

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Wang v. The Owners, Strata Plan
LMS2970,*
2024 BCCA 184

Date: 20240415
Docket: CA49758

Between:

Yi Wang

Appellant

And

**The Owners, Strata Plan LMS2970 and
Chao Wang**

Respondents

Before: The Honourable Madam Justice Fisher
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
February 29, 2024 (*Wang v. The Owners, Strata Plan LMS2970,*
Vancouver Docket L220173).

Oral Reasons for Judgment

The Appellant, appearing in person
(via videoconference):

Y. Wang

Counsel for the Respondent, Chao Wang:

M.J. Buchanan

Place and Date of Hearing:

Vancouver, British Columbia
April 15, 2024

Place and Date of Judgment:

Vancouver, British Columbia
April 15, 2024

Summary:

The applicant is subject to a vexatious litigant order which bars her from commencing any legal proceedings in this court without leave. She seeks leave to commence an appeal. Held: Application dismissed. In assessing a leave application made by a vexatious litigant, the court is not required to give extensive reasons. In this case, the applicant has failed to demonstrate that her proposed appeal is reasonably founded or arguable, or that the other criteria for leave have been met. Her submissions repeat the same meritless arguments already rejected twice below and, as such, are yet another example of the applicant repeatedly raising arguments which have previously been found to be devoid of merit, despite being warned not to do so.

[1] **FISHER J.A.:** The applicant, Yi Wang, is subject to a vexatious litigant order which bars her from commencing any legal proceedings in this Court without leave of a justice. She seeks leave to commence an appeal from an order of Justice Blok pronounced on February 29, 2024. That order dismissed an appeal which arose within the sale of land processes set out in the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78. As her proposed appeal is now out of time, should leave be granted, Ms. Wang also seeks an extension of time to commence it.

[2] The respondent, Chao Wang, opposes the application, submitting that Ms. Wang's arguments are completely devoid of merit and are the same or similar to arguments that have been repeatedly rejected both in the courts below and by this Court. He also seeks special costs against Ms. Wang.

Legal framework

[3] In applications for leave to commence an appeal brought by a vexatious litigant, the normal test for leave to appeal applies, but with some modification. Importantly, the primary factor is the merit of the appeal: *611481 BC Ltd. v. Graham Construction and Engineering (1985) Ltd.*, 2023 BCCA 414 (Chambers); *Pearlman v. Critchley*, 2012 BCCA 344 (Chambers), aff'd 2012 BCCA 398, leave to appeal to the SCC ref'd [2012] S.C.C.A. No. 527.

[4] The normal test for leave to appeal, set out in *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 (Chambers), is:

- 1) whether the point on appeal is of significance to the practice;
- 2) whether the point raised is of significance to the action itself;
- 3) whether the appeal is *prima facie* meritorious, or, on the other hand, whether it is frivolous; and
- 4) whether the appeal will unduly hinder the progress of the action.

[5] In assessing merit, the applicant must be able to show that the proceeding is “reasonably founded or arguable”: *Keremelevski v. British Columbia (Workers’ Compensation Board)*, 2019 BCCA 338 (Chambers) at para. 3, aff’d 2019 BCCA 428 at para. 4, leave to appeal to SCC ref’d [2019] S.C.C.A. No. 544. In addition, the court must be satisfied that the proposed appeal is not brought for an improper purpose or is otherwise a clear abuse of process. I agree with Justice Saunders in *611481 BC Ltd.* at para. 10, that the following guidance provided in *Gichuru v. Purewal*, 2023 BCCA 345, which addressed the appropriate approach to similar applications in the Supreme Court of British Columbia, applies, with appropriate modifications, to assessing the merits as well as the residual exercise of discretion:

[49] The result is this: where a vexatious litigant seeks leave to commence a new proceeding, the court must be convinced that the proposed proceeding is not doomed to fail and is not brought for an improper purpose or otherwise a clear abuse of process. Once the court is satisfied that the litigant has met those minimal requirements, the court may consider the totality of the circumstances to determine whether to exercise discretion in favour of granting leave. Where a serious injustice might result from a failure to allow the litigant to pursue the claim, discretion will invariably be exercised in favour of granting leave. On the other hand, where it is clear that a claim is weak, of no real importance, and uneconomical to litigate, discretion will almost certainly be exercised against granting leave.

[6] Moreover, in assessing a leave application by a vexatious litigant, the court is not required to provide extensive reasons. As this Court also said in *Gichuru*:

[29] ... A fundamental purpose of a vexatious litigant order is to prevent the unnecessary expenditure of judicial resources on vexatious litigation. That purpose would not be served if judges were expected to provide detailed judgments on baseless applications for leave.

Background

[7] While I do not intend to give detailed reasons, in light of the submissions made by both parties, I consider it appropriate to review to a limited extent the background leading up to this application.

The vexatious litigant order

[8] Ms. Wang was declared a vexatious litigant by Justice Butler on January 25, 2022, on application by The Owners, Strata Plan LMS 2970 (the “Strata”), one of the respondents to this matter: 2022 BCCA 56. In making the order, Justice Butler noted that Ms. Wang had demonstrated “incredible persistence” in bringing her claims against the Strata and had appealed costs orders “at every turn”. All of this, he said, led to a significant amount of costs being awarded against her which had grown out of minor disputes and was entirely disproportionate to the value of her claims: see paras. 22–23.

[9] Justice Butler recognized that Ms. Wang had raised arguments which had been found to be meritless in previous appeals, despite numerous warnings from this Court against her doing so. For example, in *Wang v. The Owners, Strata Plan LMS2970*, 2021 BCCA 277 (Chambers), the Court found that Ms. Wang had been “relentless” in her pursuit of the Strata as well as Chao Wang, the other respondent in this application. Justice Bennett noted that she had been unsuccessful “at every step of the way” and continued to bring frivolous arguments on costs applications previously dismissed by this Court: at para. 40. A similar warning was given by this Court in another action Ms. Wang commenced against the Strata and the Civil Resolution Tribunal (CRT), 2021 BCCA 416:

[24] I would only add, as a cautionary note to Ms. Wang, that the costs of litigation arising from the \$200 fine in these proceedings, and other proceedings to which we have been referred, have been disproportionate to the amount in issue, or any principles at stake. Despite its recovery of costs, the Strata Corporation has been obliged to spend time and effort in this litigation far beyond that warranted by its relatively minimal importance or value. Initiating further or other litigation may be regarded as vexatious conduct. I make this comment both to attempt to dissuade Ms. Wang from vexatious conduct, and so that it will be clear in further litigation, if there is

any, that Ms. Wang has been cautioned about potential misuse of the public resource that is the judicial system.

[10] Justice Butler therefore concluded that Ms. Wang’s actions, both generally and in this Court, bore “the hallmarks of a vexatious litigant”:

[30] ... She has brought repeated proceedings against the respondent, many of which have been entirely lacking in merit. She persists in making the same arguments and she rolls forward her arguments on issues she has lost into subsequent proceedings...

The underlying proceedings

[11] This dispute originates in a proceeding Ms. Wang brought against the Strata and Chao Wang before the CRT. Chao Wang is a resident of the strata complex and president of the strata council. Ms. Wang alleged that Chao Wang had terrorized her and her children and had vandalized her car and she asked the Strata to post a notice within the complex describing the vandalism and Chao Wang’s alleged responsibility for it. The Strata refused.

[12] A CRT adjudicator dismissed Ms. Wang’s claim: *Wang v. The Owners, Strata Plan LMS 2970*, 2018 BCCRT 473. Ms. Wang sought leave to appeal the CRT decision to the Supreme Court of British Columbia, but leave was denied: 2018 BCSC 2207. A further appeal to this Court was dismissed, with special costs being ordered against Ms. Wang as a consequence for making unfounded and scandalous allegations: 2020 BCCA 356. Also dismissed was an application for leave to appeal to the Supreme Court of Canada: 2021 CanLII 109586 (S.C.C.).

[13] On April 8, 2021, the special costs recoverable by Chao Wang were assessed by the Registrar of this Court at \$33,421.06: 2021 BCCA 150. Ms. Wang unsuccessfully sought to review that order, first by a justice and then by a division of the Court, and additional special costs were awarded to Chao Wang in the amount of \$2,500 for each application: 2021 BCCA 277 and 2021 BCCA 369. The total amount of costs awarded against Ms. Wang has since accumulated to an amount of approximately \$40,000.

[14] Chao Wang certified the cost awards through certificates of judgment, which were filed in the Land Title Office and registered against the title to Ms. Wang's strata unit. In April 2023, Chao Wang commenced the sale of land process under ss. 92 to 96 of the *Court Order Enforcement Act*. The first stage of that process is a "show cause" hearing where the court determines whether the land in question, or the interest of the judgment debtor, is liable for satisfaction of the judgment. The order which results from a "show cause" hearing, if granted, is a reference to the registrar to determine the judgment debtor's interest in the property. It is only at the third stage of the process where the court may make an order for sale.

[15] This application stems from an order made by Associate Judge Krentz after the "show cause" hearing, which directed the matter to move to the second stage of the process, the registrar's hearing: *Wang v. The Owners, Strata Plan LMS2970*, Vancouver Docket No. L220173 (B.C.S.C.). At that hearing, Ms. Wang objected to Chao Wang having standing to make the application on the basis that he had assigned his judgments to the Strata. The court did not accede to the objection, finding that there had not been a formal assignment of the judgments but rather an arrangement between Chao Wang and the Strata as to the payment of legal fees incurred by the Strata in opposing Ms. Wang's claims. The court also relied on the state of title certificates, which indicated Chao Wang as the judgment debtor for the judgments that were registered against the subject property. Ms. Wang was then given the opportunity to show cause why her property should not be sold to realize the judgments. The court found that Ms. Wang had provided no evidence or argument that would support an order that the matter not proceed further to the registrar's hearing. The order was made to proceed and special costs were assessed in favour of Chao Wang in the amount of \$2,500.00, to be added to the amount of the judgment owing.

[16] Ms. Wang appealed Associate Judge Krentz's order in the Supreme Court and her appeal was dismissed by Justice Blok. It is Justice Blok's order that she now seeks leave to appeal.

The decision below

[17] Ms. Wang’s appeal before Justice Blok seems to have concerned only the standing issue, and not the order directing the matter to proceed to the next stage of the process. She repeated the same arguments made before the associate judge, relying primarily on minutes of a meeting of the strata council, which noted that Mr. Wang had “assigned the \$38,421.06 awarded to him to the favor of LMS 2970”.

[18] Chao Wang and the Strata, on the other hand, relied on an affidavit sworn by a property manager associated with the Strata. In that affidavit, the affiant deposed that the Strata had chosen to cover Chao Wang’s legal expenses because it determined he had been targeted due to his position as a strata council member, but it did so on the condition that any costs awarded to Chao Wang, and which he was able to collect, be paid back to the Strata. The affiant also deposed that the Strata had never taken a formal assignment of Chao Wang's legal rights and that the judgments for costs remained in favour of Chao Wang.

[19] Justice Blok found the evidence put forward by Ms. Wang to be speculative given her lack of personal knowledge of the arrangements between the parties. He did not consider the fact that those arrangements “were noted in a certain way by somebody who kept minutes at a strata council meeting” to amount to proof on the issue. He considered the “better evidence” to be clearly that provided by the Strata in that they had explained exactly what the arrangement was: a cost reimbursement arrangement in which Mr. Wang was funded by the Strata on condition that he pay back any monies that he recovers. He concluded that this did not constitute an assignment, either legal or equitable, and therefore dismissed the appeal.

Discussion

[20] I have reviewed Ms. Wang’s written submissions as well as her oral submissions today, which repeat the same arguments rejected twice below about Chao Wang’s standing to commence the sale process under the *Court Order Enforcement Act*. I find no merit in her submissions.

[21] Justice Blok made no reviewable error in finding that the cost reimbursement arrangement between Chao Wang and the Strata did not constitute an assignment. In doing so, he properly relied on evidence from the Strata that explained the nature of the arrangement rather than a brief note in the minutes of a strata council meeting that did not. The same findings had been made by Associate Judge Krentz. Moreover, all the certificates of title in respect of Ms. Wang's property indicated that Chao Wang is a judgment creditor for the judgments that were registered against title and those judgments all showed Chao Wang as the registered owner of the judgments.

[22] Ms. Wang has failed to demonstrate that her proposed appeal is "reasonably founded or arguable" or that the other criteria for leave have been met. In addition, this application is yet another example of Ms. Wang's pattern of bringing repeat proceedings against the respondents and raising arguments which have been found to be meritless in previous appeals and previous lower court decisions, despite being warned not to do so.

[23] For these reasons, the application for leave is dismissed. It is therefore not necessary to address the application for an extension of time.

[24] With respect to costs, I am not prepared to grant special costs in this case because Ms. Wang was required to bring such an application. However, I will order ordinary costs in the amount of \$1,500.

"The Honourable Madam Justice Fisher"