COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Marida Holdings Ltd. v. Wang,* 2026 BCCA 104

Date: 20260312
Docket: CA50701

Between:

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

Appellants (Plaintiffs)

And

Li Min Wang

Respondent (Defendant)

Before: The Honourable Chief Justice Marchand
The Honourable Justice Griffin
The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated May 2, 2025 (*Marida Holdings Ltd. v. Wang*, 2025 BCSC 1408, New Westminster Docket S248664).

Counsel for the Appellants:	W.A. Berger
Counsel for the Respondent:	Z. Yang
Place and Date of Hearing:	Vancouver, British Columbia February 10, 2026
Place and Date of Judgment:	Vancouver, British Columbia March 12, 2026

Written Reasons by:
The Honourable Justice Mayer

Concurred in by:
The Honourable Chief Justice Marchand
The Honourable Justice Griffin

Summary:

The appellants appeal the orders of a chambers judge setting aside a default judgment and subsequent damages assessment. They contend that the judge erred in law by relying on Rule 22-1(3) of the Supreme Court Civil Rules as a basis to set aside the damages assessment. They also contend that the judge made palpable and overriding errors of fact in determining whether the respondent was guilty of willful delay or default in responding to the appellants' claim. Held: Appeal dismissed. The appellants were ordered to serve their damages assessment application substitutionally, and did so, giving the respondent standing to apply to set the damages assessment aside under R. 22-1(3). The judge did not make the alleged palpable and overriding errors of fact.

Reasons for Judgment of the Honourable Justice Mayer:

[1] This appeal concerns the orders of a chambers judge setting aside a default judgment and subsequent damages assessment. The underlying claim was brought by the appellants after the respondent, Li Wang, did not complete the purchase of a property located in Anmore, British Columbia. The appellants took default judgment after Ms. Wang failed to file a response to their claim for damages and later obtained an order assessing their damages at $430,000.

[2] The appellants contend that the judge erred in law by relying on Rule 22-1(3) of the *Supreme Court Civil Rules* [*Rules*] and the decision of this Court in *Ibrahim v. Hashemi*, 2024 BCCA 383, as a basis to set aside the default judgment and damages assessment. In addition, the appellants allege that the judge made various palpable and overriding errors of fact and an error of law concerning, in summary, when Ms. Wang became aware of the proceedings brought against her. They seek an order that the default judgment and damages assessment be reinstated.

[3] For the reasons that follow, I would dismiss the appeal. The judge properly applied R. 22-1(3) and relevant law in deciding to set aside the damages assessment. Having done so, it was open to the judge to set aside the default judgment, as she did, pursuant to R. 3-8(11). The appellants have not identified any palpable and overriding errors of fact or an error of law made by the judge in concluding that Ms. Wang had not willfully delayed or defaulted in responding to the appellants' claim.

Background

[4] A brief summary of the relevant background is set out in the judge's reasons, indexed as *Marida Holdings Ltd. v. Wang,* 2025 BCSC 1408 ("Reasons"):

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

[5] Ms. Wang contends that she did not learn of the default judgment and damages assessment until January 21, 2025. On April 11, 2025, after retaining legal counsel, she applied to set both aside.

[6] At the hearing before the judge on April 28, 2025, Ms. Wang submitted she was entitled to apply under R. 22-1(3) to set aside the damages assessment and then request that the default judgment be set aside. In the alternative, she sought

these orders pursuant to the court's inherent jurisdiction. Parenthetically, R. 22-1(3) provides the court with jurisdiction to reconsider an order made when a party to a chambers proceeding fails to attend at a hearing, provided that the person who failed to attend was not guilty of willful delay or default.

[7] The appellants took the position that Ms. Wang was not entitled to rely on R. 22-1(3) because she had not filed a response to their notice of civil claim and therefore was not a party of record who was entitled to notice of the hearing to assess damages. The judge did not agree. She concluded Ms. Wang was entitled to notice even though she was not a party of record, as a result of the earlier substitutional service order. Relying on *Ibrahim*, she found that Ms. Wang was entitled to apply to set aside the damages assessment under R. 22-1(3) and did not need to rely on the court's inherent jurisdiction.

[8] The judge then applied R. 22-1(3). She correctly referred to the three requirements an applicant must satisfy to set aside a damages assessment, set out at para. 30 of *Ibrahim*: (1) they are not guilty of willful delay or default; (2) they have brought the application for reconsideration as soon as reasonably possible; and (3) they have shown a meritorious defence, or at least a defence worthy of investigation. As set out at para. 32 of *Ibrahim*, these factors also apply in the context of an application to set aside a default judgment under Rule 3-8(11).

[9] The judge quickly disposed of the second and third requirements. She found that as soon as Ms. Wang became aware of the proceedings, she took matters seriously and gave them priority. The judge also found that Ms. Wang had a meritorious defence, or at least a defence worth investigating. These findings are not at issue in this appeal.

[10] With respect to the first requirement, the judge concluded there was no willful or deliberate failure on Ms. Wang's part to respond to the appellants' claim or attend at the damages assessment hearing. She set out the following summary of her evidence:

> [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:
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> > 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.
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> > 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.
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> > 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.
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> > 4. She did not receive the registered mail copy of the damages assessment application. Indeed, it had no signed acknowledgment of receipt.
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> > 5. Due to Chinese internet restrictions, she was not able to access her Canadian email accounts while she was in China.
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> > 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.
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> > 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.

[11] Ultimately, the judge was satisfied that despite the orders for substitutional service Ms. Wang did not receive the documents served by the appellants, was unaware of the proceedings, and had not willfully or deliberately failed to respond or attend the damages assessment hearing. She concluded that it was in the interests of justice to set aside both the damages assessment order under R. 22-1(3) and the default judgment under R. 3-8(11).

Did the judge err in law by applying Rule 22-1(3)?

[12] Whether the judge erred in applying R. 22-1(3) is a question of law. The standard of review on a question of law is correctness. If such an error is found, an

appellate court is free to replace the opinion of the trial or chambers judge with its own: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 8.

[13] In *Ibrahim,* this Court dismissed an appeal seeking to overturn a decision setting aside a damages assessment and default judgment. The defendant had not filed a response to a notice of civil claim, and the plaintiff obtained default judgment, with damages to be assessed. When the damages assessment came on for hearing, the chambers judge adjourned the application and ordered that the plaintiff serve the defendant with the damages assessment application by registered mail. The defendant, who was not aware of the default judgment or the application, did not appear, and damages were assessed. She subsequently retained counsel and then successfully applied under R. 22-1(3) to have the assessment and default judgment set aside. The plaintiff appealed.

[14] Justice Horsman, writing for the division, referred to the reasoning in *National Home Warranty Group Inc. v. Red Rose Appliances & Plumbing*, 2018 BCSC 234 [*National Home Warranty*], concerning when relief under R. 22-1(3) is available:

> While R. 22-1(3) of the *Rules* provides the court with jurisdiction to reconsider an order made in the absence of the other party, the precondition to the operation of R. 22-1(3) is that the absent party was entitled to notice. A party in default is not generally entitled to receive notice of an application to assess damages following a default judgment: *National Home Warranty* at paras. 35–39.

Ibrahim at para. 17(c).

[15] Justice Horsman concluded that the defendant was entitled to notice of the application to assess damages as a result of a previous order that she be served and therefore had standing to apply for reconsideration under R. 22-1(3), even though she had not appeared: *Ibrahim* at paras. 28–29, citing *Main Acquisitions Consultants Inc. v. Prior Properties Inc.,* 2022 BCCA 102 at para. 40.

[16] In this appeal, the appellants contend that in this case, unlike in *Ibrahim* where the damages assessment was adjourned pending service on the defendant, they sought an order for substitutional service of their damages assessment application in an abundance of caution. They contend that Justice Norell's order did

not require service on Ms. Wang but rather only permitted them to serve her substitutionally.

[17] In my view, the circumstances in *Ibrahim* parallel those in this appeal.

[18] Justice Norell made the order authorizing substitutional service of the notice of application to assess damages on October 22, 2024, after the appellants applied for this relief. The order provided that the appellants "may serve the Notice of Application and associated materials" and a requisition setting the hearing in various ways (emphasis added). In addition, the order provided that the "the Defendant may file an application response herein 12 days after service in accordance with" the order (emphasis added). The appellants then perfected substitutional service pursuant to this order.

[19] In my view, the appellants' interpretation of Justice Norell's order, that use of the word "may" means the order merely permitted but did not require substitutional service, is untenable. The judge ordered both the manner of substitutional service on Ms. Wang and a deadline for her to respond.

[20] Judges do not generally make optional orders. In my view, Justice Norell's order was not optional but required the appellants to serve the notice of application for assessment of damages on Ms. Wang.

[21] To their credit, the appellants sought a substitutional service order and then perfected service pursuant to Justice Norell's order. As a result, Ms. Wang had standing to apply to set aside the damages assessment order under R. 22-1(3).

[22] I would not accede to this ground of appeal.

Did the judge make palpable and overriding errors of fact?

[23] The standard of review on alleged errors of fact is palpable and overriding error. Absent palpable and overriding error affecting the assessment of facts, findings of fact cannot be overturned: *Housen* at paras. 10, 19 and 21–25.

[24] The appellants contend that the judge made two errors of fact, relevant to the question whether Ms. Wang was guilty of willful delay or default.

[25] First, they say the judge erred in finding that Ms. Wang's affidavit contained evidence that her apartment was rented to tenants, but she was not told of the lobby postings of the notice of civil claim or delivery of the application to assess damages, when in fact her affidavit contained no such evidence. They also say the judge should have drawn an adverse inference from Ms. Wang's failure to call her tenants as witnesses—the inference being that the tenants told her about service of these materials.

[26] Next, they say that the judge erred in finding that Ms. Wang's email address, with the qq.com domain, was a Canadian email address she could not access while in China due to Chinese internet restrictions, when in fact this was a Chinese email address.

[27] The judge's reasons do not set out an exhaustive summary of Ms. Wang's affidavit evidence. With respect to whether Ms. Wang had been told about service of materials, the judge simply noted "she was not told of the lobby postings of the notice of civil claim or the damages assessment application": Reasons at para 17.

[28] I agree with the appellants' submission that Ms. Wang's affidavit does not explicitly state she had not been told about the lobby postings or had not been notified by her tenants about attempted service. In this respect the judge misstated the evidence. However, I do not consider this error to be overriding. There was an evidentiary basis for the judge's conclusion that Ms. Wang did not know about the proceedings until January 2025.

[29] Ms. Wang was in China between May 23, 2023, and January 21, 2025, except for the period between March 13, 2024, and June 5, 2024 (which was before Justice Norell made a substitutional service order). In her affidavit, she stated:

1. While she was in China, she was unable to check her email accounts due to internet restrictions in China and did not receive any notifications regarding this proceeding;

2. She checked her Gmail account when she returned to Canada in January 2025 and found an email from appellants' counsel;

3. She did not check the mailbox of her Canadian residence after May 23, 2023 until February 2025, when she found a letter from appellants' counsel;

4. She stopped using her previous Canadian phone number when she went to China in May 2023; and

5. Her failure to respond was due to her "extended absence from Canada for urgent family reasons, language barriers, and lack of actual notice of this proceeding" (emphasis added).

[30] Although Ms. Wang did not expressly state that her tenants did not tell her about delivery of the appellants' notice of application to assess damages in October 2024, it was open to the judge, on the record before her, to infer this was the case.

[31] As noted earlier, the appellants argue that the judge failed to draw an adverse inference. They say an adverse inference arises from Ms. Wang's failure to file affidavit evidence responding to evidence from their process server that he delivered materials to an adult Asian male at her Burnaby apartment on September 21, 2024. That is, they submit the judge should have inferred that the tenant brought these materials to her attention.

[32] First, counsel for the appellants was not certain if this adverse inference argument was put to the judge. Even if it were, I would not conclude that the judge erred in failing to draw the inference. As this Court stated in *Singh v. Reddy*, 2019 BCCA 79 at para. 9, "the decision to draw an adverse inference is discretionary and premised on the likelihood that the witness would have given harmful testimony to the party who failed to call him or her."

[33] The factors to be considered in deciding whether to draw an adverse inference, set out at para. 10 of *Singh,* include the following: (1) whether there is a legitimate explanation for failing to call the witness; (2) whether the witness is within the exclusive control of the party or is equally available to both parties; and (3) whether the witness has key evidence to provide or is the best person to provide the evidence in question.

[34] In my view, it is unclear whether Ms. Wang would have anticipated that the appellants intended to seek an adverse inference at the hearing before the judge—and therefore been prepared to explain why she had not called evidence from her tenants. In addition, there is no evidence that the tenants were within her "exclusive control" at the time of the hearing before the judge. Finally, in the absence of some evidence, it would have been speculative for the trial judge to conclude that the tenant would have notified Ms. Wang about the delivery of materials and provided them to her while she was in China. For these reasons, I would not conclude that the judge erred in failing to draw the adverse inference sought by the appellants.

[35] With respect to the appellants' argument the judge erred in finding that Ms. Wang's qq.com email address was a Canadian email address, it is not entirely clear whether the judge assumed this was the case. The judge referred to Ms. Wang's evidence that "[d]ue to Chinese internet restrictions, she was not able to access her Canadian email accounts while she was in China" (emphasis added). There is no admissible evidence before this Court or the court below as to whether the email account ending in "qq.com" is Chinese or Canadian.

[36] In any case, Ms. Wang's evidence was that she was unable to access this account and her Gmail account when she was in China and she primarily used WeChat for communication. I see no error by the judge in relying on this evidence.

[37] Ultimately, I agree with Ms. Wang's submissions that the appellants impermissibly ask this Court to reweigh the evidence that was before the judge concerning whether Ms. Wang willfully ignored the appellants' proceedings. The judge's finding that Ms. Wang did not become aware of the default judgement or

damages assessment until she returned to Canada in January 2025 is owed deference.

[38] I would not accede to this ground of appeal.

Did the judge err in law by taking judicial notice of Chinese internet restrictions?

[39] The appellants submit that the judge erred in law by taking judicial notice that unspecified Chinese internet restrictions prohibited access to Ms. Wang's Canadian email accounts. In my view, this submission is misplaced. In her reasons the judge did not set out that she took judicial notice of this fact but instead referred to the Ms. Wang's evidence as to why she was unable to access her email accounts while she was in China.

[40] I would not accede to this ground of appeal.

Disposition

[41] I would dismiss the appeal.

"The Honourable Justice Mayer"

I AGREE:

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Justice Griffin"