

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cao v. Canadian Imperial Bank of
Commerce,*
2025 BCSC 1601

Date: 20250819
Docket: S254010
Registry: New Westminster

Between:

Jing Cao

Plaintiff

And

Canadian Imperial Bank of Commerce and Tao Jiang

Defendants

Before: Associate Judge Hughes

Reasons for Judgment

The Plaintiff, appearing in person: J. Cao

The Defendant, appearing in person: T. Jiang

No further appearances

Place and Date of Hearing: New Westminster, B.C.
August 6, 2025

Place and Date of Judgment: New Westminster, B.C.
August 19, 2025

Table of Contents

INTRODUCTION 3
BACKGROUND..... 3
THE APPLICABLE RULE 4
THE PARTIES’ POSITIONS..... 5
DOES THE COUNTERCLAIM DISCLOSE NO REASONABLE CLAIM? 5
**IS THE COUNTERCLAIM UNNECESSARY, SCANDALOUS, FRIVOLOUS OR
VEXATIOUS? 7**
IS THE COUNTERCLAIM OTHERWISE AN ABUSE OF PROCESS? 7
RESULT 9

Introduction

[1] The plaintiff, Jing Cao (“Ms. Cao”), applies to strike the counterclaim filed by the defendant Tao Jiang (“Mr. Jiang”) pursuant to Rule 9-5(1)(a), (b) or (d) of the Supreme Court Civil Rules [*Rules*], and she seeks costs.

Background

[2] Ms. Cao and Mr. Jiang are separated spouses who are also parties to a family law action in this court, New Westminster Registry No. E71053 (the “Family Action”). Mr. Jiang is the claimant and Ms. Cao is the respondent in the Family Action. The parties’ primary asset is a condominium located in Coquitlam, BC (the “Condo”), which the parties purchased shortly after immigrating to Canada in 2016. The Condo is registered in Mr. Jiang’s sole name and is subject to a mortgage in favour of the Canadian Imperial Bank of Commerce (“CIBC”).

[3] In the Family Action, Mr. Jiang seeks an equal division of family property including the Condo. Ms. Cao claims the Condo as her excluded property, and she seeks an unequal division of family property. She claims that the funds used to purchase the Condo came from her parents.

[4] Both spouses are self-represented in this action and in the Family Action.

[5] The plaintiff filed her notice of civil claim in this action on June 17, 2024, naming only CIBC as a defendant. The plaintiff has amended her notice of civil claim twice, first on July 23, 2024, and again on June 2, 2025. In simple terms, Ms. Cao alleges that, prior to the purchase of the Condo in 2016, CIBC wrongfully transferred \$200,000 from her CIBC account to Mr. Jiang’s CIBC account (the “Funds Transfer”). The relief sought against CIBC includes an order to rescind the Funds Transfer, and damages for lost investment opportunity, emotional distress, loss of future income, and punitive damages.

[6] On June 27, 2025, after Ms. Cao filed her second amended notice of civil claim, Mr. Jiang obtained an order of this court adding him as a second defendant in this action. He filed a response to civil claim on July 3, 2025. Mr. Jiang’s primary

concern, and the basis of his application to be added as a defendant, is the potential effect on him of the plaintiff's claim for rescission of the Funds Transfer.

[7] Mr. Jiang filed a counterclaim in this action on July 14, 2025, in which he claims the following relief:

1. an order to stop jingcao to seek the relief to rescind transaction in jingcao's civil claim.
2. an order to award general damages for the emotional distress and harm suffered due to plaintiff's conduct, but also deep and lasting emotional damages due to the direct and foreseeable consequences of the plaintiff's actions, amount \$150000 as compensation.
3. an order to seek punitive damages in an amount \$150000 for taojiang's suffering substantial emotional distress.
4. order to the cost of the action.
5. order to stop jingcao to seek any relief to violate our family assets.

[8] As indicated at the outset, the plaintiff seeks to strike the whole of the counterclaim pursuant to Rule 9-5(1)(a), (b) or (d), without leave to amend.

The applicable rule

[9] Rule 9-5(1) provides:

Scandalous, frivolous or vexatious matters

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

The parties' positions

[10] The plaintiff's notice of application provides no legal basis for this application other than a recitation of Rule 9-5(1). There is no analysis or explanation as to how the Rule applies to the counterclaim. In the legal basis of his application response, Mr. Jiang does not address Rule 9-5(1), but simply repeats the legal basis set out in his counterclaim.

[11] In oral submissions, and in answer to questions from the court, the plaintiff advised that her objections to the counterclaim are that the factual allegations are false, and that the claims are the same as those made by Mr. Jiang in the Family Action.

[12] In response, Mr. Jiang says that the claims differ in that the civil action deals with a potential rescission of the Funds Transfer which, if successful, may require him to repay the \$200,000. He also claims that the factual allegations made by the plaintiff in her notice of civil claim are false, and that her actions have caused him acute emotional distress.

[13] In the face of limited and legally deficient submissions from these two self represented litigants, I reserved judgment so that I could carefully review the counterclaim and the pleadings in the Family Action.

Does the counterclaim disclose no reasonable claim?

[14] Rule 9-5(1)(a) provides that the court may strike the whole or part of a pleading on the ground that it discloses no reasonable claim.

[15] A pleading will be only struck under subrule (a) if it is "plain and obvious" that it has no reasonable prospect of success. The facts as pleaded are assumed to be true unless they are manifestly incapable of being proven: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at paras. 64-66.

[16] This court has recently confirmed the following principles:

Pleadings must set out the issues of fact and law to be determined by the court. Material facts should be set out simply and clearly. Pleadings will be struck where they do not establish a cause of action, do not advance a claim known to law, or are groundless and fanciful: *Stoneman v. Denman Island Local Trust Committee*, 2010 BCSC 636 at para. 27.

Wang v. Davies, 2025 BCSC 596 at para. 35.

[17] I have determined that it is plain and obvious that the counterclaim has no reasonable prospect of success for the following reasons.

[18] Mr. Jiang's counterclaim does not comply with the basic requirements of a pleading. Rule 3-4(6) provides that Rule 3-1 applies to a counterclaim as if it were a notice of civil claim. Rule 3-1(2) provides that a notice of civil claim must (a) set out a concise statement of the material facts giving rise to the claim; (b) set out the relief sought by the plaintiff against each named defendant; and (c) set out a concise summary of the legal basis for the relief sought. The counterclaim does none of those things.

[19] The Statement of Facts fails to outline the issues of fact to be determined or to set out a concise or coherent statement of material facts. It describes Mr. Jiang's account of the circumstances surrounding the parties' move to Canada, their decision to purchase the Condo, and interactions with CIBC. It also describes two subsequent agreements between the spouses, and various allegations with respect to the plaintiff's parents, who are not parties to this civil action or the Family Action. It pleads no material facts to support the claims for general or punitive damages.

[20] In addition, the counterclaim pleads general damages for emotional distress in the amount of \$150,000. Rule 3-7(14) provides that if general damages are claimed, the amount of the general damages claimed must not be stated in any pleading.

[21] The claim for an order stopping the plaintiff from seeking rescission of the Funds Transfer is not a proper claim. Mr. Jiang can oppose the plaintiff's claim for rescission, as he has done in his response to civil claim, but he cannot succeed in a

claim to stop the plaintiff from seeking an order for rescission. That claim is bound to fail.

[22] The claim for an “order to stop jingcao to seek any relief to violate our family assets” is also bound to fail. It is incomprehensible, and there are no material facts or legal basis pleaded to support this claim.

[23] The counterclaim also does not provide a clear legal basis for the relief sought. There are three paragraphs in the Legal Basis section, headed “Breach of Tort law”, “Breach of common law fraud”, and “Breach of family law Act BC”. Under each of these headings Mr. Jiang provides a narrative regarding alleged unfairness to him, but no discernable articulation of the legal basis for his claims.

[24] For the above reasons, I find that it is plain and obvious that the counterclaim has no prospect of success. In the event that I am wrong, I will address the other bases on which the plaintiff applies to strike the counterclaim.

Is the counterclaim unnecessary, scandalous, frivolous or vexatious?

[25] Rule 9-5(1)(b) provides that the court may strike a pleading if it is unnecessary, frivolous, scandalous or vexatious.

[26] A pleading is unnecessary or vexatious if it does not go to establishing the plaintiff’s (or in the case of a counterclaim, the defendant’s) cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court’s time and public resources: *Nevsun Resources Ltd.*, at para. 65.

[27] For the same reasons articulated above, I find that the counterclaim is unnecessary or vexatious.

Is the counterclaim otherwise an abuse of process?

[28] Rule 9-5(1)(d) provides that the court may strike a pleading on the ground that it is an abuse of process.

[29] In *Rossner v. Nystrom*, 2019 BCSC 583 at para. 43, this court described abuse of process as a broad and flexible doctrine that permits the court to prevent unfairness and oppressive treatment in the context of civil actions. Only egregious conduct will engage the doctrine. The proceedings must be so unfair that they are contrary to the interests of justice and would bring the administration of justice into disrepute: *Hare v. Lit*, 2013 BCSC 33 at para. 24.

[30] This court held in *Woodward & Company Lawyers LLP v. The Tsilhqot'in National Government*, 2021 BCSC 16 [Woodward], that the commencement by the plaintiff of more than one action in the same jurisdiction against the same defendant in relation to the same dispute is an abuse of process.

[31] Abuse of process is a substantive doctrine that serves fundamental policy objectives such as protecting the principle of finality in litigation, ensuring that litigants are not vexed twice by the same cause, preserving the courts' and litigants' resources, and upholding the integrity of the legal system in order to avoid inconsistent results: *Toronto (City) v. C.U.P.E. Local 79*, 2003 SCC 63 at para. 38. All of these policy objectives are implicated by the commencement of multiple claims by a plaintiff against the same defendants in relation to a single cause of action: *Woodward* at para. 72.

[32] In his amended notice of family claim filed in the Family Action on October 25, 2024, Mr. Jiang claims in Schedule 5 – Other Orders “an order to award the claimant emotional and physical damages of \$200,000 against the respondent under the TORT LAW for threatening claimant life safety”. This claim appears to be duplicated in Mr. Jiang’s counterclaim in this action for general damages for “the emotional distress and harm suffered due to the plaintiff’s conduct.”

[33] For the reasons articulated in *Woodward*, it would be an abuse of process to allow Mr. Jiang to advance the same claims against Ms. Cao in both this and the Family Action.

[34] Accordingly, I find that the portion of the counterclaim that claims damages for emotional distress is an abuse of process.

Result

[35] For the reasons set out above, I order that the counterclaim filed by Tao Jiang on July 14, 2025, be struck in its entirety.

[36] Where a claim is brought by a self-represented litigant, the court should consider whether a self-represented litigant’s defective pleading can be corrected by way of amendment: *Wang*, at para. 67. After such consideration, I have determined, as this court did in *Wang*, that the counterclaim is so overwhelmed with difficulty that it is not possible to identify all of the specific inadequacies that exist. I see no reasonable prospect that the pleading can be corrected, and I therefore order that the counterclaim be struck without leave to amend.

[37] To be clear for Mr. Jiang’s benefit, this order does not prevent him from defending this civil action and the claims made by Ms. Cao therein. He is still a party and has a right to participate as a defendant. It also does not stop him from pursuing the claims he has brought against Ms. Cao in the Family Action.

[38] I also want to be clear that this decision is not to be seen as an endorsement of the merits of Ms. Cao’s claims. The only application before me was to strike the counterclaim. Such application does not engage any consideration of the merits of the notice of civil claim.

[39] With respect to the application for costs, the plaintiff has been successful on this application and is entitled to her costs payable by Mr. Jiang in any event of the cause but not payable forthwith.

“Associate Judge Hughes”