

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Gong v. O'Neill*,  
2023 BCCA 27

Date: 20230119  
Docket: CA48591

Between:

**Quan Gong**

Appellant  
(Plaintiff)

And

**P. O'Neill**

Respondent  
(Defendant)

Before: The Honourable Mr. Justice Frankel  
(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated September 8, October 11, October 17, November 15, and December 5, 2022 (*Gong v. O'Neill*, Vancouver Registry S2110068.)

The Appellant, appearing in person:

Q. Gong

Counsel for the Respondent:

G.J. Roper

Place and Date of Hearing:

Vancouver, British Columbia  
January 6, 2023

Place and Date of Judgment  
with Reasons to Follow:

Vancouver, British Columbia  
January 6, 2023

Place and Date of Written Reasons:

Vancouver, British Columbia  
January 19, 2023

**Summary:**

*The applicant seeks an order extending the time for filing an appeal record in connection with her ostensible appeals of five decisions related to the same civil action. She appeals the dismissals of her application for a production order, her adjournment applications, and her injunction applications. She also appeals an order granting the defendant's application to dismiss her claim. Held: Application allowed in part. The application is dismissed with respect to four of the decisions on the basis that they are limited appeal orders in respect of which leave to appeal has not been granted. The applicant does have the right to appeal the order dismissing her claim and, within that appeal, she has the ability to challenge the mid-hearing refusal of an adjournment by the judge hearing the dismissal application. Her application for an extension of time to file an appeal record in that regard is granted.*

**Reasons for Judgment of the Honourable Mr. Justice Frankel:****Introduction**

[1] On January 6, 2023, I heard an application by Quan Gong for an order extending the time for the filing of an appeal record in connection with appeals she has filed from five decisions made by four judges of the Supreme Court of British Columbia in connection with a civil action she commenced against P. O'Neill. At the conclusion of that hearing, I dismissed the application as it relates to four of those decisions and extended the time for filing with respect to the remaining one, even though that time has not yet expired. I did so with reasons to follow. These are those reasons.

**Background**

[2] Mr. O'Neill is an arbitrator with the Residential Tenancy Branch who decided a residential tenancy dispute between Ms. Gong and her landlord in the landlord's favour. On November 22, 2021, Ms. Gong commenced an action against Mr. O'Neill.

[3] On February 8, 2022, Mr. O'Neill applied under Rules 9-5(1)(a), (b), and (d) of the *Supreme Court Civil Rules* [SCCR] to have that action dismissed on the basis it does not disclose a reasonable claim, is unnecessary and vexatious, and is an abuse of process. As required by SCCR Rule 8-1(15), Mr. O'Neill prepared an application record. That record was voluminous and included numerous documents

Ms. Gong had filed, 21 of which were affidavits she had sworn. The remaining documents had been filed by Mr. O'Neill and served on Ms. Gong. Mr. O'Neill served the index to the application record on Ms. Gong, as required by Rule 8-1(17).

[4] On August 30, 2022, Ms. Gong filed an application to enjoin a specific lawyer and a specific assistant in the law firm acting for Mr. O'Neill from communicating with her and to enjoin that law firm from serving her with documents by email.

[5] After receiving the index to Mr. O'Neill's application record, Ms. Gong applied for what I would call a production order, being an order requiring Mr. O'Neill to provide her with hardcopies of every document listed in the index. She also sought copies of several compact discs that were attached as exhibits to her affidavits. As I understand it, those discs were made by Ms. Gong. In addition, she sought an adjournment of the dismissal application, then set for September 12, 2022, until after she had received the hardcopies and discs.

[6] On September 8, 2022, Justice Baker dismissed Ms. Gong's production and adjournment applications. However, Mr. O'Neill's counsel agreed to provide Ms. Gong with an electronic version of the application record so she would have all of the documents in electronic form. Counsel also agreed to bring the compact discs he had to the hearing of the dismissal application.

[7] On September 9, 2022, Ms. Gong filed an application to enjoin any counsel acting for Mr. O'Neill from communicating with her by email and to enjoin them from serving any documents on her by email.

[8] The dismissal hearing did not proceed on September 12, 2022.

[9] On September 29, 2022, Ms. Gong filed an application, returnable on October 11, 2022, seeking to have the dismissal application, which had been reset for October 12, 2022, adjourned pending an appeal from Baker J.'s orders.

[10] On October 6, 2022, Ms. Gong filed a notice of appeal in Form 1, seeking leave to appeal Baker J.'s orders. By virtue of Rule 13 of the *Court of Appeal Rules*,

B.C. Reg. 187/2022 [COAR] a party seeking leave to appeal must file a notice of application in Form 4 and an application book not more than 30 days after filing their notice of appeal.

[11] On October 11, 2022, Ms. Gong filed an application, returnable that day, seeking to adjourn the dismissal application set for the next day. Justice Gropper dismissed that application and also the one Ms. Gong had filed on September 29, 2022.

[12] When the dismissal application came on before Justice Forth on October 12, 2022, Ms. Gong unsuccessfully sought an adjournment. After Mr. O'Neill's counsel completed his submissions, Forth J. adjourned the proceeding to November 15, 2022, to accommodate Ms. Gong.

[13] On October 17, 2022, Justice Tammen heard and dismissed Ms. Gong's injunction applications filed on August 30, 2022, and September 9, 2022.

[14] On November 1, 2022, Ms. Gong filed a notice of application in Form 1 seeking an extension of time with respect to filing the material needed to advance an application for leave to appeal Baker J.'s orders. That application was never pursued.

[15] On November 14, 2022, Ms. Gong filed an application, returnable that day and without notice to Mr. O'Neill, seeking to adjourn the continuation of the dismissal application hearing. A master adjourned the application to the next day before Forth J.

[16] When proceedings resumed on November 15, 2022, Forth J. refused to adjourn. She completed the hearing and reserved judgment.

[17] On December 5, 2022, Forth J. released reasons for judgment granting the dismissal application. Ms. Gong's notice of civil claim was struck and her action dismissed: 2022 BCSC 2119.

[18] On December 12, 2022, Ms. Gong filed an “amended” notice of appeal in Form 1. In the “Leave Not Required” section of that notice, she states she is appealing orders made by Baker J. (September 8, 2022), Gropper J. (October 11, 2022), Tammen J. (October 17, 2022), and Forth J. (November 15 and December 5, 2022).

[19] COAR Rule 23(1) requires an appellant to file and serve an appeal record not more than 60 days after filing a notice of appeal or, if leave to appeal is required, not more 60 days after leave is granted.

[20] On December 28, 2022, Ms. Gong filed a notice of application in Form 4, seeking an “extension of time to file appeal record” with respect to all the orders listed in her amended notice of appeal.

### **Do Any of the Orders Being Challenged Require Leave to Appeal?**

[21] Ms. Gong’s position is that none of the orders set out in her amended notice of appeal require leave to appeal, i.e., they are appealable as of right. I disagree. As I will explain, the only appeal presently before this Court is from the order made by Forth J. on December 5, 2022.

[22] By virtue of s. 13(2)(a) of the *Court of Appeal Act*, S.B.C. 2021, c. 6 what are known as “limited appeal orders” require leave to appeal. Section 1 of that *Act* provides that these are orders are prescribed in the COAR. Section 11 of those *Rules* reads, in part:

For the purposes of the definition of "limited appeal order" in section 1 of the Act, the following orders are prescribed as limited appeal orders:

- (a) an order granting or refusing relief for which provision is made under any of the following Parts or rules of the Supreme Court Civil Rules:
  - (i) Rule 3-7(22) [order for particulars];
  - (ii) Part 5 [Case Planning];
  - (iii) Part 7 [Procedures for Ascertaining Facts], other than Rule 7-7(6) [application for order on admissions];
  - (iv) Rule 9-7(11), (12), (17) or (18) [adjournment or dismissal, preliminary orders, orders, and right to vary or set aside order];

- (v) Part 10 [Property and Injunctions];
  - (vi) Part 11 [Experts];
  - (vii) Rule 12-2 [Trial Management Conference];
  - (viii) Rule 18-1 [Inquiries, Assessments and Accounts];
  - (ix) Rule 21-7 [Foreclosure and Cancellation];
  - (x) Rule 22-1(4) [evidence on an application];
- ...
- (e) an order granting or refusing an adjournment or an extension or a shortening of time;

[23] Justice Baker’s order dismissing the production application is a limited appeal order under *COAR* s. 11(a)(x) because it refused relief under *SCCR* 22-1(4)(c). The latter rule provides that, in a chambers proceeding, a judge may “give directions required for the discovery, inspection or production of a document or a copy of a document”. Her refusal of an adjournment is a limited appeal order under *COAR* s. 11(e).

[24] Justice Gropper’s refusal to grant an adjournment is also a limited appeal order under *COAR* s. 11(e).

[25] Justice Tammen’s orders are limited appeal orders under *COAR* s. 11(a)(v) because they dismissed applications for injunctive relief falling under Part 10 of the *SCCR*. More specifically, they refused applications for pre-trial injunctions falling under Rule 10-4.

[26] Standing alone, Forth J.’s November 15, 2022 refusal of an adjournment is a limited appeal order. On the other hand, her December 5, 2022 order granting Mr. O’Neill’s dismissal application is not a limited appeal order because it disposed of Mr. Gong’s action; it is appealable as of right. Because the November 15, 2022 refusal of an adjournment occurred during the hearing of the dismissal application, it can be raised as a ground of appeal in the appeal from the December 5, 2022 order.

**What, If Any, Extensions Should be Granted?**

[27] Ms. Gong’s inclusion of the orders made by Baker, Gropper, and Tammen JJ. in the “Leave Not Required” section of her amended notice of appeal is meaningless; they are all limited appeal orders in respect of which leave to appeal has not been granted. As appeals from those orders are not before this Court, there is no basis on which Ms. Gong can file material for the purpose of perfecting such appeals. Accordingly, her application for an extension of time to file an appeal record with respect to them is dismissed.

[28] The appeal from Forth J. stands on a different footing. Ms. Gong has a right to appeal the December 5, 2022 order granting Mr. O’Neill’s dismissal application and, within that appeal, the ability to challenge Forth J.’s November 15, 2022 refusal of an adjournment. To that extent the amended notice of appeal is valid.

[29] Mr. O’Neill accepts that by reason of the amended notice of an appeal, an appeal from Forth J.’s December 5, 2022 order is properly before this Court. As that appeal was initiated on December 12, 2022, Ms. Gong has until February 10, 2023, to file the appeal record. However, in light of the fact she acts on her own behalf, Mr. O’Neill agreed to her being given some additional time to complete that task.

**Disposition**

[30] It is for these reasons that I:

- (a) dismissed the application to extend the time for filing an appeal record with respect to appeals from the orders of Baker J. (September 8, 2022), Gropper J. (October 11, 2022), Tammen J. (October 17, 2022), and Forth J. (November 15, 2022);
- (b) extended the time for filing an appeal record with respect to the appeal from the order of Forth J. (December 5, 2022) up to and including March 3, 2023; and
- (c) ordered costs of this application be costs in the appeal from Forth J.’s order.

[31] I also dispensed with the need for Ms. Gong to sign the formal order in regard to this matter.

“The Honourable Mr. Justice Frankel”