

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Marida Holdings Ltd. v. Wang*,  
2025 BCSC 1408

Date: 20250502  
Docket: S248664  
Registry: New Westminster

Between:

**Marida Holdings Ltd., Shannon Marie Mackenzie,  
Marilyn Ethel Anderson, and Heather Anderson**

Plaintiffs

And:

**Li Min Wang**

Defendant

Before: The Honourable Justice Hamilton

### Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs: W.A. Berger (by videoconference)

Counsel for the Defendant: Z. Yang (by videoconference)

Place and Date of Hearing: New Westminster, B.C.  
April 28, 2025

Place and Date of Judgment: New Westminster, B.C.  
May 2, 2025

[1] **THE COURT:** I am prepared to provide oral reasons this morning, and so I will do so now.

[2] The defendant, Li Wang, applies to set aside a default judgment taken against her by the plaintiffs. The plaintiffs obtained a default judgment on October 16, 2023, with damages to be assessed. The court assessed damages on

November 8, 2024, and ordered that Ms. Wang pay damages of \$430,000 plus interest and costs.

### **Background Facts**

[3] In terms of the background facts, the plaintiffs commenced this action by notice of civil claim filed March 31, 2023, claiming damages against Ms. Wang for failing to complete the purchase of a 3.4-acre property in Anmore, British Columbia, which I will refer to as "the property." The plaintiffs obtained an order to serve the notice of civil claim on Ms. Wang substitutionally by posting a copy of the notice of civil claim on the lobby door of an apartment building located at Manchester Drive, Burnaby, British Columbia, in which Ms. Wang owns unit 115 and sending a photo of the posting by text message to 778-855-2743.

[4] On October 16, 2023, the plaintiffs obtained a default judgment and in December 2023, filed the judgment against title to Ms. Wang's apartment. In September 2024, the plaintiffs filed a notice of application to assess damages, and on October 22, 2024, Justice Norell ordered the plaintiffs to serve the application on Ms. Wang using five different methods, namely:

1. posting the materials on the lobby door to Ms. Wang's apartment.
2. sending the materials by regular registered mail to Ms. Wang's apartment.
3. sending a photo of the lobby door posting to that same telephone number as in the first substitutional service order.
4. sending the materials by email to two different email accounts of Ms. Wang.

[5] On November 8, 2024, the court then assessed damages at \$430,000 plus interest of \$27,961.74 and costs of \$8,127.48 in Ms. Wang's absence. The \$430,000 figure represented the difference between the sale price of the property set out in the agreement for purchase and sale (\$1.58 million) and what the property actually sold for after the deal did not proceed (\$1.15 million). The plaintiffs had already received a deposit of \$55,000 that Ms. Wang paid directly to

them and the court ordered that a further \$20,000 deposit be released to the plaintiffs following the damages assessment.

### **The Parties' Positions**

[6] The parties agree that Rule 3-8(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], the usual rule for setting aside default judgments in Supreme Court, does not apply to set aside the damages assessment.

[7] Ms. Wang submits that she is able to use Rule 22-1(3) to seek the damages assessment be set aside and then request that the judgment be set aside. Rule 22-1(3) of the *Rules* provides the court with jurisdiction to reconsider an order made in the absence of another party provided that the person who failed to attend court was not guilty of willful delay or default.

[8] In the alternative to Rule 22-1(3), Ms. Wang seeks to set aside the damages assessment and judgment pursuant to the court's inherent jurisdiction. She submits that it would be a shocking and unconscionable miscarriage of justice to let the damages assessment and default judgment stand.

[9] The plaintiffs submit that Rule 22-1(3) is not available to Ms. Wang as she did not file a response to the notice of civil claim and as such, she is not a party of record who was entitled to notice of the hearing to assess damages. The plaintiffs further submit that Ms. Wang has not satisfied the stringent test for engaging the court's inherent jurisdiction, which can only be used to prevent a miscarriage of justice that is something shocking and unconscionable. The plaintiffs maintain that Ms. Wang's only remedy is to seek leave to appeal to the Court of Appeal.

### **The Law**

[10] Both counsel referred in their submissions to *Ibrahim v. Hashemi*, 2024 BCCA 383, a relatively recent decision in which the Court of Appeal provides helpful guidance. *Ibrahim* involved an appeal of the order of the chambers judge setting aside default judgment and assessment of damages. The defendant in that case, as in the case at hand, had not filed a response to the notice of civil claim. As such, she was not a party of record.

[11] However, in *Ibrahim*, as in the case at hand, the plaintiff had been ordered to serve the defendant substitutionally with the materials for the damages

assessment in advance. Within that context, Horsman, J.A. states at paragraph 29:

The fact that Ms. Hashemi was entitled to notice gave her standing to apply to set the order aside under R. 22-1(3): *Main Acquisitions Consultants Inc. v. Prior Properties Inc.*, 2022 BCCA 102, at para. 40.

[12] In our case, like in *Ibrahim*, Justice Norell ordered that the plaintiffs serve Ms. Wang substitutionally with their application to assess damages. Like the defendant in *Ibrahim*, Ms. Wang was entitled to notice even though she was not a party of record. Based on *Ibrahim*, I find that Ms. Wang is entitled to apply under Rule 22-1(3) to set aside the damages assessment. She need not rely on the court's inherent jurisdiction or apply for leave to appeal to the Court of Appeal.

### **Rule 22-1(3)**

[13] I will now turn to Rule 22-1(3). As stated in the rule itself, the applicant needs to demonstrate that she is not guilty of wilful delay or default. In *Ibrahim*, the Court of Appeal stated at paragraph 30:

[30] On an application under R. 22-1(3), as under *Miracle Feeds*, the applicant must demonstrate: (1) that she is not guilty of wilful delay or default; (2) that she has brought the application for consideration as soon as reasonably possible; and (3) that she has shown a meritorious defence, or at least a defence worthy of investigation: *Rangi v. Rangi*, 2007 BCCA 352, at para. 73. The *Miracle Feeds* factors are not meant to apply inflexibly, and they are not immutable: *Nichol v. Nichol*, 2015 BCCA 278, at para. 37. Rather, they are appropriate indicators of whether it is in the interests of justice to set aside a default judgment: *Andrews v. Clay*, 2018 BCCA 50, at para. 29. As I have indicated, similar principles apply to the test under R. 22-1(3).

### **Relevant Factors**

[14] The relevant factors in considering whether to set aside the damages assessment under Rule 22-1(3) are also relevant to whether or not to set the default judgment aside.

[15] First, was the application to set aside brought as soon as possible? Ms. Wang learned of the default judgment after January 21, 2025. The plaintiffs' counsel properly concedes that Ms. Wang has brought this application as soon as possible.

[16] Second, has there been willful or deliberate failure to file a response or defence to the plaintiffs' claim or willful or deliberate failure to appear at the damages assessment? Ms. Wang's affidavit explains in great detail supported by documentation why she did not file a response or attend at the damages assessment. She was unaware of the action until after January 21, 2025.

[17] In May 2023, Ms. Wang travelled to China to care for her mother who had suffered a stroke. Her father was then hospitalized with health issues. Ms. Wang also suffered medical issues while in China. As such, other than a brief trip back to Canada in or about March 2024, Ms. Wang was largely out of the country from May 2023 to January 2025. Ms. Wang attaches a copy of the entries on her Chinese passport and documentation regarding her flights to her affidavit to corroborate her evidence. Ms. Wang explains that:

1. When she went to China in May 2023, she ceased using her Canadian phone number, which was the phone number used for substitutional service in both orders.
2. Her apartment was rented to tenants, but she was not told of the lobby postings of the notice of civil claim or the damages assessment application.
3. When she was in China, she did not check the Canadian mailbox, so she did not receive the mailed copy of the damages assessment application.
4. She did not receive the registered mail copy of the damages assessment application. Indeed, it had no signed acknowledgment of receipt.
5. Due to Chinese internet restrictions, she was not able to access her Canadian email accounts while she was in China.
6. She only checked her accounts when she returned to Canada in January of 2025. While she visited Canada briefly in 2024, her visit was prior to Justice Norell's order that she be served with the damages assessment materials using her email addresses.

7. When she returned to Canada in January 2025 and checked her emails, she first became aware of the judgment and damages assessment and immediately cancelled her return ticket to China, hired a Mandarin-speaking lawyer, and brought this application to deal with this matter.

[18] I am satisfied that despite the orders for substitutional service employing several different methods of service, Ms. Wang simply did not receive the documents served. I accept Ms. Wang's evidence that there was no willful or deliberate failure to respond or attend. I accept Ms. Wang's reason for not responding to the action or attending the assessment of damages was that she was unaware of the proceedings. As soon as she became aware of the proceedings, she took matters seriously and gave them priority. I find that she would have done so earlier had she known or had any idea about the action.

[19] Next, is there a meritorious defence or a defence at least worthy of investigation? Ms. Wang seeks to file a response to the notice of civil claim and to add a third-party claim against her realtor, Mr. Chow. Her defence includes the following:

- 1) It was clear to the seller and her realtor that she had no intention of purchasing the property personally. She incorporated a company for the purpose of purchasing the property. As such, she was incorrectly named as the defendant.
- 2) The paragraphs advertising the property for sale showed one power line, and Mr. Chow assured her that it was low voltage power line. Ms. Wang later discovered there were actually two power lines and that they were both high-voltage power lines. According to Ms. Wang, this is significant for two reasons:
  - I. It affected the ability to redevelop the property, and
  - II. RBC had pre-approved her for financing but later refused to permit her to use the property as security for the mortgage due to the power lines and zoning issues.

- 3) Mr. Chow did not advise her that the \$55,000 deposit was non-refundable.
- 4) The subject removal amendment was signed under circumstances of duress and material representations made by Mr. Chow indicating that he would secure a co-investor and financing. Ms. Wang is not proficient in English and did not understand the contract or the addendum fully.

[20] Ms. Wang will also suggest that the plaintiffs failed to mitigate. She proposed alternatives, which the plaintiffs rejected.

[21] Without weighing into whether or not the various defences or third-party claims would be successful, I find that Ms. Wang has shown that she has a meritorious defence or at least a defence worth investigating.

### **Overall Interests of Justice**

[22] Considering all the circumstances, I find that it is in the interests of justice to set aside the damages assessment and the judgment. Ms. Wang was unaware of the action. I accept that had she known about the action, she would have filed a defence and appeared at the damages assessment. Not permitting her to defend this case on the merits would be unjust.

[23] I understand that Ms. Wang is not a wealthy woman. Both counsel mentioned she has approximately \$120,000 equity in her apartment. The claim is more than three times that amount. The claim is significant and should be addressed on the merits.

### **Orders**

[24] For the above reasons, I am satisfied that the damages assessment should be set aside under Rule 22-1(3), and the judgment should be set aside under Rule 3-8(1).

[25] As such, I make the following orders:

1. The default judgment granted on October 16, 2023, is set aside;
2. The order made after application dated November 8, 2024, is set aside;

3. The judgment registered as CV 1070504 on December 11, 2023, against the defendant's property located at unit 115-9847 Manchester Drive, Burnaby, British Columbia be removed;
4. The defendant has leave to file a response to civil claim, counterclaim, and third-party notice within 21 days.

[26] In terms of costs, unless counsel have submissions to the contrary, my preliminary view is that costs of this application should be in the cause.

“Hamilton J.”