

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Wang v. The Owners, Strata Plan LMS  
2970,*  
2023 BCCA 227

Date: 20230524  
Docket: CA47723

Between:

**Yi Wang**

Appellant  
(Petitioner)

And

**The Owners, Strata Plan LMS 2970**

Respondent  
(Respondent)

Before: The Honourable Madam Justice Bennett  
The Honourable Mr. Justice Fitch  
The Honourable Mr. Justice Grauer

On appeal from: An order of the Supreme Court of British Columbia, dated  
August 4, 2021 (*Wang v. The Owners Strata Plan LMS 2970*, 2021 BCSC 1780,  
Vancouver Docket S1912898).

## Oral Reasons for Judgment

The Appellant, appearing in person  
(via videoconference):

Y. Wang

No one appearing on behalf of the  
Respondent

Place and Date of Hearing:

Vancouver, British Columbia  
May 24, 2023

Place and Date of Judgment:

Vancouver, British Columbia  
May 24, 2023

**Summary:**

*This appeal arises from an order allowing the appellant's petition for judicial review but ordering each party bear their own costs. The appellant appeals only the costs aspect of the order, but did not file an application for leave. Held: the appeal is from a limited appeal order, which requires leave. As the proposed appeal does not meet the criteria for granting leave, leave would be denied. It is devoid of merit and raises no issues of importance. However, as the appellant declines to apply for leave, the appeal is quashed and her application for relief under the Constitutional Question Act is dismissed.*

[1] **GRAUER J.A.:** In her appeal, the appellant maintains that the judge below erred in ordering that the parties bear their own costs, notwithstanding that the appellant succeeded in her application for judicial review of a decision of the Civil Resolution Tribunal ("CRT").

[2] The appellant takes the position that leave is unnecessary because she is bringing an application under Section 8(2)(b) of the *Constitutional Question Act, R.S.B.C. 1996, c. 68* and has given notice of application to the Attorney General of Canada and British Columbia. She asserts that depriving her of her costs amounts to imposing cruel and unusual punishment that is grossly disproportionate in the circumstances, contrary to s. 12 of the *Charter*.

[3] That application, however, is one of the grounds on which the appellant seeks to set aside the judge's order. That order remains an order in respect of costs only. It follows that it is a "limited appeal order" as defined by R. 11 of the *Court of Appeal Rules*, B.C. Reg. 120/2022:

## Limited appeal orders

11 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:

...

(f) an order in respect of costs or security for costs, if the only matter being appealed is in respect of costs or security for costs;

[4] Accordingly, the appellant cannot bring her appeal without leave: *Court of Appeal Act*, S.B.C. 2021, c. 6, s. 13(2)(a). The appellant, who is unrepresented, did not file an application for leave to appeal. The registry advised the appellant that we could not hear her appeal in the absence of leave, but that, in the interests of finality,

we were prepared to hear submissions as to why leave should be granted, and, if we granted leave, to hear her appeal. Otherwise, the only recourse would be to quash the appeal as a nullity: *Rabey v. Bowen*, 2022 BCCA 148.

[5] Before us the appellant continues to assert that leave is unnecessary.

[6] The background is as follows.

[7] The appellant is the sole owner of a strata lot in the respondent Strata. In 2014, the Strata Council decided that the carpeting in the hallways needed to be replaced and, in 2015, a budget was approved. Upgrades began. In late 2016, the appellant formed the view that the Council had failed to obtain the necessary approval from the owners, and sought to have members of the Strata Council held personally liable for the costs that had been expended on the upgrades.

[8] In April 2019, the appellant commenced a dispute before the CRT. The CRT dismissed her complaint on the ground that it was time-barred, concluding that she had discovered the issue more than two years before she commenced proceedings. The CRT additionally accepted late evidence from the respondent, finding that it did not cause any prejudice to the appellant.

[9] The appellant then sought judicial review of the CRT's decision.

[10] In reasons indexed at 2021 BCSC 1780, Justice Skolrood, then of the Supreme Court, allowed the appellant's petition for judicial review. He found that the CRT properly exercised its discretion to admit the respondent's late evidence and that there was no basis for the court to interfere (at para. 23). On the limitations issue, however, the judge found that it was not possible to discern the legal basis upon which the tribunal member reached the decision that the claim was time-barred. Accordingly, applying a correctness standard, he concluded that the decision to dismiss the claim could not stand (at paras. 27, 32), and remitted the matter to the CRT for reconsideration.

[11] The judge then determined that the appellant and the respondent strata would each bear their own costs. It is from this conclusion that the appellant seeks to appeal. The judge stated, at para. 37:

[37] In the normal course, the petitioner would be entitled to her costs as the successful party. However, in light of the various ill-conceived arguments she has advanced and the serious, yet unfounded, allegations she has made against both the strata council and the tribunal member, I decline to award her costs. Each of the petitioner and the respondent will therefore bear their own costs. No costs will be awarded to or against the CRT.

[12] In her appeal, the appellant alleges that the judge erred in declining to award her costs by taking into account what the judge described as ill-conceived arguments and serious but unfounded allegations made by the appellant. The appellant further says that the judge infringed her rights under s. 12 of the *Charter* by imposing a cruel and unusual punishment in his order that is grossly disproportionate in the circumstances.

[13] If the appellant applied for leave, she would bear the onus of satisfying the criteria for granting leave. These are well-known, and are set out in a number of cases including, *Goldman, Sachs & Co. v. Sessions*, 2000 BCCA 326 at para. 10. They include:

- 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.

[14] The overarching concern is the interests of justice: *Hanlon v. Nanaimo (Regional District)*, 2007 BCCA 538 at para. 2.

[15] As was noted in *Neufeld v. Foster*, 2000 BCCA 485 at paras. 14–15 (Chambers), an order for costs is discretionary, and therefore subject to limited appellate review. Leave to appeal an order for costs is generally not granted unless

a question of principle is involved. See also *Gichuru v. Pallai*, 2019 BCCA 282 (Chambers).

[16] Ms. Wang’s proposed appeal is of no significance to the profession, and of no significance to the action itself. That action is over. The grounds she raises do not extend beyond the parameters of this particular case.

[17] Turning to the merits, I observe that the grounds of appeal articulated by the appellant raise no question of principle and are devoid of merit. It was open to the judge in his discretion to consider and weigh the nature of the arguments and allegations made by the appellant in deciding the question of costs. The appellant has failed to demonstrate any error in his assessment of those arguments and allegations.

[18] With respect to the appellant’s *Charter* argument, it is well established that the *Charter* does not apply to judicial orders issued in a civil dispute between private parties: *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 SCR 573; *A.B. v C.D.*, 2020 BCCA 11 at para. 203. Moreover, her argument has no air of reality; the values recognized by s. 12 of the *Charter* are not engaged in the circumstances of this case.

[19] I would therefore dismiss her application for relief under the *Constitutional Question Act*.

[20] In my view, the proposed appeal raises no question of principle and has no prospect of success. In all the circumstances, it would not be in the interests of justice to allow it to proceed. Had the appellant brought a proper application for leave to appeal, I would dismiss it. She has however, declined to do so. Accordingly, I would quash the appeal.

[21] **BENNETT J.A.:** I agree.

[22] **FITCH J.A.:** I agree.

[23] **BENNETT J.A.:** The application in relation to the *Constitutional Question Act* notice is dismissed and the appeal is quashed.

“The Honourable Mr. Justice Grauer”