

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Gong v. Zhang*,
2023 BCCA 462

Date: 20231127
Dockets: CA47895; CA48499; CA48591

Docket: CA47895

Between:

Quan Gong

Appellant
(Plaintiff)

And

Yu Yi Zhang

Respondent
(Defendant)

- and -

Dockets: CA48499; CA48591

Between:

Quan Gong

Appellant
(Plaintiff)

And

P. O'Neill

Respondent
(Defendant)

Before: The Honourable Justice MacKenzie
The Honourable Justice Dickson
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia,
dated December 5, 2022 (*Gong v. O'Neill*, 2022 BCSC 2119,
Vancouver Docket S2110068).

- and -

On an application to vary: Orders of the Court of Appeal for British Columbia, dated January 6, 2023 (*Gong v. O'Neill*, 2023 BCCA 27, Vancouver Docket CA48591); January 11, 2023 (*Gong v. O'Neill*, Vancouver Docket CA48499); and May 10, 2023 (*Gong v. Zhang*, 2023 BCCA 235, Vancouver Dockets CA47895, CA48499, CA48591 and CA48722).

Oral Reasons for Judgment

No appearance by the Appellant

No appearance by the Respondent,
Yu Yi Zhang

Counsel for the Respondent, P. O'Neill:

G.J. Roper

Place and Date of Hearing:

Vancouver, British Columbia
November 27, 2023

Place and Date of Judgment:

Vancouver, British Columbia
November 27, 2023

Summary:

This judgment collectively addresses an appeal from an order striking a notice of civil claim filed by the appellant against the respondent, Mr. O’Neill, and five applications to review orders of single justices of this Court. The review applications arise from (1) the aforementioned civil action and (2) a related residential tenancy dispute in respect of premises rented to the appellant by the respondent, Ms. Zhang. In each of these matters, the appellant’s submissions are unfocused, make incomprehensible arguments and are at times scandalous. Held: Appeal and each review application dismissed. In the appeal, the appellant fails to identify any reviewable error. It is dismissed substantially for the reasons of the chambers judge. Dismissal of the appeal renders two of the review applications moot. In respect of the other three review applications, the appellant fails to identify any error warranting interference by a division of this Court. The review applications are therefore dismissed.

[1] **MACKENZIE J.A.:** Ms. Gong did not appear this morning for the hearing of these matters. She had emailed the registry seeking an adjournment this morning. The Deputy Registrar advised her to appear before the Court to seek the adjournment. Ms. Gong declined to appear before the Court.

[2] Mr. Outerbridge, the Registrar, had advised her on September 12, 2023, that “I have fixed the above-noted dates [including today’s date, November 27, 2023]. It is important that you attend Court on these dates, as orders could be made in your absence if you fail to do so”. The Court is doing that.

[3] We proceeded in Ms. Gong’s absence, having read all the filed materials for this appeal and the review applications. We have proceeded on the basis of that written material and Mr. Roper’s submissions.

[4] This judgment addresses three files that collectively include one appeal and five applications made pursuant to s. 29 of the *Court of Appeal Act*, S.B.C. 2021, c. 6 [Act], to vary or cancel orders of single justices of this Court (the “review applications”).

[5] We will first describe the three files, then provide a brief background to the appeal and the review applications, and finally, we will specifically address them.

[6] The three files are as follows:

CA48591 – *Gong v. O’Neill*

- An appeal from the order of Justice Forth made December 5, 2022, striking Ms. Gong’s notice of civil claim against the respondent, Mr. O’Neill (*Gong v. O’Neill*, 2022 BCSC 2119).
- A review of Justice Frankel’s order made January 6, 2023, dismissing Ms. Gong’s application for an order extending the time to file an appeal record with respect to four appeals she filed from decisions by judges of the Supreme Court of British Columbia in connection with her civil action against Mr. O’Neill (*Gong v. O’Neill*, 2023 BCCA 27).
- A review of Justice Skolrood’s order made May 10, 2023, dismissing Ms. Gong’s “no fee” application in CA48591 (*Gong v. Zhang*, 2023 BCCA 235).

CA48499 – *Gong v. O’Neill*

- A review of Justice Bennett’s order made January 11, 2023 (*Gong v. O’Neill* (11 January 2023), CA48499 (Chambers)), dismissing Ms. Gong’s application for an extension of time to file the application book for her application for review of Justice Horsman’s order made October 18, 2022, refusing leave to appeal an interim order made in her civil action against Mr. O’Neill (*Gong v. O’Neill*, 2022 BCCA 359).
- A review of Justice Skolrood’s order made May 10, 2023, dismissing Ms. Gong’s “no fee” application in CA48499 (*Gong v. Zhang*, 2023 BCCA 235).

CA47895 – *Gong v. Zhang*

- A review of Justice Skolrood’s order made May 10, 2023, dismissing Ms. Gong’s application to remove an appeal from the inactive list (*Gong v. Zhang*, 2023 BCCA 235).

Background

[7] This appeal and the review applications arise from: (1) a residential tenancy dispute in respect of premises the respondent, Ms. Zhang (the “landlord”), rented to Ms. Gong; and (2) a civil action commenced by Ms. Gong against the respondent, Mr. O’Neill, a residential tenancy arbitrator for the Residential Tenancy Branch (“RTB”).

[8] A useful summary of the history of the proceedings (both the tenancy dispute and the civil action) is set out in the reasons for judgment of Justice Forth: see 2022 BCSC 2119 at paras. 6–24. A brief overview of the relevant background is also warranted here.

[9] The tenancy at issue commenced in October 2019. In April 2021, after multiple cooking incidents at the premises, at least one of which resulted in a fire, the landlord issued Ms. Gong a “one-month notice to end tenancy” pursuant to the *Residential Tenancy Act*, S.B.C. 2002, c. 78, alleging that Ms. Gong was jeopardizing the health and safety of other occupants in the building, putting the property at risk, and causing damage to the property.

[10] Ms. Gong disputed the notice to end tenancy before the RTB. On October 1, 2021, Mr. O’Neill dismissed Ms. Gong’s application disputing the notice to end tenancy and ordered her to deliver full vacant possession of the rental unit to the landlord.

[11] Later that month, Ms. Gong filed a petition for judicial review of that decision and several other related decisions, including three made by Mr. O’Neill. On November 3, 2022, Justice Warren of the Supreme Court of British Columbia heard the judicial review petition and delivered oral reasons for judgment the same day, dismissing it: *Gong v. Zhang* (3 November 2022), Vancouver S218954 (BCSC).

[12] In light of certain circumstances which had unfolded since Mr. O’Neill’s substantive decision of October 1, 2021, Justice Warren concluded the application for judicial review was moot:

[24] ... The October 1st decision dismissed the tenant's application and ordered her to deliver up vacant possession of the rental unit within two days of being served. On October 7, 2021, the landlord served an order for possession. The landlord filed a writ of possession on or about October 25, 2021, and a bailiff enforced the writ of possession on October 28, 2021. The tenant was removed and she has not resided in the unit since then.

...

[32] ... the application for judicial review is moot. The petitioner is no longer residing in the premises. If she was successful on this petition, the RTB decision or decisions and any accompanying order(s) would be set aside. However, there is no longer a tenancy in place. No other relief is sought. Accordingly, the petition serves no practical purpose.

[13] Nonetheless, and perhaps in an effort to assure Ms. Gong that she had been heard, she went on to explain why she would have dismissed the petition on its merits, finding there was no unfairness to Ms. Gong and the decisions reached by the RTB were not patently unreasonable.

[14] On October 20, 2023, for reasons indexed at 2023 BCCA 424, this Court dismissed Ms. Gong's appeal from Justice Warren's order dismissing the petition for judicial review.

[15] As noted above, in addition to seeking judicial review of his decisions, Ms. Gong also commenced a civil action against Mr. O'Neill in November 2021. Her claim was dismissed by Justice Forth on December 5, 2022. It is the civil action from which the majority of the issues discussed in this judgment emanate.

[16] I now turn to address the three files of this Court that were heard together today, November 27, 2023.

CA48591 – Gong v. O'Neill

[17] This file involves the appeal from Justice Forth's dismissal of the civil action Ms. Gong filed against Mr. O'Neill (indexed at 2022 BCSC 2119), and two applications pursuant to s. 29 of the *Act* to review orders of Justices Frankel (indexed at 2023 BCCA 27 (Chambers)) and Skolrood (indexed at 2023 BCCA 235 (Chambers)).

The Appeal from Justice Forth's Order (2022 BCSC 2119)

[18] It is apparent from the procedural history, and from the nature of the claim itself, that Ms. Gong brought the civil claim against Mr. O'Neill because she was dissatisfied with his decisions in the residential tenancy dispute. Justice Forth aptly described Ms. Gong's amended notice of civil claim as alleging the following against Mr. O'Neill:

[57] The amended notice of civil claim is difficult to follow but on my reading of it, the following allegations are made against the defendant:

- a) The defendant deleted evidence, allowed the landlord to slander the plaintiff, did not allow the plaintiff to respond, and used the landlord's lies;
- b) The defendant maliciously "fabricated charges of nothing" by warning the plaintiff not to interrupt and disrupt the landlord at the next hearing;
- c) At the hearing on September 24, 2021, the defendant excluded the plaintiff and ended the hearing;
- d) Under the heading of Perjury, the plaintiff claims that the defendant, the landlord, and two Vancouver Police department ("VPD") officers conducted an illegal eviction by "violence, robbing, [and] stealing";
- e) The defendant worked with other arbitrators to support his lies and defamation;
- f) The defendant used the landlord to persecute the plaintiff in the way the hearings were designed;
- g) The defendant has "exceeded defamation, making perjury" and has been involved in "criminal conspiracy";
- h) The defendant has been involved in:
 - i. "Directly or indirectly depriving the right that the plaintiff applied for review at the RTB";
 - ii. "Directly or indirectly destroying evidence that the plaintiff reviewed on Oct[ober] 7, 2021";
 - iii. "Indirectly threatening";
 - iv. "Indirectly infection virous and poison";
 - v. "Indirectly tracking"; and
 - vi. "Indirectly murder".

[19] As Mr. O'Neill summarizes in the opening statement of his factum, Ms. Gong alleges he has perpetrated against her a campaign of defamation, lies and

persecution as part of a “Vancouver black society” and in furtherance of an “eviction business conducted for the Real Estate market and housing investors”. She extended this alleged conspiracy to include judges and court staff of both the Supreme Court of British Columbia and this Court.

[20] On February 8, 2022, Mr. O’Neill filed a notice of application pursuant to R. 9-5 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR] to strike Ms. Gong’s amended notice of civil claim on the basis that the pleadings did not disclose a reasonable claim and were frivolous, vexatious and an abuse of the court’s process. Alternatively, Mr. O’Neill applied under Rules 9-6(4) and (5)(b) of the SCCR for a summary judgment that the action be dismissed as not raising a genuine issue for trial.

[21] On October 12, 2022, Justice Forth heard the dismissal application in chambers, but adjourned it to November 15, 2022, to provide Ms. Gong, who represented herself at the hearing, time to prepare a response. On November 15, 2022, the judge dismissed Ms. Gong’s application to further adjourn, and on December 5, 2022, she dismissed the claim. The judge granted the respondent’s application, concluding that the action disclosed no reasonable claim, was vexatious, unnecessary and an abuse of process. She also dismissed the claim as disclosing no genuine issue for trial: at paras. 123–124.

[22] Justice Skolrood concisely summarized the judgment of Forth J. in his reasons (2023 BCCA 235 (Chambers)) dismissing Ms. Gong’s “no fee” application in CA48591 pursuant to Rule 85 of the *Court of Appeal Rules*, B.C. Reg. 120/2022 [Rules]:

[41] Briefly, the application before Forth J. was brought by Mr. O’Neill, pursuant to R. 9-5 of the *Supreme Court Civil Rules*, to have Ms. Gong’s notice of civil claim struck as disclosing no reasonable cause of action (R. 9-5(1)(a)), as being unnecessary and vexatious (R. 9-5(1)(b)), and as being an abuse of process (R. 9-5(1)(d)). Justice Forth concluded that it was plain and obvious that the claims against Mr. O’Neill offended all three Rules: at para. 90. She noted that it was unclear what discrimination it is that Ms. Gong suffered at the hands of Mr. O’Neill as alleged, and it was unclear what conspiracy was alleged to have taken place between Mr. O’Neill and Ms. Zhang: at paras. 93–94. She additionally found that Ms. Gong failed to

provide any particulars as to what defamatory statements were made by Mr. O'Neill: at para. 97.

[42] Justice Forth then considered whether Ms. Gong should be permitted to further amend her pleadings. She noted that where there are fundamental deficiencies in the pleadings, the pleadings should be struck rather than allowing an amendment: at para. 106, citing *H.M.B. Holdings Limited v. Replay Resorts Inc.*, 2019 BCSC 1138 at paras. 4, 57–65, aff'd 2021 BCCA 142. She therefore found that the appropriate remedy was to strike the pleadings and dismiss the action against Mr. O'Neill: at para. 107.

[43] Justice Forth finally considered, in the alternative, whether the claim should be dismissed under R. 9-6(5)(b) and concluded that Ms. Gong had no genuine issue respecting the alleged claims for perjury, discrimination, and conspiracy, and that the defence of absolute privilege operated to protect Mr. O'Neill from any claim of defamation: at para. 122. Justice Forth was therefore satisfied that there was no genuine issue for trial and dismissed the claim under R. 9-6(5)(a).

[23] The hearing before Justice Forth was particularly challenging, in part for the reasons she described this way:

[37] I note that it was a very challenging hearing. The plaintiff continually interrupted counsel during his submissions. She refused to abide by my direction that she stop speaking, sit down, and listen. She claimed that she did not understand English and did not have a copy of the materials. I took the morning recess so that a copy of the notice of application could be made for her. A copy of the notice of application was provided to her.

[38] At one point she simply refused to stop talking so I stood down the proceeding and walked out. While I was outside of the courtroom, the plaintiff left the courtroom. I returned and I continued to listen to counsel's submissions. About 30 minutes later, the plaintiff appeared with three sheriffs. She again started to interrupt counsel's submissions and would not sit down until instructed to do so by a sheriff.

[24] Ms. Gong commenced this appeal as of right almost immediately after Justice Forth released her reasons for judgment.

Discussion

[25] In her 45-page factum and in her reply factum, Ms. Gong repeatedly alleges that Justice Forth and court staff have lied, committed perjury, fabricated facts as reasons for judgment, persecuted her, "enjoyed her teasing and violating and damaged Ms. Gong's right to life and health", and cheated and maliciously imposed vicious law. Ms. Gong makes serious allegations of judicial and court staff

misconduct without any basis in evidence. It is important that Ms. Gong recognize that court staff act on instructions from judges. The court staff works very hard and must be treated with respect.

[26] In our view, Ms. Gong has failed, in her unfocused submissions, to describe any ground for appellate intervention. Her appeal is entirely devoid of merit.

[27] With respect to the issue of whether the judge erred in dismissing her claim against Mr. O'Neill, Ms. Gong has failed to identify any error in the judge's identification of the legal principles relevant to Rules 9-5(1)(a), (b), (d), 9-6(5)(b) of the *SCCR*, or any reviewable error in her application of those principles. Nor did the judge err in denying a further amendment to the pleadings. There is no basis for appellate intervention in any of these respects.

[28] Ms. Gong also asserts the judge erred in refusing her application for an adjournment on November 15, 2022, the second day of the hearing. Ms. Gong submitted that she was sick and had no interpreter with her: at para. 42. (It is important to have regard to the context: Ms. Gong's application of October 12, 2022, to adjourn the hearing generally was dismissed, but the judge granted an adjournment to November 15, 2022, for Ms. Gong to obtain an interpreter and prepare response submissions. These decisions are not appealed.)

[29] Rarely will this Court interfere with a decision in the court below on whether to grant an adjournment. These decisions are discretionary in nature and, as such, are entitled to a high degree of deference on appeal: *Watts v. Mountain Country Property Management Ltd.*, 2021 BCCA 426 at para. 15, leave to appeal to SCC ref'd, 40014 (28 April 2022). For appellate intervention to be warranted, the impugned ruling must have been perverse and have produced a substantial injustice: *Lasersight Inc. v. Wiese*, 2001 BCCA 345 at para. 12.

[30] Ms. Gong has not met this high bar. In her reasons, the judge carefully considered and denied the adjournment application as not being justified by the evidence: at paras. 41–48. At the hearing, she had carefully reviewed the relevant

background, and in particular, the difficult history of the proceedings, patiently dealt with all the difficulties presented at the hearing itself, and correctly identified and properly applied the governing legal principles. There is no reviewable error in her judgment.

[31] Thus, substantially for the reasons of the chambers judge, we dismiss the appeal.

Review of Justice Frankel's Order (*Gong v. O'Neill*, 2023 BCCA 27 (Chambers))

[32] On January 6, 2023, Justice Frankel heard Ms. Gong's application 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 the civil action.

[33] That day, for reasons that followed on January 19, 2023, Justice Frankel dismissed the application with respect to Ms. Gong's ostensible appeals in respect of four of those decisions and granted an extension of time with respect to the remaining one (being the December 5, 2022, order of Justice Forth on the dismissal application). The dismissed applications were with respect to appeals from the orders of Justice Baker (September 8, 2022), Justice Gropper (October 11, 2022), Justice Tammen (October 17, 2022), and Justice Forth (November 15, 2022).

[34] In his judgment, Justice Frankel set out the relevant procedural history which had led to the applications before him:

[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 [in the civil action], 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.

...

[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.

...

[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.

...

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

...

[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.

[35] Before Justice Frankel, Ms. Gong took the position that each of the appeals in respect of which she was advancing an extension of time application were appealable as of right. Justice Frankel did not agree. He concluded that:

- The orders of Baker, Gropper, and Tammen JJ. were "limited appeal orders" as prescribed by s. 11 of the *Rules*: at paras. 23–25;
- The December 5, 2022, order of Forth J. was not a limited appeal order; it was appealable as of right: at para. 26; and
- Standing alone, Forth J.'s November 15, 2022, refusal of an adjournment was a limited appeal order; however, because that order was the refusal of an adjournment occurred during the hearing of the

dismissal application, it could be raised as a ground of appeal in the appeal from the December 5, 2022 order: at para. 26.

[36] Justice Frankel went on to conclude:

[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.

[Emphasis added.]

[37] Thus, Justice Frankel dismissed the application to extend time with respect to appeals from four of the five orders; however, he ordered by consent that Ms. Gong be given additional time to file her appeal record in connection with the fifth order, that of Justice Forth dated December 5, 2022, which dismissed her claim against Mr. O'Neill. We have now disposed of that appeal.

[38] As Mr. O'Neill submits, it is difficult to discern the nature of the error Ms. Gong alleges. In any event, our view is that Ms. Gong's application to review Justice Frankel's order is moot.

[39] As described above, Justice Frankel dismissed the application to extend the time for filing an appeal record with respect to four ostensible appeals initiated by Ms. Gong. Presumably, it is this aspect of the order which Ms. Gong seeks to have reviewed by a division of this Court. Each of those purported appeals, which formed

the basis of Justice Frankel’s decision, were from orders dismissing applications for *interlocutory relief* in the civil action:

- Baker J. (September 8, 2022) dismissed what Frankel J.A. described as “production and adjournment applications” in the civil action made pursuant to, insofar as the production application was concerned, Rule 22-1(4)(c) of the *SCCR*;
- Gropper J. (October 11, 2022) dismissed two separate applications to have the dismissal hearing in the civil action adjourned;
- Tammen J. (October 17, 2022) dismissed two applications in the civil action for pre-trial injunctions made pursuant to Rule 10-4 of the *SCCR*; and
- Forth J. (November 15, 2022) dismissed an application to adjourn the dismissal hearing in the civil action.

[40] As has been explained, subsequent to each of these interlocutory orders being issued, the dismissal hearing was held and on December 5, 2022, Justice Forth struck Ms. Gong’s pleadings and dismissed the entire civil action. We have now heard and dismissed Ms. Gong’s appeal from that final order.

[41] Generally, a court will decline to decide an appeal if its decision on the matter will not resolve a controversy which affects or may affect the rights of others. If, subsequent to the initiation of the proceeding, events occur such that no present live controversy affecting the rights of the parties exists, the case is said to be moot: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 353, 1989 CanLII 123 (SCC); *Mead v. Mead*, 2022 BCCA 161 at para. 27. However, the Court may exercise its discretion to hear an appeal which is moot, taking certain factors into consideration: *Borowski* at 358; *Mead* at paras. 28–29.

[42] These principles are equally applicable in the context of an application to vary or cancel the order of a single justice of this Court pursuant to s. 29 of the *Act*.

[43] The applications before Justice Frankel were to extend the time for filing the appeal records in the aforementioned appeals from interlocutory orders in the civil action. The civil action has been dismissed, and that dismissal has now been affirmed by this Court. Thus, even if it were to be assumed that the underlying appeals were properly constituted because they concerned requested interlocutory

relief in the civil action, they have been rendered moot by the dismissal of that action. Because the underlying proposed appeals are moot, it logically follows that an application to extend the time for the filing of appeal records in those proceedings is also moot. It further follows that an application to review a decision dismissing such an application for extended time is equally moot.

[44] Put simply, there is no live controversy underlying the review application which may affect the rights of any of the parties. The review application is thus moot. In the Court’s view, it is not in the interests of justice to hear this moot application, and we decline to exercise our discretion to do so. Accordingly, we dismiss this application for review.

Review of Justice Skolrood’s Order (*Gong v. Zhang*, 2023 BCCA 235)

[45] No one appeared for the respondent on any of Ms. Gong’s applications before Justice Skolrood in chambers on May 10, 2023, which were heard *ex parte*, and no response was filed to any of the three applications before us to review the orders he made that day.

[46] Included in both this appeal file, CA48591, and in CA48499, are Ms. Gong’s review applications of Justice Skolrood’s orders of May 10, 2023, dismissing her applications pursuant to Rule 85 of the *Rules* for orders that no fees were payable. Justice Skolrood correctly described the applicable legal framework as follows:

[19] Rule 85(4) of the *Court of Appeal Rules* provides a justice of the Court with the power to make an order that no fees are payable in respect of an appeal where the appeal is not (i) bound to fail, (ii) scandalous, frivolous or vexatious, or (iii) an abuse of process, and the person’s payment of court fees under R. 84 would cause undue hardship.

[20] The “lacks merit” standard from the former equivalent Rule was “not high” and the current “bound to fail” standard is even lower: *Harrison v. Law Society of British Columbia*, 2022 BCCA 316 at para. 5 (Chambers). Notwithstanding the lower standard, Justice Willcock in *Harrison* dismissed the application on the basis that the appellant had failed to establish that the appeal was not bound to fail (at para. 21).

[Emphasis in the original.]

[47] First, in relation to file CA48591, Justice Skolrood summarized the application before Justice Forth, as replicated above: at paras. 41–43. Justice Skolrood then said this with respect to the appeal of Justice Forth’s order dismissing Ms. Gong’s civil claim:

[48] With respect to the appeal of Forth J.’s order dismissing Ms. Gong’s action, Ms. Gong alleges the judge erred in, among other things: fabricating facts, conducting hearings that violated and damaged the appellant’s right to life and health, falsifying factors and cheating, and maliciously imposing vicious law. Respectfully, Ms. Gong has failed to identify any errors in law or palpable and overriding errors of fact. I see no prospect of a division of this Court overturning the decision of Forth J. and I would also find that Ms. Gong’s appeals are vexatious.

[48] Justice Skolrood thus dismissed Ms. Gong’s no fee application in CA48591.

[49] An application under s. 29 of the *Act* to review an order of a single justice of this Court sitting in chambers is not a rehearing of the application made in chambers. It is well-established that a person applying for a cancellation or variation of such an order must satisfy a division that the justice was wrong in law or in principle, or misconceived the facts: *Yang v. Shi*, 2023 BCCA 146 at para. 10. As held in *Haldorson v. Coquitlam (City)*, 2000 BCCA 672:

[7] It comes to this: that the review hearing is not a hearing of the original application as if it were a new application brought to a division of the court rather than to a chambers judge, but is instead a review of what the chambers judge did against the test encompassed by asking: was the chambers judge wrong in law, or wrong in principle, or did the chambers judge misconceive the facts. If the chambers judge did not commit any of those errors, then the division of the court in review should not change the order of the chambers judge.

[50] Evidently, this is a deferential exercise premised on the identification of an error warranting intervention. We conclude Ms. Gong has not identified any reviewable error in the reasons of Justice Skolrood dismissing her application for a no fee order respecting the appeal from the order of Justice Forth. Accordingly, we dismiss this application for review.

CA48499 – Gong v. O’Neill

[51] CA48499 also arises from the civil action. The underlying proposed appeal in the file is from an order of Justice Wilkinson made July 29, 2022. Justice Skolrood helpfully set out the relevant procedural history in this file at paras. 35–38 of his reasons for judgment indexed at 2023 BCCA 235. The most important points, prior to Justice Wilkinson’s order, are these:

- The parties appeared before Master Robertson on June 7, 2022, on Ms. Gong’s application for an adjournment of the hearing of Mr. O’Neill’s application for dismissal of her civil claim against him. Master Robertson ordered the dismissal application be adjourned to August 30, 2022, and that Ms. Gong provide response materials by August 2, 2022;
- On July 15, 2022, Ms. Gong filed a notice of application seeking, among other things, an order setting aside Master Robertson’s order of June 7, 2022, for a failure to adhere to the procedural requirements of the *SCCR*. She filed further notices of application on July 18, 2022, and July 25, 2022, seeking the same or similar orders;
- On July 29, 2022, the parties appeared before Justice Wilkinson on Ms. Gong’s application to set aside Master Robertson’s order. Justice Wilkinson dismissed the entirety of Ms. Gong’s application that day for reasons indexed at 2022 BCSC 1696.

[52] Ms. Gong applied to this Court for leave to appeal the order of Justice Wilkinson made July 29, 2022. On October 18, 2022, for reasons indexed as 2022 BCCA 359, Justice Horsman dismissed Ms. Gong’s application as “it would not be in the interests of justice to grant Ms. Gong leave to bring an appeal that has no merit, no practical utility, and can only serve to unduly hinder the progress of the [civil] action”: at para. 27.

[53] On October 25, 2022, Ms. Gong filed and served an application to vary the order of Justice Horsman. On November 1, 2022, Ms. Gong filed an application requesting an extension of time to submit her application book. That application came before Justice Bennett on January 11, 2023. For oral reasons issued that day, Justice Bennett dismissed the application for an extension of time, which she found brought “an end to” the appeal: at para. 22.

[54] Justice Skolrood observed in his reasons of May 10, 2023, that the appeal from Justice Wilkinson’s order had been rendered moot: at para. 35.

[55] Now before us in this file are two applications: (1) to review Justice Bennett’s order in chambers of January 11, 2023, dismissing an application for an extension of time to file an application book; and (2) to review Justice Skolrood’s order in chambers of May 10, 2023, dismissing a no fee application in CA48499. Justice Skolrood dismissed this no fee application in the same judgment discussed earlier (2023 BCCA 235).

Review of Justice Bennett’s Order (CA48499, January 11, 2023, Chambers)

[56] We will first address Ms. Gong’s application for review of Justice Bennett’s order of January 11, 2023.

[57] Ms. Gong’s proposed appeal in this file results, albeit indirectly, from the dismissal of an application for interlocutory relief in the civil action; namely, an order adjourning the dismissal hearing in that action and mandating that Ms. Gong file responsive materials. Given Justice Forth’s dismissal of Ms. Gong’s claim against Mr. O’Neill, and our dismissal of the appeal from Justice Forth’s order, Ms. Gong’s application to review Justice Bennett’s order (denying an extension of time to file an application book in her application to review the order of Justice Horsman denying leave to appeal an order of a Supreme Court judge dismissing an application to set aside that interlocutory order) is moot. There remains no live controversy between the parties and the review application thus serves no practical purpose. It is not in the interests of justice to entertain it further. It is therefore dismissed.

Review of Justice Skolrood’s Order (2023 BCCA 235)

[58] We now turn to Ms. Gong’s application for review of Justice Skolrood’s order of May 10, 2023, dismissing her no fee application in this file.

[59] We have already referred to Justice Skolrood’s correct description of the legal framework for a no fee order: at paras. 19–20. In respect of the no fee application in

this file, Justice Skolrood quoted at length from the judgments of Justices Horsman and Bennett to establish the relevant background: at paras. 36–37.

[60] He dismissed Ms. Gong’s application, concluding (at para. 45) that it was clear Ms. Gong’s appeals were bound to fail (as indeed they have). Justice Skolrood said this:

[46] In her 2022 reasons, Horsman J.A. found that “[t]here is no merit to this appeal” and that “there is no practical utility to the appeal in any event”: at para. 25 (emphasis added).

[47] In her 2023 reasons, Bennett J.A. declined to grant Ms. Gong an extension of time, as it was “not in the interests of justice to permit a case to go forward that has zero chance of success, resulting in delays in the trial court and a waste of appellate resources”: at para. 20 (emphasis added).

[48] ... I would also find that Ms. Gong’s appeals are vexatious.

[49] In her application before Bennett J.A., Ms. Gong alleged that Mr. O’Neil is “a professional judicial staff performing as an arbitrator at the RTB” who “uses his knowledge, position, and privilege working with certain court [staff] from the RTB, the Vancouver Supreme Court, and Court of Appeal” to “keep repeating the incorrect information to strengthen [these] laws and rules.” She alleged that Mr. O’Neill is “pushing the procedures in front of some specific justices to support [him]” and she made allegations about the “dirty Vancouver [judicial] society”: at para. 18. Ms. Gong made allegations against Horsman J.A., stating that her order had “significant wrong information, or lies” and told Bennett J.A. in her oral submissions that judges lie: at para. 21. This application is yet another means by which Ms. Gong is attempting to carry out vexatious proceedings. Her appeals are an abuse of court resources and should not be entertained by waiving the fee requirement.

[50] Accordingly, I would dismiss the no fee applications.

[Emphasis added.]

[61] Once again, Ms. Gong fails to describe any ground which would warrant interference with Justice Skolrood’s order by a division of this Court. There is clearly no merit to this review application. It is dismissed.

CA47895 Gong v. Zhang

Review of Justice Skolrood’s Order (2023 BCCA 235)

[62] This final application for review concerns Justice Skolrood’s order made May 10, 2023, dismissing Ms. Gong’s application to remove an appeal (file

CA47895) from this Court's inactive list. The appeal in question emanates from the residential tenancy dispute with Ms. Gong's former landlord, Ms. Zhang (not the civil claim against Mr. O'Neill). More specifically, the appeal is from Justice Sharma's order on an adjournment application pertaining to Ms. Gong's application for judicial review.

[63] As Justice Skolrood explained, at para. 17, Justice Sharma's decision was an interim adjournment decision that has since been supplanted by subsequent proceedings. He reasoned that there was no point in removing the appeal from the inactive list because it was clear that the substance of Ms. Gong's appeal, as it related to the tenancy dispute with Ms. Zhang, was addressed in file CA48722, the appeal from the dismissal of her petition for judicial review by Justice Warren on November 3, 2022. As stated above, that appeal was recently heard and dismissed by this Court: 2023 BCCA 424.

[64] Justice Skolrood tried to explain this to Ms. Gong, but to no avail: at para. 17. He concluded it was neither appropriate nor in the interests of justice to remove a moot appeal from the inactive list, citing *British Columbia (Attorney General) v. Koffman Estate*, 2019 BCCA 444 at para. 24. Justice Skolrood accordingly dismissed the application. As a result, the appeal in CA48795 was dismissed as abandoned under Rule 51 of the *Rules*.

[65] As with her applications to review Justice Skolrood's order in the other files discussed in this judgment, Ms. Gong has failed to describe any basis which would justify intervention by a division of this Court. In our view, there is no reviewable error in Justice Skolrood's order. We accordingly dismiss the application for review.

[66] In summary, we echo this Court's observations in its judgment of October 20, 2023, 2023 BCCA 424 at para. 7: Ms. Gong's factum on the appeal from Justice Forth's order (CA48591) is unfocused, confusing, and at times irrational and scandalous. This description also applies to the material filed on her review applications. It is not possible to respond to Ms. Gong's incomprehensible arguments.

Disposition

[67] In the result, the appeal in CA48591 and the review applications in files CA48591, CA48499 and CA47895 all stand as dismissed.

[68] This judgment brings an end to these three files. For clarity, we add that Ms. Gong is not permitted to file any further material on these matters. The Court registry will be so advised.

Costs

[69] We accede to the respondent Mr. O’Neill’s submission to fix costs at \$1,000, inclusive of all matters addressed in this judgment which pertain to him.

[70] We dispense with the requirement for Ms. Gong’s signature on the formal order dismissing the appeal and the review applications.

[71] The appeal and the review applications stand dismissed.

“The Honourable Justice MacKenzie”

“The Honourable Justice Dickson”

“The Honourable Mr. Justice Abrioux”