

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Chandi v. Zhao*,
2024 BCCA 47

Date: 20240202
Docket: CA49143

Between:

Jadwinder Singh Chandi

Appellant/
Respondent on Cross Appeal
(Respondent)

And

Yu Lin Zhao

Respondent/
Appellant on Cross Appeal
(Applicant)

Before: The Honourable Mr. Justice Groberman
The Honourable Madam Justice Fenlon
The Honourable Mr. Justice Fitch

On appeal from: An order of the Supreme Court of British Columbia, dated
May 16, 2023 (*Delta (Corporation) v. Zhao*, Vancouver Docket S177100).

Oral Reasons for Judgment

The Appellant/Respondent on
Cross Appeal, appearing in person:

J.S. Chandi
(H. Singh, Interpreter)

Counsel for the Respondent/Appellant on
Cross Appeal:

Y.L. Zhao

Place and Date of Hearing:

Vancouver, British Columbia
February 2, 2024

Place and Date of Judgment:

Vancouver, British Columbia
February 2, 2024

Summary:

Expropriation funds were paid into court by a municipality. The entirety of the principal amount was eventually paid out, leaving only accrued interest. The court then made an order that the remaining funds be paid out to the respondent. It also awarded the respondent 2/3 of her costs for the several applications for payment out. The appellant appealed the orders and the respondent cross appealed, seeking to have her party and party costs awarded in full. Held: Appeal dismissed; Cross Appeal allowed, but only to the extent of substituting an order for costs on scale A for the existing order awarding 2/3 of her costs on scale B. The judge made no error in ordering the money to be paid out to the respondent since the appellant still owed her money on a judgment that required that the money held in court would go first to paying off that judgment. Most of the money in court was held in respect of the appellant's interest in land, so payment of that money to the respondent will reduce the appellant's indebtedness to her. With respect to costs, the judge's approach was a practical one, and understandable, but there is no provision in the Supreme Court Rules allowing this sort of fractional award of costs. In the circumstances of this case, this Court should substitute a valid costs order for the one made by the chambers judge. Rather than awarding the respondent a fraction of her party and party costs on scale B, she will have her full party and party costs, but on scale A.

[1] **GROBERMAN J.A.:** The appellant and respondent were engaged in a dispute over ownership of farm property when the municipality in which the property was situated began expropriation proceedings. As doubts had been raised about the true ownership of the property, the municipality filed a petition under s. 20(4) of the *Expropriation Act*, R.S.B.C. 1996, c. 125. In that proceeding, the Supreme Court ordered the municipality to pay its advance payment into court under s. 20(6) of the *Act*.

[2] Over the ensuing years, the court made several orders directing payments of funds out of court. At the time of the chambers application giving rise to this appeal, the entirety of the principal amount paid into court had been paid out. Only interest accrued on the principal amount remained to be distributed.

[3] The judge ordered the amount that remained (which appears to have been around \$28,000 or \$29,000) paid out to Ms. Zhao. It also awarded her 2/3 of her costs for the several applications that had been made for payments out.

[4] Mr. Chandi appeals the order. Ms. Zhao resists the appeal, contending that the accrued interest belonged to her. She cross appeals, seeking to be awarded full party and party costs of the applications for payments out.

[5] For reasons that follow, I would dismiss the appeal. The order for payment to Ms. Zhao was appropriate, though the basis for the payment is not accurately reflected in the respondent's argument. The interest did not, for the most part, accrue to her, but it was properly paid out to her under the terms of a previous court order. I would allow the cross appeal and substitute a costs order that conforms with the *Supreme Court Civil Rules*.

Background

[6] Ms. Zhao purchased farm property in Delta in January 2016. In May 2016, she transferred an undivided $\frac{1}{2}$ interest in the property to Mr. Chandi. The two did not agree on the financial terms that applied to the sale, and in February 2017, Ms. Zhao commenced an action against Mr. Chandi, alleging (among other things) that he had not paid the agreed-upon purchase price.

[7] While that litigation continued, the Corporation of Delta began the process of expropriating the property, as it required it for highway purposes. Because the owners of the property were in a dispute as to their respective entitlements, the municipality commenced this proceeding in July 2017, under s. 20(4) of the *Expropriation Act* for the purposes of determining who the advance payment should be made to. On August 3, 2017, Justice Macintosh ordered Delta to pay its advance compensation into court under s. 20(6) of the *Expropriation Act*. The amount paid into court was \$1,572,000.

[8] On August 16, 2017, Ms. Zhao filed an application to have half of that amount paid out to her, on the basis that her undivided $\frac{1}{2}$ interest in the property was not in dispute. The application came on before Master Wilson on September 20, 2017. He ordered \$30,000 to be paid out to Ms. Zhao's counsel and adjourned the balance of Ms. Zhao's application.

[9] On September 29, 2017, Mr. Chandi applied to have \$400,000 paid out to him. He based the application on the proposition that, while there was a dispute between himself and Ms. Zhao on whether he had fully paid for his undivided ½ interest, it was clear that he had paid her \$400,000.

[10] On October 25, 2017, Master McDiarmid heard the two outstanding applications. He ordered that \$756,000 be paid out to Ms. Zhao and that \$400,000 be paid out to Mr. Chandi. Those payouts meant that the entire principal amount attributable to Ms. Zhao's undivided ½ interest had been paid out, while \$386,000 remained in court in respect of Mr. Chandi's undivided ½ interest.

[11] The action between Ms. Zhao and Mr. Chandi proceeded to a 20-day trial in 2022 before Justice Horsman (then of the Supreme Court). In a judgment indexed as 2022 BCSC 1574, she found that Mr. Chandi owed Ms. Zhao \$302,500 in respect of the property. She ordered him to pay that amount plus pre-judgment interest (the latter was calculated to amount to \$19,355.02). She also made the following orders in respect of the expropriation funds held in the proceedings commenced by the Corporation of Delta:

- Ms. Zhao shall have priority to a payout of the funds that Mr. Chandi owes her before Mr. Chandi receives any proceeds from the City's expropriation of the 7725 Farm that remain in Court;
- Mr. Chandi, as co-owner of the 7725 Farm at the time of the expropriation, is entitled to any remaining funds in Court once his liability to Ms. Zhao is satisfied....

[12] On October 31, 2022, Justice Hughes ordered the payment out of \$321,855.02 to Ms. Zhao, representing the amounts awarded by Justice Horsman in her trial judgment.

[13] Meanwhile, on October 10, 2022, Justice Horsman had issued reasons (indexed as 2022 BCSC 1831) dealing with the costs of the trial between Ms. Zhao and Mr. Chandi, and awarded Ms. Zhao her costs on scale B. On March 15, 2023, Registrar Gaily assessed those costs at \$105,042.39.

[14] The principal amount remaining to the credit of this action at that time was \$64,144.98. Ms. Zhao applied to have that amount, plus any accrued interest (Ms. Zhao termed it “incurred interest”) paid out to her. On April 11, 2023, Justice Fleming ordered the principal amount paid out to Ms. Zhao in partial satisfaction of the costs award. That left a substantial portion of the costs award unpaid (\$40,897.41 plus any post-judgment interest). Justice Fleming adjourned the issue of payment out of the accrued interest.

[15] On April 26, 2023, there was a further appearance before Justice Jackson, where she made an order for a further payment out of \$3,939, though the material before this Court does not detail the precise basis for the order. In any event, the precise basis does not have any impact on this appeal.

The Order Under Appeal

[16] That brings us to the chambers hearing that gives rise to this appeal. On May 16, 2023, the remaining matters came before Justice Duncan. The following observations are the foundation of her order:

[6] I have reviewed the application record and the tortured history of this piece of land. I am satisfied that Ms. Zhao is entitled to the money currently held on account of action S177100 to be paid out to her and she is entitled to the costs of this application. I understand her frustration at being put to the expense of numerous applications, but on a rough and ready assessment, I find she is entitled to two-thirds of the costs of the applications in action S177100 leading up to today.

[17] The formal order is rather awkwardly worded. It is as follows:

THIS COURT ORDERS that:

1. An order of that any incurred interest to be paid out of court to Yu Lin Zhao;
2. An order that Chandi pay Zhao the costs for this application;
3. An order that Zhao is entitled to two-thirds costs of this action against Mr. Chandi at Scale B

The Order for Payment Out

[18] It is not clear from the materials before the Court exactly what amount was paid out in respect of the May 16, 2023 order. In her unreported reasons for judgment, Justice Duncan stated her understanding that “about \$28,017.29 in interest” remained in court. In his factum, Mr. Chandi says that the amount that was paid out was \$29,131.02. It is not essential to have an exact amount for the purposes of these reasons. What is clear is that the amount remaining in court was less than the amount still owing by Mr. Chandi in respect of the orders made by Justice Horsman. The full amount was properly paid out to Ms. Zhao, as Justice Horsman’s order provided that Ms. Zhao was to be paid out of the expropriation funds, and that Mr. Chandi would not receive anything from those funds until Ms. Zhao had been fully paid out on the judgment.

[19] In the result, I find no error in the judge’s order that the amount remaining in court be paid out to Ms. Zhao.

[20] The problem is not with the payment out, but with how the money that is paid out is to be accounted for. In her factum, Ms. Zhao maintained that the money she received was simply interest that she was owed, and that she does not have to take it into account in respect of the amounts that remain owing on the judgment. As she acknowledged in oral argument, she was mistaken in that regard. Her judgment already included an amount for interest. Allowing her to also take interest paid on the money in court would permit her double recovery.

[21] Almost all the interest that accrued is attributable to amounts held in respect of Mr. Chandi’s undivided $\frac{1}{2}$ interest in the farm property. That interest belongs, in the first instance, to Mr. Chandi, and when it is paid out to Ms. Zhao, it serves to reduce his indebtedness to her.

[22] The only exceptions are interest paid in respect of the \$30,000 paid out to Ms. Zhao’s lawyer under the September 20, 2017 order, and interest paid in respect of the \$756,000 paid out to her under the October 25, 2017 order. Those two payments were in respect of Ms. Zhao’s undivided $\frac{1}{2}$ interest in the property. I note

that those amounts were only in court for a short period of time, so the amount of interest accrued in respect of them cannot be very large. Nonetheless, those amounts, once quantified, need not be taken into account in determining Mr. Chandi's remaining indebtedness.

[23] The detailed accounting issues are not directly before this Court, and I mention them only to flag an issue that will be of concern in any proceedings where the amount owing on the judgment pronounced by Justice Horsman needs to be determined.

The Costs Order

[24] It is understandable that the judge decided to take a "rough and ready" approach to costs. I suspect, from the materials that are now before the Court, that the judge considered that Ms. Zhao had not handled the litigation completely efficiently, and that much of her preparation and argument was not helpful to the court. The judge was fully entitled to take those matters into account in her costs award.

[25] Unfortunately, as I read Rule 14 of the *Supreme Court Civil Rules*, it does not allow the approach taken by the judge. Rule 14-1(1) provides that "if costs are payable ... by order, those costs must be assessed as party and party costs in accordance with Appendix B". Appendix B does not appear to allow the sort of fractional costs awarded by the judge.

[26] While Rule 14-1(15) allows a court to award costs "that relate to some particular application, step or matter in or related to the proceeding", the order in this case did not specify particular applications or steps for which costs were ordered.

[27] This may well be a case in which lump sum costs could have been ordered in respect of the proceeding, under Rule 14-1(1)(c) and 14-1(15), but they were not.

[28] Ms. Zhao's primary argument on this appeal is that by giving her only 2/3 of her costs on scale B, the court effectively reduced her entitlement to be equivalent to

what she would have received under scale A. She also points out that the order, as pronounced, may mean that she is only able to recover 2/3 of her proper disbursements.

[29] I am not convinced that an award under scale A would have been inappropriate in this case. The applications for payment out of funds were not complex. Ms. Zhao needed only show that she had been granted judgments, and that they came within the order of Justice Horsman. While unduly lengthy affidavits and arguments may have been filed by the parties, Ms. Zhao's decision to do so did not convert simple, straightforward applications into matters of ordinary difficulty.

[30] Given the limited amounts at issue on this cross appeal and the way that the parties have conducted their litigation in the past, it would be truly unfortunate if this matter were returned to the trial court for a new consideration of the issue of costs. In my opinion, a just order would be to replace the costs order of the chambers judge with an order that Ms. Zhao is entitled to costs on scale A in respect of her applications for payment out of funds. Such an order would also eliminate any confusion as to whether Ms. Zhao is entitled to recover the full amount of her legitimate disbursements.

[31] As Ms. Zhao notes, the practical effect of this substituted order is very limited. The amounts recoverable by Ms. Zhao in costs will be approximately the same as she would have recovered based on the order made by the chambers judge. I am satisfied that that is an entirely appropriate resolution of the matter.

[32] For the sake of clarity, I note that the judge's error did not affect her order for costs on the application before her; she awarded the respondent costs on scale B in respect of that appearance. That part of her order stands.

Conclusion

[33] I would dismiss the appeal. I would allow the cross appeal by striking the part of the award of costs that gave Ms. Zhao 2/3 of her costs on scale B and substituting an order giving her party and party costs on scale A.

[34] Neither party can be said to have achieved substantial success on the appeal or cross appeal. Accordingly, each should bear their own costs of the proceedings in this Court.

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

[36] **FENLON J.A.:** I agree

[37] **GROBERMAN J.A.:** The appeal is dismissed and the cross appeal is allowed by striking the part of the costs award that gave Ms. Zhao 2/3 of her costs on scale B and substituting an award of costs on scale A. Each party to bear their own costs.

“The Honourable Mr. Justice Groberman”