

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bang v. Kim*,
2024 BCCA 174

Date: 20240503
Docket: CA48704

Between:

Sung Oh Bang

Appellant/
Respondent on Cross Appeal
(Plaintiff)

And

Mi Kyung Kim

Respondent/
Appellant on Cross Appeal
(Defendant)

And

Myungsook Lim

Respondent
(Defendant)

Before: The Honourable Chief Justice Marchand
The Honourable Madam Justice Saunders
The Honourable Madam Justice Bennett

Supplementary Reasons to: *Bang v. Kim*, 2024 BCCA 88,
Vancouver Docket CA48704.

Counsel for the Appellant:

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T. Boyd

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Cross Appeal:

D.J. Taylor

Place and Date of Hearing:

Vancouver, British Columbia
June 19, 2023

Place and Date of Judgment:

Vancouver, British Columbia
March 6, 2024

Written Submissions Received:

April 2 and 10, 2024

Place and Date of Supplementary Judgment

Vancouver, British Columbia
May 3, 2024

Supplementary Reasons of the Court

Summary:

An order to strike paragraphs of the factual pleadings in the amended response to civil claim said to be unnecessary in light of this court's reasons indexed as 2024 BCCA 88, is refused. The issue of unnecessary pleadings should be resolved by the trial court.

Supplementary Reasons for Judgment of the Court:

[1] On March 6, 2024, this court issued reasons for judgment *Bang v. Kim*, 2024 BCCA 88, allowing the appeal “to the extent of adding to the order a term striking para. 18 of the response to civil claim”, that paragraph being found within Part 3: Legal Basis. Paragraph 18 pleaded the defence of *ex turpi causa non oritur actio*.

[2] The appellant seeks, as a corollary, an order striking paras. 16–42 of Part 1 of the amended response to civil claim on the basis those paragraphs relate only to that plea of *ex turpi causa*, and are therefore unnecessary pleadings. The respondents take no position on the request.

[3] Of course unnecessary pleadings have no place in a notice of civil claim or a response to civil claim. However, the action has been returned to the Supreme Court for amendment, in any event, by the order of the Supreme Court and our refusal to interfere with the order respecting the pleadings on estoppel.

[4] In addition to an order striking para. 18 of Part 3 of the response to civil claim, the relief sought by the appellant asked that:

“(a) This appeal be allowed and the following parts of the decision of the chambers judge be set aside:

...

(ii) Declining to strike the related factual allegations at paragraphs 16–42 of Part 1 of the Amended Response”.

[5] The presentation of the appeal in the factums and the hearing, however, did not focus on paras. 16–42. Nor did the order appealed make specific reference to those paragraphs. An appeal to this court is from an order, and not from reasons for decision.

[6] Considering the several discrete defences that, in the Supreme Court of British Columbia, were rolled into the general dismissal of portions of the appellant's application without reference to specific factual pleadings, it is our view we should not, for the first time in this case, cull paragraphs of the amended response to civil claim. In the least, those paragraphs require inspection before they are struck, and we cannot say now whether they have any bearing on any remaining issues in the litigation. In our view, the fate of paras. 16–42 of Part 1 of the amended response to civil claim is best resolved by the Supreme Court of British Columbia.

[7] It remains open to the appellant to apply to the trial court to strike these paragraphs as unnecessary, given our order striking para. 18 of Part 3. We decline to strike further paragraphs.

“The Honourable Chief Justice Marchand”

“The Honourable Madam Justice Saunders”

“The Honourable Madam Justice Bennett”