it.

[11] To be sure, in the appropriate case, an appellate court might decide to *vary* an order affecting all the parties in the proceeding below and may decide to do so only in favour of an appellant. *Birrell v. Providence Health Care Society*, 2009 BCCA 109, relied on by the New Plaintiffs here, is such a case. It stands for the proposition that where the problem with the order below is unique to the parties making the appeal, an appellate court may decide to vary that order so that it does not apply to the appellants, rather than setting it aside. If this is what the appellate court does, then, but only then, the non-appellant parties will not be affected by the successful appeal.

[12] The situation in *Birrell* was that there were three defendants – Providence Health Care Society, Vancouver Coastal Health Authority and the University of British Columbia ("UBC") – two of which had an ultimate limitation defence because they were "hospitals" under the *Limitation Act* as it was at that time and one ("UBC") that was not a "hospital" and so did not have such a limitation period. The hospitals appealed an order of this Court allowing the addition of new representative plaintiffs to a class proceeding when it was discovered that the original representative plaintiff, Margaret Birrell, had no cause of action. The appeal was successful on the basis that substituting a representative plaintiff was, in the view of the Court of Appeal, inappropriate after the expiry of the ultimate limitation period.

[13] Given that this was the basis of their decision, UBC and the hospitals were in very different position as defendants. The Court of Appeal, in crafting its order, therefore did not set aside the order substituting the representative plaintiff, but instead allowed the appeal to the extent of varying the order to declare that the new representative plaintiffs had no cause of action against the hospitals: *Birrell* at para. 30.

[14] *Birrell* does not suggest that non-appellant defendants can *never* benefit from a successful appeal, including a successful appeal of an order allowing new plaintiffs. It does, however, stand for the proposition that the appellate court, in deciding whether to set aside or merely vary the order below, should take into account whether the basis of the success of the appeal was specific to the appellant or would apply to the other parties in the proceeding below.

III. SHOULD I SET ASIDE THE ORDER ADDING THE NEW PLAINTIFFS OR SHOULD I JUST VARY IT SO THAT THE NEW PLAINTIFFS CANNOT SUE MS. CHANG?

[15] Turning to the question of whether there is something that differentiates the other defendants from Ms. Chang, the New Plaintiffs make two arguments:

a) First, they argue that the general principle, set out by the Supreme Court of Canada in *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy*), [1995] 2 S.C.R. 97 at paras. 6-13, 1995 CanLII 86, that an appellate court should generally be reluctant to decide issues that are unnecessary to dispose of the appeal applies in this instance.

b Second, they argue that there is a distinction between Ms. Chang and the other defendants relevant to my decision that adding the New Plaintiffs was not "just and convenient", namely that it was *Ms. Chang's* lawyer that sent (then) counsel for the plaintiffs, including the New Plaintiffs, a letter in September 2018 (before the expiry of the relevant limitation period) outlining concerns with proceeding without addressing the basis on which a claim could be advanced by the existing plaintiffs on behalf of the New Plaintiffs and advising that he would vigorously resist an application by the plaintiffs if they did not address the issue "with dispatch".

[16] In my opinion, there is no merit to the first argument. While I do not dispute the principle that appellate courts, like courts generally, should be careful about

deciding more than they need to, I find that it does not apply here, since one way or the other I need to clarify whether the New Plaintiffs can sue the non-appellant defendants. Based on *Birrell*, I should only allow this if there is a real basis for a distinction between the situation of Ms. Chang and of the other defendants.

[17] On the second question, in my view the New Plaintiffs give far too much weight to the fact that it happened to be Ms. Chang's counsel who gave notice to privies of the New Plaintiffs that they needed to be added before the expiry of the limitation period. What was relevant about Mr. Forstrom's September 2018 letter was not how it changed the equities with respect to Ms. Chang, but how it put the New Plaintiffs (through their privies) on notice at a time when they could easily have addressed the situation by bringing the joinder application within the limitation period. It was the unexplained and unexcused failure to follow up on this that I considered important to the exercise of my discretion. I did *not* find that Ms. Chang suffered from any specific prejudice by comparison with the other defendants, who equally lose the benefit of a limitation period.

[18] This situation is quite distinct from that in *Birrell* where it would have been only the appellant defendants who would have lost the benefit of the ultimate limitation period and where that loss was decisive for the Court of Appeal in its consideration of the interests of justice. Here, both the appellant and non-appellant defendants suffer the same prejudice and the unexcused delay of the New Plaintiffs is a factor that applies to the defendants alike.

IV. ORDER

[19] I therefore settle my order of April 25, 2024 in the following terms:

a) The appeal is allowed.

b) Paragraph 1 of the Order of Associate Judge Bilawich pronounced on April 25, 2023 (the "Order Below") adding 56 named individuals or companies as plaintiffs in this action (the "New Plaintiffs") is set aside.

c) Paragraph 4 of the Order Below is varied to omit the New Plaintiffs from the amended style of cause.

d) Paragraph 5 of the Order Below is varied to provide that the plaintiffs' leave to file a further amended notice of civil claim substantially in the form attached as Schedule "A" to the Order Below is subject to this order.

e) Costs of the appeal may be spoken to by arrangement of counsel.

"J. G. Morley, J."
The Honourable Justice Morley