COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Tan v. Tan,*
2024 BCCA 113

Date: 20240306
Docket: CA49454

Between:

Li Wen Tan

Appellant
(Plaintiff)

And

Kai Tan and Hong Jiao

Respondents
(Defendants)

Before: The Honourable Mr. Justice Harris
The Honourable Mr. Justice Abrioux
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated November 3, 2023 (*Tan v. Jiao*, Vancouver Docket S234458).

Oral Reasons for Judgment

The Appellant, appearing in person (via audioconference):	L.W. Tan
The Respondents, appearing in person:	K. Tan H. Jiao
Place and Date of Hearing:	Vancouver, British Columbia March 6, 2024
Place and Date of Judgment:	Vancouver, British Columbia March 6, 2024

Summary:

The appellant appeals the dismissal of his breach of contract and unjust enrichment claim against the respondents. The appellant sought an order that he be placed on title to his parent's residence and that he be entitled to a share of rental income. His claim was dismissed. The appellant alleged the trial judge made errors in his findings of fact, that he erred regarding an evidentiary ruling and that he erred in his application of the legal test of unjust enrichment. Held: Appeal dismissed. The appellant failed to demonstrate that the trial judge committed an error of law or palpable and overriding error of fact in his unjust enrichment analysis or in his analysis regarding the existence of a contract with his parents. The appellant failed to establish the trial judge committed an error regarding admissibility of a document.

[1] **WINTERINGHAM J.A.**: This is an appeal from the trial order made on November 3, 2023, in which the judge dismissed the appellant's action and awarded costs to the respondents. The appellant sought an order that he be placed on title to his parent's residence and that he be entitled to a share of approximately 12 years of rental income. The appellant challenges the order dismissing his action primarily on the basis that the trial judge made errors in his finding of facts, that he erred on an evidentiary ruling relating to the admissibility of evidence, and that he erred in his application of the legal test of unjust enrichment.

Background

[2] The appellant, Li Wen Tan, is the son of the respondents, Hong Jiao and Kai Tan. The appellant is 34 years of age.

[3] The appellant commenced the underlying action on June 20, 2023. He alleges that he had a contract with his parents to the effect that he would provide cash payments as consideration for his name being added to the title to their home and a share in the rental income it generated. The respondents state that there was no contract and that any payment that they did receive was for household expenses when their son was living with them.

[4] The judge described the pleadings filed in the action as follows:

> [3] By notice of civil claim filed June 20, 2023, the plaintiff alleges that from 2003 to 2022, he made cash payments to his parents. He says his parents promised him that, in exchange, he would be added to the title to their home. He pleads that they have refused to add him to the title to 6434 Selma Avenue, Burnaby, British Columbia and failed to provide him with a proportionate share of rental income for the years 2008 to 2020.
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> [4] He requests that he be added to the title to 6434 Selma Avenue and claims his share of rental income, said to be between $80,000 and $90,000.
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> [5] In the response to civil claim, the defendants plead that:
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> a) from October 2012 to April 2021, while attending school, the plaintiff lived at home and paid a monthly living cost for use of a bedroom suite;
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> b) from April 2021 to May 2023, the plaintiff refused to pay his living expenses and opened stock-trading accounts until losing all of his money in April 2023; and
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> c) on May 28, 2023, they called the RCMP because the plaintiff refused to leave the home.
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> [6] The defendants further plead that there is no agreement with the plaintiff and plead that the plaintiff suffers from various disabilities….

[5] As noted by the judge, the parties in this case are self-represented, and the pleadings do not comply with the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. However, I agree with the judge that the gist of the appellant's claim is for breach of contract, or in the alternative, unjust enrichment.

Reasons of the Trial Judge

[6] The trial judge concluded that the appellant failed to discharge his burden to prove, on a balance of probabilities, either the existence of a contract with his parents, or in the alternative, the elements of a claim for unjust enrichment.

[7] With respect to the alleged contract, the appellant's evidence was that sometime in 2003, his parents had told him they would add him on title to their home in exchange for cash contributions to their mortgage. The appellant was unable to provide any additional evidence of the alleged agreement, and despite questioning from the trial judge, was unable to describe the agreement with any precision. The judge noted that in 2003, the appellant would have been, at most, 14 years of age.

[8] Given the lack of evidence, the judge was unable to conclude that there was an agreement between the parties that the respondents would add the appellant on title to their home in exchange for cash payments. Further, the appellant had not proven that the funds he gave to his parents were actually used to pay down the mortgages on their properties.

[9] While the respondents agreed that the appellant had given them cash, they did not agree on the purpose of those payments. The respondents' evidence was that the appellant initially gave them money to keep safe while he was residing in foster care, and then later, when the appellant was living with them as an adult, for his daily living expenses.

[10] Further, based on the evidence presented, the judge was unable to determine the amounts paid by the appellant since 2003. The judge described the appellant's evidence as follows:

> [12] I am further far from satisfied as to the amounts the plaintiff has given to the defendants over the years. The plaintiff merely identified various bank account statements in his name and testified that all cash withdrawals on those accounts were given to his parents. He further calculated that the amount he gave them in cash was computed by taking his earnings and deducting known expenses. He testified the balance was given to his parents. He has not produced a single receipt for cash given to his parents. Also, except for one occasion, he has not traced a cash withdrawal from his account to a cash deposit into his parents' account. The single exception, which he says is an example of tracing, is not. The amounts do not match.
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> [13] I would add that a review of the plaintiff's bank statements does not support the plaintiff's evidence that all cash withdrawals went to his parents. The sporadic nature and varying amounts of the cash withdrawals are much more consistent with the withdrawals being for various purposes, and not to simply transfer the excess [earnings less known expenses] to his parents.

[11] Regardless of the actual amount paid, the judge noted that the appellant had failed to prove that the respondents used those payments to pay down the mortgages on the various properties they owned since 2003.

[12] The judge similarly concluded the appellant had failed to prove his claim in unjust enrichment:

> [15] Further to the extent the plaintiff relies on unjust enrichment, he must prove: (a) that the defendants were enriched; (b) that the plaintiff suffered a corresponding deprivation; and (c) that the defendants' enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason justifying the enrichment: *Pheasant v. Thompson*, 2023 BCCA 291, at para. 38, paraphrasing *Moore v. Sweet*, 2018 SCC 52, at para. 37.
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> [16] Although I am far from satisfied that the enrichment and corresponding deprivation have been proven, the plaintiff completely fails on the third branch of the test. While the plaintiff was a minor, there was a juristic reason for the defendants, his parents, to manage and control his finances. Once he reached the age of majority, he resided with his parents and, as he was making money, it was not unreasonable for the parents to request that he contribute to household expenses. That was and is a legitimate juristic reason for the transfers.

[13] Having concluded that the appellant failed to prove his claims, the judge dismissed the action and awarded costs to the respondents.

Issues on Appeal

[14] The appellant's factum suggests the trial judge made eight errors in judgment. I will restate the grounds of appeal to account for some overlap in the grounds as articulated in the appellant's factum:

a) Did the trial judge err with respect to the following findings of fact:

   i. in finding that the purpose of the appellant's transfers as a minor were for safekeeping;

   ii. in finding that the purpose of the appellant's transfers as an adult were to support his parents;

   iii. in finding that the cash transfers alleged were not born out in the financial documents provided to the court; and

   iv. in his credibility assessment in choosing to accept the testimony of the respondent over that of the appellant?

b) Did the trial judge err in refusing to admit a letter from Bradley Achtem that purportedly showed the appellant's cash payments were used to pay the mortgage of the respondents?

c) Did the trial judge err in mixed fact and law by failing to consider deprivation to the appellant in the assessment of the unjust enrichment test?

Standard of Review

[15] "The standard of review is well-known. On questions of law, the standard of review is correctness. On questions of fact, the standard of review is palpable and overriding error. Absent an extricable question of law, the standard of review for questions of mixed fact and law is also palpable and overriding error": *Freeland v. Farrell*, 2022 BCCA 99 at para. 38, citing *Housen v. Nikolaisen*, 2002 SCC 33.

[16] The appellant has not pointed to, nor do I detect, an extricable question of law. Thus, I am to assess the errors alleged on the standard of palpable and overriding error.

Analysis

(1) Errors of Fact

[17] The appellant submits the judge erred by making several errors of fact. The standard of review for findings of fact is highly deferential. This Court cannot interfere unless the appellant can establish that the judge made a palpable and overriding error: *Housen* at para. 10.

[18] The first errors alleged relate to the judge's findings about the purpose for which money was given. The appellant submits that the judge erred by stating as a teenager, he "should" give money to his parents to protect his savings. Relatedly, the appellant submits the judge erred by stating as an adult, he "should" contribute money to his parents "… as any adult would to support his parents".

[19] The appellant has not established a palpable error. On review of the reasons, it is clear the judge's findings of fact were based on the testimony of the appellant's father and related to an element of the cause of action the appellant needed to prove. The judge was not suggesting, as a teenager, the appellant "should" have given his money to his parents to protect his savings. Nor was the judge saying that the appellant "should" contribute money to support his parents. Rather, the judge was simply restating the father's testimony in support of the finding that there was a juristic reason for the cash payments:

> [16] … While the plaintiff was a minor, there was a juristic reason for the defendants, his parents, to manage and control his finances. Once he reached the age of majority, he resided with his parents and, as he was making money, it was not unreasonable for the parents to request that he contribute to household expenses. That was and is a legitimate juristic reason for the transfers.

[20] In his factum, the appellant suggests the judge failed to consider the fact he had his own bank account as a teenager and there was no need for his parents to protect his money. Additionally, the appellant suggests the respondents had rental income and were not experiencing financial hardship. The appellant has misconstrued the trial judge's reasons on this point. The trial judge used this evidence to explain his finding that there was a juristic reason for the transfer of funds from the appellant to the respondents. Based on the evidence he accepted, the trial judge was entitled to use this evidence in the way he did.

[21] The appellant next states that the trial judge misapprehended evidence, including his deposit book, bank statements, and description of the alleged verbal agreement.

[22] While the appellant may disagree with the judge's conclusions, there is nothing in the record to suggest that the judge misapprehended this evidence. Rather, the reasons demonstrate that the judge generously interpreted the pleading and considered the evidence, including the financial exhibits tendered at trial. The financial exhibits consisted of some of the appellant's bank statements. The bank statements showed non-descript withdrawals and deposits. Based on

the financial records tendered, the trial judge was unable to find, as the appellant requested, that the cash withdrawals related to money transfers to his parents. The evidence tendered does not connect the transactions to the appellant's parents or to the alleged agreement. On the record before this court, the financial records do not prove the transfer of money from the appellant to the respondents. There are simply generic entries showing money going in and out of the appellant's bank account on certain dates. The judge characterized the financial evidence correctly and his reasons do not demonstrate any misapprehension of this evidence.

[23] The trial judge provided an opportunity to the appellant to set out (and explain) the terms of the agreement with his parents. In effect, the trial judge was asking the appellant to explain what he could about the agreement with his parents. The judge was not satisfied that the details provided by the appellant proved the existence of the agreement alleged. At para. 9 of his reasons for judgment, the judge explained why he rejected the appellant's evidence on this material point. At para. 11, the judge explained why he was not satisfied that the evidence presented established there was ever an agreement that the respondents would put the appellant on title in exchange for his cash contributions. The judge assessed the evidence as presented and ultimately concluded that the appellant had not proven his case on a balance of probabilities. This was a finding that was open to him to make on the evidence presented. I would not interfere with this conclusion.

(2) Evidentiary Ruling/Case Management Issues

[24] The appellant says the judge made several errors in his management of the trial. Additionally, the appellant submits the judge erred in an evidentiary ruling he made because he refused to admit a letter from Bradley Achtem.

[25] A transcript of the trial judge's ruling is not before us. In his factum and again before us, the appellant alleged that the judge refused to permit Mr. Achtem to testify remotely. He also alleges that the judge erred by refusing to admit a letter authored by Mr. Achtem. The appellant contends that the letter was offered to prove his transfer of funds to the respondents. He submits the letter constitutes

proof "… witnessing plaintiff's cash payments went to pay defendant's mortgage." Mr. Achtem's letter appears in the appeal book. In the letter, Mr. Achtem described the fact that the appellant had worked at fast food companies between 2009–2012 and earned money from these jobs which "… by his account, largely went to his parents so they could help pay off their mortgage."

[26] A judge's ruling on the admissibility of evidence is reversible where the court has misdirected itself, come to a decision that is so clearly wrong it amounts to an injustice, or where the judge gave no or insufficient weight to relevant considerations: *Santelli v. Trinetti,* 2019 BCCA 319 at para. 45, citing *Kish v. Sobchak Estate*, 2016 BCCA 65 at para. 33; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27.

[27] On the point of the money paid to pay off their mortgage, the letter constitutes hearsay. In its form and without further evidence, the letter was not admissible for the purpose which the appellant sought. In other words, Mr. Achtem's letter does nothing more than restate something told to him by the appellant. On its face, the letter did not have any evidentiary value. The appellant has not pointed to any error by the trial judge regarding the admissibility of Mr. Achtem's letter.

[28] The appellant also alleges that the trial judge erred in case management decisions by refusing to allow Mr. Achtem to testify remotely, refusing to permit the appellant to amend his claim, and refusing to order the respondents to produce their bank statements.

[29] These rulings, or the transcript reflecting these case management decisions, are not before us.

[30] However, each of these is a discretionary case management decision and such decisions are subject to a highly deferential standard of review: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2008 BCCA 107 at para. 4, leave to appeal to SCC ref'd, [2008] S.C.C.A. No. 222. As stated by Justice

Moldaver, writing for a majority of the Supreme Court of Canada in *R. v. Samaniego*, 2022 SCC 9, trial judges can avail themselves of their trial management power:

> [26] ... it is important on appellate review that trial management decisions are examined in the context of the trial as a whole, rather than as isolated incidents. Trial management decisions, as the one in this example, engage the judge's discretion. Absent error in principle or unreasonable exercise, these discretionary decisions deserve deference (*R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 44).

[31] In this case, the appellant has not pointed to an error, either in his oral submissions before us or in his written material, made by the trial judge with respect to the case management decisions made. These are discretionary decisions that deserve deference. Having failed to point to any error in the exercise of his discretion, I would not accede to this ground of appeal.

(3) Unjust Enrichment

[32] The trial judge correctly stated the legal principles as set out in *Moore v. Sweet*, 2018 SCC 52., at para 37. To succeed in his unjust enrichment claim, the appellant had to establish:

a) an enrichment to the respondents;

b) a correspondent deprivation to the appellant; and

c) the absence of any juristic reason for the enrichment.

[33] The trial judge first expressed doubt about enrichment and corresponding deprivation, stating he was “far from satisfied” either had been proven. However, the judge focused on the third element required to prove unjust enrichment. The judge stated the appellant “… completely fails on the third branch of the test.” The trial judge concluded that there was a juristic reason for the financial transfers, stating that when the appellant was a minor, there was a juristic reason for the respondents to manage and control his finances. Once he reached the age of majority, it was not unreasonable for the respondents to request that he contribute to household expenses.

[34] In all, the trial judge was satisfied that there was a “legitimate juristic reason” for the transfers. He thus found there was no unjust enrichment.

[35] This was a finding that was available to the trial judge. On this point, the trial judge considered the testimony of the appellant’s father that there was never any agreement that the appellant would be placed on title or that he was contributing to the mortgage. The trial judge noted that this testimony did not change despite being tested in cross-examination and the trial judge accepted this testimony. He was entitled to do so based on the evidentiary record presented.

[36] This case came down to the appellant’s failure to meet his burden. He was required to prove on a balance of probabilities the existence of an agreement with his parents. Alternatively, he was required to prove on a balance of probabilities that his parents were unjustly enriched such that he was entitled to a remedy.

[37] The appellant has failed to demonstrate that the trial judge committed any error of law or palpable and overriding error of fact in his unjust enrichment analysis or in his analysis regarding the existence of a contract with his parents.

[38] I would dismiss this ground of appeal.

Disposition

[39] I would dismiss the appeal.

[40] **HARRIS J.A.**: I agree.

[41] **ABRIOUX J.A.**: I agree.

[42] **HARRIS J.A.**: The appeal is dismissed and the respondents are entitled in the ordinary course to their costs.

“The Honourable Justice Winteringham”