IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bang v. Kim,*
2023 BCSC 776

Date: 20230509
Docket: S187014
Registry: Vancouver

Between:

Sung Oh Bang (a.k.a. Bang Sung Oh a.k.a. Bang Sungoh)

Plaintiff

And

**Mi Kyung Kim (a.k.a. Kim Mi Kyung a.k.a. Kim Mikyung)
and Myungsook Lim**

Defendants

And

**Sung Oh Bang (a.k.a. Bang Sung Oh a.k.a. Bang Sungoh),
Younghoon Bang, Jiwon Bang, Jiyoon Bang and Jioh Bang**

Defendants by Counterclaim

Before: The Honourable Justice Branch

Reasons for Judgment on Costs

Counsel for Plaintiff and Defendants by Counterclaim:	M. Vesely T. Boyd
Counsel for Defendants:	D. J. Taylor T. Johnston, Articled Student
Written Submissions received on:	November 28, 2022, March 8 and 28, 2023
Place and Date of Judgment:	Vancouver, B.C. May 9, 2023

[1] I recently issued reasons on two applications brought in this real estate claim. These are reported at *Bang v. Kim*, 2022 BCSC 1893 (the "Reasons"). These are my supplementary reasons on costs. I will not repeat the facts set out in the Reasons and will use the same defined terms.

[2] The plaintiff and defendants by counterclaim ("PDCs") seek an order that costs be payable by the defendants jointly and severally as follows:

a) the plaintiff, Sung Oh Bang, be awarded costs of her application to strike the defendants' pleadings in any event of the cause; and

b) the defendants by counterclaim ("DCs"), Younghoon Bang, Jiwon Bang, Jiyoon Bang, and Jioh Bang be awarded costs of the application challenging jurisdiction over the Counterclaim, and for the steps taken in the Counterclaim itself, at Scale C, payable forthwith.

[3] The plaintiff brought an application to strike the defendants' amended response. This application was granted in part. The Court struck the unclean hands and set off defences, as well as certain paragraphs pleading evidentiary facts. The Court also gave the defendants leave to make certain necessary amendments.

[4] I find that there was divided success in relation to this first pleadings motion, such that each party should bear their own costs relating to same. The defendants argue that they were substantially successful as the plaintiff was only successful on two of several pleadings issues. That understates the degree of the PDCs' success given that other paragraphs were struck, and other aspects of the Response only survived because the Court was prepared to grant the defendants leave to amend. Furthermore, the exercise of determining substantial success is not a simple matter of counting the result on every one of the issues – the weight and importance of the various issues is key. Here, the clean hands defence carried an outsized weight, and the plaintiff was successful on that point. In sum, while I agree with the defendants that the PDCs were not substantially successful, neither were the defendants.

[5] The second application was brought by the DCs to strike the counterclaim on jurisdictional grounds. This application was successful and brings any Canadian proceeding against the DCs to an end. I agree that the DCs were substantially successful on this application. Where a claim and counterclaim raise discrete issues, costs may be apportioned between them: *Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2012 BCCA 196 at paras. 80-81; *Stano v. Stano*, 2014 BCSC 1933 at para. 18. I find that the issues raised against the DCs were sufficiently distinct such that this approach is reasonable.

[6] The defendants assert that the DCs' application was brought for an improper purpose, being to shield their misconduct from scrutiny. The result of the jurisdiction application belies that argument. The DCs were well within their rights to insist that the claim against them be brought in the proper jurisdiction.

[7] The defendants also assert that success was divided because the PDCs only succeeded on their *forum non conveniens* argument, and not on jurisdiction *simpliciter*. I find that this argument calls for an undue fine-tuning of the application's bases for relief. At its core, this was a motion alleging that the matter was not brought in a proper jurisdiction. The fact that the plaintiff succeeded based on one jurisdictional argument rather than the other is not enough to justify depriving the DCs of their costs: *Souhaibb v. Javed*, 2023 BCSC 584. Further, there was a great deal of overlap in the factual and legal underpinnings of each argument.

[8] In terms of whether any costs payable should be set at Scale C, I agree that the motions were of more than ordinary difficulty: s. 2(2), Appendix B of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]. The applications involved difficult issues of law and fact that took five court days to present. Furthermore, it is relevant that the jurisdictional application effectively determined the rights of the foreign parties, at least in relation to the Canadian litigation: s. 2(3), Appendix B of the *Rules*.

[9] In terms of allocating the five days of argument as between the two applications, I agree with the PDCs that it is reasonable to allocate 2.5 days to each.

The defendants complain that even attempting a division would be “an exercise in futility”. However, it is clear that the two motions were distinct – each could have been brought separately. There was a clean break during the course of submissions as between the applications. The two applications each engaged the rights of a different set of parties. Furthermore, it should be noted that the pleadings motion was necessarily determined based on the pleadings alone. Any evidentiary review went solely to the jurisdictional application.

“The Honourable Mr. Justice Branch”