

In the Court of Appeal of Alberta

Citation: Wang v Millman, 2024 ABCA 393

Date: 20241129
Docket: 2401-0169AC
Registry: Calgary

Between:

Xiaoli Lily Wang and Daiming Robert Li

Appellants
(Plaintiffs)

- and -

Alexander S. Millman

Respondent
(Defendant)

The Court:

**The Honourable Justice Jack Watson
The Honourable Justice Jo'Anne Strekaf
The Honourable Justice April Grosse**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice E.J. Funk
Dated the 23rd day of May, 2024
Filed on the 10th day of June, 2024
(Docket: 1901 02706)

Memorandum of Judgment

The Court:

[1] The appellants sued their former lawyer, the respondent Mr Millman, in 2019. In April 2024, the appellants applied to have the respondent declared in contempt of court for filing an application for summary dismissal of the appellants' claim pursuant to Rule 7.3 of the *Alberta Rules of Court*. The appellants argue that the summary dismissal application was contemptuous because it was duplicative of an earlier unsuccessful application by the respondent for dismissal of the claim for long delay pursuant to Rule 4.33. The appellants focus on the fact that the ultimate remedy sought in both applications was dismissal of their claim.

[2] A chambers justice held that the filing of the summary dismissal application did not amount to contempt. Her decision involved the application of a legal standard to the facts, a question of mixed fact and law, and is reviewable for palpable and overriding error: *Alberta v AUPE*, 2014 ABCA 197 at para 15. We find no reviewable error.

[3] There is no merit to the appellants' argument that the respondent committed contempt by breaching the order dismissing the application for long delay. That order did not, expressly or by implication, preclude the respondent from later bringing an application for summary dismissal on the merits.

[4] Similarly, the filing of the summary dismissal application was not a contempt of the court's process as argued by the appellants. Given the distinct issues involved in the application to dismiss for long delay and the application for summary dismissal on the merits, the latter was not duplicative or abusive, nor was it a collateral attack on the order dismissing the application for long delay. In these circumstances, we need not determine if or when a collateral attack or abuse of process might also amount to contempt. Whatever contempt may be, this is not it.

[5] The chambers justice ordered the appellants to pay \$675 in costs, which they argue was unjustified. We disagree. The costs ruling follows the general starting point that a successful party is entitled to costs and \$675 is the amount set by Column 1 of Schedule C to the *Alberta Rules of Court* for a contested application. The amount could have been higher, given the appellants' unfounded allegations of contempt. Costs awards are reviewed on a deferential standard and there is no basis for this court to interfere: *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26 at para 52.

[6] The appeal is dismissed. Pursuant to Rule 14.88 of the *Alberta Rules of Court*, the respondent is entitled to costs of the appeal on Column 1 of Schedule C.

[7] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Appeal heard on November 4, 2024

Memorandum filed at Calgary, Alberta
this 29th day of November, 2024

Watson J.A.

Strekaf J.A.

Grosse J.A.

Appearances:

Appellant, X. Wang

Appellant, D. Li (no appearance)

J. Blanchard

B. Biayeibo
for the Respondent