

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wang v. Corsa Auto Gallery Ltd.*,  
2023 BCSC 382

Date: 20230130  
Docket: S203689  
Registry: Vancouver

Between:

**Runzhe Wang**

Plaintiff

And

**Corsa Auto Gallery Ltd., IZIAH ZIBRAAN BUKSH,  
and Lucas Wong**

Defendants

Before: The Honourable Justice Blake

## **Oral Reasons for Judgment** In Chambers

Counsel for the Plaintiff:

D.D. Way, appearing as agent  
for D. Chen

Counsel for the Defendant Lucas Wong:

J.F. Gray

For the Defendants Corsa Auto Gallery Ltd.  
and IZIAH ZIBRAAN BUKSH:

No appearance

Place and Date of Hearing:

Vancouver, B.C.  
January 19, 2023

Place and Date of Judgment:

Vancouver, B.C.  
January 30, 2023

[1] **THE COURT:** As these are oral reasons, I make the normal reservation that if a transcript is ordered, I may edit them where necessary and quote from the caselaw in more detail, but that the overall substance and result will not change.

## **I. INTRODUCTION**

[2] Lucas Wong is a named defendant in the within action. He seeks to set aside a default judgment order made October 8, 2020 (the “Default Judgment”), and a damages assessment order made August 9, 2021 (the “Damages Order”). He also seeks leave to file a response to civil claim and a counterclaim. Mr. Wong argues it would be a significant miscarriage of justice not to set aside the Damages Order and the Default Judgment and give him the opportunity to bring a fulsome defence to the claim advanced by the plaintiff.

## **II. BACKGROUND**

[3] In the fall of 2015, Mr. Wong began to work part-time for Mr. Buksh at a carwash company. Starting in late 2017 or early 2018, he began to assist Mr. Buksh in finding potential buyers for vehicles Mr. Buksh was selling out of his car dealership, the defendant Corsa Gallery Ltd. (“Corsa”). Mr. Wong met the plaintiff, Mr. Wang, when he responded to an ad Mr. Wong placed trying to help Mr. Buksh sell cars. Eventually, Mr. Wong also began to help Mr. Wang find potential buyers for cars Mr. Wang was trying to sell.

[4] The underlying action arises from an alleged agreement between Mr. Wang and Corsa to purchase two cars. Mr. Wang alleges he paid \$40,000 as a deposit for the two cars but he never received the cars, and in May 2019 he asked for the deposit to be returned. He alleges in June 2019 he received e-transfers returning \$3,000, and in July 2019 he entered into a settlement agreement with Mr. Buksh and Corsa whereby Mr. Buksh agreed to personally repay the sum of \$37,000 to Mr. Wang's spouse, as his agent. He claims against Corsa for, among other things, the breach of two deposit agreements between Mr. Wang and Corsa, and against Mr. Buksh, for breach of a settlement agreement. He claims damages resulting from alleged negligent misrepresentations as against Mr. Wong, specifically that

Mr. Wong advised him the carwash had a good reputation, and Corsa and Mr. Buksh were both creditworthy and trustworthy.

[5] Mr. Wong denies making the alleged negligent misrepresentations. Further, he argues when Mr. Buksh entered into the alleged settlement agreement with Mr. Wang, and agreed to release Mr. Buksh and Corsa, then Mr. Wang also released any and all potential claims against Mr. Wong. Finally, he says he sold a car for Mr. Wang, and Mr. Wang owed him a commission of \$350, which he withheld from Mr. Wong, telling him to get it from Mr. Buksh and to deduct it from the amount owing to Mr. Wang. He argues in obtaining the Damages Order, Mr. Wang effectively obtained double recovery for this \$350.

[6] The plaintiff filed his notice of civil claim on March 25, 2020, and an amended notice of civil claim on May 11, 2020. An affidavit of service was filed in which the plaintiff confirmed he served Mr. Wong with the amended notice of civil claim on June 21, 2020. Mr. Wong acknowledges service of an originating pleading, which he thinks was the amended notice of civil claim, although he no longer has the document. It is common ground that Mr. Wong was properly served.

[7] After Mr. Wong was served, he contacted his employer, Mr. Buksh, whom Mr. Wong says informed him he would take care of it, and told Mr. Wong not to respond. Mr. Wong deposes in his affidavit filed in support of his application that:

42. I assumed that this document was related to the issues between Mr. Buksh and the plaintiff, so I contacted Mr. Buksh by telephone. I told Mr. Buksh about the document I received and asked him what I should do. Mr. Buksh told me to leave it and not to respond, and that he would take care of it.
43. I had previously talked to Mr. Buksh about some other legal issues that he was having and he told me that he had five lawyers who all helped him out with different things. Attached as "Exhibit C" of this affidavit is all of the text messages that I could find between Mr. Buksh and me. Mr. Buksh deleted me from WeChat so I was not able to recover any WeChat messages with Mr. Buksh.
44. At the time I believed Mr. Buksh that Corsa and Mr. Buksh had a lawyer who was representing them in this case. I believed Mr. Buksh when he told me that he would take care of it and that I did not need to respond. I understood this to mean that his lawyer was handling it. I

did not receive any other documents around this time so I believed that Mr. Buksh had dealt with it as he told me he would.

45. I have never been involved in any sort of litigation before this. I thought that the case was being handled properly and that I did not need to do anything further because Mr. Buksh's lawyer was representing me.

[8] Mr. Wong took no further steps in defending the action brought as against him. He provides no corroborating evidence that Mr. Buksh advised him he would take care of it, and he did not need to respond. When asked if he could provide evidence from Mr. Buksh corroborating his affidavit, counsel advised that was not possible.

[9] Corsa and Mr. Buksh filed a response to civil claim, on their behalf, on June 18, 2020. They filed a notice of intention to act in person on November 4, 2020.

[10] The plaintiff obtained the Default Judgment against Mr. Wong on October 8, 2020, with damages and costs to be assessed.

[11] The plaintiff then filed an application on July 2, 2021, seeking orders that the proceeding continue as if no response to civil claim had been filed by the defendants Corsa and Mr. Buksh, judgment be granted to the plaintiff as against Corsa and Mr. Buksh, and a damages assessment be made against the three defendants in the amount of \$37,000 pursuant to Rule 9-7 of the *Supreme Court Civil Rules* B.C. Reg. 168/2009 [*Rules*]. While this notice of application identified the defendants in the "To" line, it is common ground Mr. Wong was not provided with notice of this application.

[12] In his affidavit sworn June 29, 2021, and relied upon at the hearing of his summary trial application on August 9, 2021, Mr. Wang deposed:

12. On or around July 18, 2019, I and Yifan Lu met with Buksh and Buksh agreed to repay the sum of \$37,000. I and Yifan Lu made an audio recording during the meeting. Attached hereto and marked as Exhibit "E" is a true recording of the meeting, which is stored in a USB drive.
13. To date, I am still owed of thirty-seven thousand dollars \$37,000 pursuant to the Deposit Agreements as I have not been refunded the Partial Payments.

14. I know of no fact that would constitute a defence to the claim.

[13] It was clear before the judge who heard the damages assessment application that default judgment had been obtained as against Mr. Wong, and Corsa and Mr. Buksh had been served with the notice of application. The Damages Order was made on August 9, 2021, granting judgment to the plaintiff as against the defendants, with damages assessed in the amount of \$37,000 and costs in the amount of \$480 with respect to the Default Judgment obtained by the plaintiff against Mr. Wong. The preamble to the Damages Order incorrectly contains the phrase, “and no one else appearing although duly served”, as it is common ground Mr. Wong was not served with the notice of application. No appeal was brought from the Damages Order.

[14] Mr. Wong did not receive notice of the Damages Order until over a year later, at the end of September 2022, when he was advised by his former landlord there was a notice posted on the front door at his previous address. On September 28, 2022, he was served with a number of court documents, including the Damages Order. Subpoena to Debtor proceedings have been commenced.

### **III. LEGAL PRINCIPLES**

[15] A defendant who has failed to file a response to civil claim is not entitled to service of subsequent applications: see *National Home Warranty Group Inc. v. Red Rose Appliances & Plumbing Ltd.*, 2018 BCSC 234 at para. 38 [*National Home Warranty*]; *Main Acquisitions Consultants Inc. v. Prior Properties Inc.*, 2022 BCCA 102 at paras. 27–32. Mr. Wong was a party to the within proceeding, but he was not a party of record.

[16] Pursuant to Rule 8-1(7) of the *Rules*, the plaintiff was not required to serve Mr. Wong with the notice of application which resulted in either the Default Judgment or Damages Order. Mr. Wong has no standing to seek a reconsideration of the Damages Order pursuant to Rule 22-1(3), nor does he seek such a reconsideration.

[17] I accept Mr. Wong was in default of his obligations to file a response to civil claim, and was not a party of record. As a result, pursuant to the *Rules*, he was not entitled to notice of the chambers application to assess damages.

[18] When an assessment of damages has been made, and it remains in place, this Court is prevented from setting aside a prior default judgment: *Port Alberni Shelter Society v. Literacy Alberni Society*, 2022 BCSC 239 at para. 20 [*Port Alberni*]; *Bassi v. Bassi*, 2013 BCSC 284 at paras. 55–56. A damages assessment is a final order, and once made, the court's jurisdiction, including its ability to set aside a default judgment order under Rule 3-8(11), is spent: *Port Alberni* at para. 21; *Bassi* at para. 54.

[19] In those circumstances, the court must first consider whether to exercise its inherent jurisdiction to set aside the Damages Order. Only if I find it is appropriate to do so is it then appropriate to consider whether to set aside the Default Judgment against Mr. Wong, applying the factors set out in *Miracle Feeds v. D. & H. Enterprises Ltd.* (1979), 10 B.C.L.R. 58 (Co. Ct.) at 61, 1979 CarswellBC 48 [*Miracle Feeds*].

[20] The court has the inherent jurisdiction to regulate its practice and procedures to prevent miscarriages of justice: *R & J Siever Holdings Ltd. v. Moldenhauer*, 2008 BCCA 59 at para. 14.

[21] Both parties agree this Court has the inherent jurisdiction to reconsider a damages assessment “on the basis that allowing the order to stand would amount to a miscarriage of justice”: *Port Alberni* para. 23. The test is an objective one. A party alleging a miscarriage of justice has the burden of proving that allegation on a balance of probabilities. Merely establishing the existence of an arguable case is insufficient to demonstrate a miscarriage of justice; rather, the test is whether a reasonable, well-informed member of the public would find allowing the damages assessment to stand to be shocking and unconscionable: *Port Alberni* at para. 26; *National Home Warranty* at paras. 42, 49.

[22] In *Lin v. Tang* (1997), 147 D.L.R. (4th) 577, 1997 CanLII 2675 (B.C.C.A.)

[*Lin*], Justice Huddart discussed the concept of miscarriage of justice and explained:

[61] Miscarriage of justice is a difficult concept. It is not simply unfairness as viewed by the party who perceives himself the victim of an unfair process. Every party is entitled to fair process, but there is nothing objectively unfair about the process in this case. Mr. Liao is a very well-educated person with considerable business experience. He told us in his oral submissions that he is a Certified General Accountant with a Master's degree in Business Administration. A lawyer advised him throughout the preliminary proceedings, including representing him on an unsuccessful Rule 18A application for dismissal of the action and successfully defending him on the respondent's application for a *Mareva* injunction in December 1994.

...

[64] In my view, miscarriage of justice means that which is not justice according to law. A miscarriage of justice will almost always be procedural. The blemish must be such as to make the judicial procedure at issue not a judicial procedure at all: *Robins v. National Trust Co. Ltd.*, [1927] 2 D.L.R. 97 (P.C.), aff'g 57 O.L.R. 46 (Ont. C.A.). There was no such blemish here.

[65] The *Rules of Court* are fair. Both parties are entitled to benefit from them. Mr. Liao terminated the services of his lawyer, filed a notice of his intention to act in person, changed his address for delivery, began to spend more and more time in New Brunswick, and thereafter ignored the process until he learned that a judgment had been entered against him. Still, he had the benefit of a fair hearing before Saunders J.

#### **IV. ANALYSIS**

[23] Mr. Wong must establish, on a balance of probabilities, that allowing the Damages Order to stand would be viewed by a reasonable, well-informed member of the public as “shocking and unconscionable”. The test is an objective one. Only if I find Mr. Wong has established this on a balance of probabilities must I then consider whether it is appropriate to then set aside the Default Judgment.

[24] Mr. Wong argues if the Damages Order is not set aside, a significant miscarriage of justice will occur. I will address his arguments in turn.

[25] First, Mr. Wong says his failure to file a response to civil claim was not blameworthy, and it was reasonable that he relied on Mr. Buksh's verbal representation that he would take care of it. I cannot agree. Accepting Mr. Wong's evidence that Mr. Buksh advised him not to worry, and he would deal with the notice

of civil claim, raises an issue as between those two parties. While Mr. Wong may have a claim against Mr. Buksh for a breach of that representation to him, that is an issue as between them. It is not an issue between Mr. Wong and the plaintiff, and it is not an issue before me on this application.

[26] Mr. Wong chose to rely on Mr. Buksh's statement, and did nothing else to follow up what was happening with the litigation. He took on no responsibility for ensuring the litigation was being resolved, nor that his interests were being properly protected. He adduced no evidence of asking Mr. Buksh for updates, or of asking a lawyer for advice. He remained wilfully blind to any subsequent events in the proceeding. While I realize he was an employee of Corsa, and relied upon his employer's statement, I nonetheless find Mr. Wong's failure to file a response to the plaintiff's amended notice of civil claim was a wilful action of his own choosing. As a result, he was a party to the proceeding, but not a party of record. In those circumstances, the plaintiff had no obligation to serve him with his application to assess the damages. I do not accept Mr. Wong's reliance upon Mr. Buksh's statement to him establishes, on a balance of probabilities, that allowing the Damages Order to stand would shock a reasonable, well-informed member of the public.

[27] I note that while it would have been preferable for the notice of application and the Damages Order to clearly note that Mr. Wong had not been served with the materials, this is a procedural irregularity and does not constitute grounds to conclude a miscarriage of justice has occurred. The judge who made the Damages Order was clearly advised that the Default Judgment had been obtained against Mr. Wong. That would only occur if Mr. Wong had failed to file his response to civil claim.

[28] Second, counsel for Mr. Wong says the application for the damages assessment was not made on notice to him, and she valiantly argues it was therefore an *ex parte* application at which the plaintiff was obliged to make full and



frank disclosure. Counsel says the plaintiff has the obligation to make full and frank disclosure and so he should have:

- a) put all of the WeChat messages between he and Mr. Buksh into evidence, as he says those messages undermine the allegations of misrepresentation made by the plaintiff; and
- b) disclosed that he owed Mr. Wong \$350 on account of an unpaid commission, which he says should have been set off as against any damages award made against the defendants.

Counsel argues that if the judge hearing the damages assessment application had known this evidence, she would not have granted the Damages Order, and goes so far as to argue the Damages Order was improper and it would be a miscarriage of justice to allow it to stand.

[29] Notwithstanding I heard lengthy arguments that Mr. Wong has a meritorious defence, and that the claim against him is weak, it is not appropriate to consider this argument unless I find that a miscarriage of justice has occurred, and it is then appropriate that I consider the factors to set aside the Default Judgment as set out in *Miracle Feeds*.

[30] Rule 3-8 provides for the process by which a party may obtain default judgment. The plaintiff obtained default judgment against Mr. Wong, and then proceeded, pursuant to Rule 3-8(13) to apply to the court for an assessment of the damages. Such an assessment is not an *ex parte* hearing. A party who files a response to civil claim becomes a party of record, and is entitled to notice of an assessment hearing. A party who does not file a response does not become a party of record, and so is not entitled to notice of an assessment hearing. By wilfully failing to file a response to civil claim, or ensuring that one was filed on his behalf, Mr. Wong never became a party of record. His failure to do so does not make the assessment an *ex parte* hearing, for the same reasons set out by Justice Macaulay in the *Matthes v. Manufacturers Life Insurance Company*, 2008 BCSC 6 at

paras. 52–58. For the same reasons, in these circumstances, the application for an assessment of damages was not equivalent to an *ex parte* hearing with the obligation for full and frank disclosure upon the applicant.

[31] Mr. Wong relies upon the decisions of *Hightime Investment Property Ltd. v. Bromley*, 2008 BCSC 1353 at paras. 184–186 and *Preet Excavating Ltd. v. HS Sidhu Holdings Ltd.*, 2016 BCSC 1585 at para. 11 as authority for the proposition that it would be a miscarriage of justice to allow the Damages Order to stand without a determination of the underlying issues on their merits. I find both cases are distinguishable from the one before me. *Hightime Investment Property Ltd.* dealt with an application to set aside a default judgment based on the *Miracle Feeds* factors, and not a consideration of the inherent jurisdiction of the court to set aside a damages assessment as a result of miscarriage of justice. *Preet Excavating Ltd.* dealt with the issue of a miscarriage of justice, but in circumstances where the defendant had a lawyer, and only as a result of illness that lawyer was unable to attend at the application to assess damages, and an adjournment sought by an articulated student was denied by the Master. Neither case stands for the proposition that at a damages assessment, a plaintiff has the obligation to make full and frank disclosure of the defendant's potential evidence and argument.

[32] With respect to Mr. Wong's argument that he had a valid counterclaim that ought properly to have been dealt with at the time the damages were assessed, he failed to bring such a counterclaim. He wilfully put himself in the position of a party in default, and was not a party of record. As such, the *Rules* are clear he was not entitled to notice of the chambers application for assessment of damages. As Justice Huddart set out in *Lin*, the *Rules* are fair, and both parties are entitled to benefit from them. If Mr. Wong had filed a response to civil claim he would have been a party of record, and would have been entitled to notice of all subsequent applications. The fact he chose not to does not operate to put a burden on Mr. Wang to put before the court all potential arguments Mr. Wong may have made in defence of the claim, nor of any potential counterclaim Mr. Wong may have theoretically chosen to bring on his own behalf. The *Rules* do not require a plaintiff to theoretically anticipate any

potential defence a defendant may bring, nor to put any evidence a defendant may potentially argue is relevant before the court. That is the sole obligation of a defendant. That is one of the bases of our adversarial system. Mr. Wong voluntarily chose not to participate in the legal process, and cannot now argue he should be allowed to mount a defence after the plaintiff has taken the proper steps set out in the *Rules* to obtain a damages assessment. He was not denied the right to be heard on what he says was a meritorious defence, but rather, he chose not to file a response to civil claim and so did not put himself in the position to defend his interests at the damages hearing. I find Mr. Wong only formed a desire to mount a defence after he realized that failing to respond to the claim against him had resulted in the Damages Order.

[33] I do not accept that a reasonable, well-informed member of the public would conclude Mr. Wong has objectively demonstrated a miscarriage of justice has occurred, merely because he now argues he has a meritorious defence and says further evidence should have been put before the chambers judge. Alleging now he has an arguable defence is not sufficient. Mr. Wong had the opportunity to participate in the litigation and to put forward his defence. He chose not to. Mr. Wong failed to defend his interests, and a reasonable person would not find a miscarriage of justice has occurred in those circumstances.

[34] In these circumstances, I find Mr. Wong has failed to prove on a balance of probabilities that allowing the Damages Order to stand, when he now argues he has a strong defence and evidence he wishes to put before the court, constitutes a miscarriage of justice. Further, I do not accept Mr. Wong's argument that it would be a miscarriage of justice to deny him the opportunity to set aside the Damages Order and the Default Judgment, without a proper consideration of the criteria set out in *Miracle Feeds*. To accept this argument would be to ignore the applicable jurisprudence that requires Mr. Wong to establish that a reasonable, well-informed member of the public would find allowing the damages assessment to stand to be shocking and unconscionable in these circumstances. He has failed to prove this on

a balance of probabilities. It is insufficient to meet this burden to merely argue that he has an arguable defence he now wishes to advance.

**V. CONCLUSION**

[35] As I find Mr. Wong has not met his burden of proving on a balance of probabilities that allowing the Damages Order to stand constitutes a miscarriage of justice, it is not necessary for me to consider whether to set aside the Default Judgment.

[36] Mr. Wong's application is dismissed, and the plaintiff is entitled to their ordinary costs of this application.

[37] Thank you very much, counsel.

“Blake J.”